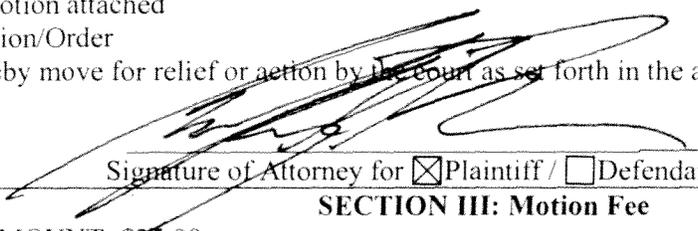


STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Scott H. Richardson, etc. )  
 Plaintiff )  
 )  
 v. )  
 )  
 Guardian Healthcare Inc. In Rehabilitation )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
 10-CP-40-7093

MOTION AND ORDER INFORMATION  
 FORM AND COVER SHEET

Plaintiff's Attorney: Geoffrey R. Bonham, Bar No. 13058 Address: PO Box 100105, Columbia SC 29202-3105 phone: 803-737-6219 fax: 803-737-6229 e-mail: gbonham@doi.sc.gov other:	Defendant's Attorney: N/A, Bar No. Address: phone: fax: e-mail: other:	JEANE L. BRIDGES C.C.P. CLERK 2010 OCT 22 PM 4:37 FILED
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)		
<b>SECTION I: Hearing Information</b>		
Nature of Motion: Motion for Approval of Plan of Rehabilitation Estimated Time Needed: NA Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO		
<b>SECTION II: Motion/Order Type</b>		
<input checked="" type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.		
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant		October 22, 2010 Date submitted
<b>SECTION III: Motion Fee</b>		
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCF) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:		
<b>JUDGE'S SECTION</b>		
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:		_____ JUDGE CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>		
Collected by: _____		Date Filed: _____
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED AMOUNT DUE: _____		

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Scott H. Richardson, Director of the South  
Carolina Department of Insurance,

Petitioner,

vs.

Guardian Healthcare, Inc.,

Respondent.

MOTION FOR APPROVAL OF  
PLAN OF REHABILITATION

C. A. No. 2010-CP-40-7893

FILED  
OCT 22 PM 4:37  
JEANETTE R. MURPHY  
C.C.P. & G.S.

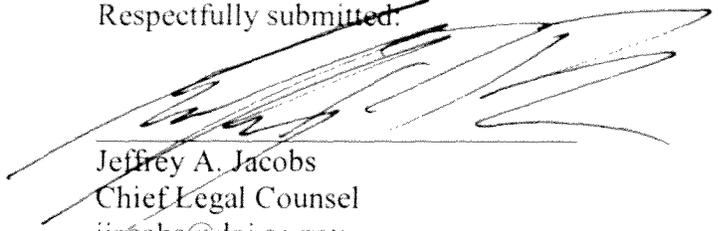
Scott H. Richardson, Director of the South Carolina Department of Insurance in his capacity as Rehabilitator of Guardian Healthcare, Inc., in Rehabilitation (Guardian), hereby moves for an order approving the Rehabilitation Plan attached hereto as Exhibit A (the Plan). As grounds therefor, Petitioner would show the Court the following:

1. On October 12, 2010, this Court executed the Consent Order Commencing Rehabilitation Proceedings & Granting an Injunction & Automatic Stay of Proceedings (the Rehabilitation Order). In the Rehabilitation Order, this Court appointed Scott H. Richardson as Rehabilitator, thereby vesting him with all powers and responsibilities set forth in S.C. Code Ann. § 38-27-330 (2002).

2. Since the entry of the Rehabilitation Order, the Rehabilitator has completed the negotiation of most of the agreements described in the Consent Order Commencing Rehabilitation Proceedings. Pursuant to S.C. Code Ann. § 38-27-330(d)(2002), the Rehabilitator hereby submits his plan for the efficient runoff of the liabilities of Guardian. Petitioner hereby respectfully requests that the Plan be approved.

In support of this motion, Petitioner relies on the orders, papers, pleadings and other filings in this matter as well as the memorandum attached hereto and incorporated herein by reference.

Respectfully submitted,



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Attorneys for the Petitioner

October 27 2010

**STATE OF SOUTH CAROLINA  
RICHLAND COUNTY**

**IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT**

Scott H. Richardson, as Director of the  
South Carolina Department of Insurance,

vs.

Guardian Healthcare, Inc.,  
Respondent.

**MEMORANDUM IN SUPPORT OF  
PLAN OF REHABILITATION**

C.A. No. 2010-CP-40-7093

FILED  
2010 OCT 22 PM 4:37  
JIMMY L. TORRIDE  
C.P. G.S.

In the Order commencing the instant rehabilitation proceedings, this Court appointed Petitioner, Scott H. Richardson, the Rehabilitator of Guardian Healthcare, Inc. in Rehabilitation (Guardian). As Rehabilitator, he has all powers and responsibilities set forth in S.C. Code Ann. § 38-27-330 (2002) of the South Carolina Code. Subsection (d) of that Code section provides:

(d) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he shall prepare a plan to effect the changes. Upon application of the rehabilitator for approval of the plan, and after any notice and hearings the court may prescribe, the court may either approve or disapprove the proposed plan, or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for the period and to the extent necessary.

Pursuant to this statutory authority, the Rehabilitator has prepared a Plan of Rehabilitation (Plan) which is attached as Exhibit A and incorporated by reference herein. The Rehabilitator believes that the Plan is fair, equitable, and in the best interests of the enrollees and creditors of Guardian.

## **I. FACTUAL BACKGROUND**

### **A. Guardian's Business Operations**

Guardian Healthcare, Inc. is a privately held South Carolina domestic insurer specializing in the marketing and sale of Medicare Advantage health insurance products. Its principal place of business is in Greenville, South Carolina. It is not authorized to transact the business of insurance in any other state.

Guardian is subject to the dual regulation of the state and federal government. The South Carolina Department of Insurance (Department) has regulatory jurisdiction over the Respondent pursuant to, *inter alia*, Chapters 3, 5, 9, 13 and 71 of Title 38 of the South Carolina Code of Laws 1976, as amended. The Department licenses the Respondent to act as an insurer in South Carolina and monitors its financial condition. The Respondent is also subject to the regulatory jurisdiction of the Center for Medicare and Medicaid Services (CMS). CMS approves the contracts for insurers, such as Respondent, that market Medicare Advantage programs. CMS approves the rates, product benefits, the provider network and provides all guidelines for the sale of the Medicare Advantage product.

Guardian's bank balances at September 30, 2010 were \$1,836,339 with estimated unpaid claims reported and unprocessed totaling \$9,758,643 (excluding incurred but not reported (IBNR)) and outstanding payables of \$86,407 thus a negative cash position of (\$7,835,897.) On a weekly basis, since early July 2010, unpaid claims have continued to be between \$9 million and \$11 million. Actuarial estimates for September 30, 2010 for incurred but not reported (IBNR)

claims are approximately \$27 million. Accordingly, Respondent had a negative cash position at September 30, 2010 of more than (\$25,000,000).

Guardian is dependent on new monthly premium revenue to pay past incurred claims; however, that revenue flow ends with contract year ending December 31, 2010 with no more incoming revenue. Premium revenue coming in for the month of October is \$14,431,430. For November and December, approximately \$28,000,000 premium will materialize if the CMS contract remains in force, but likewise, claims unpaid will increase. Administrative expenses have been running approximately \$5 million per quarter. CMS denied Guardian's bid for a 2011 contract, citing solvency concerns. On or about August 31, 2010, CMS denied Respondent's appeal of the denial of its contract bid for 2011. The management of Guardian engaged in extensive efforts to sell stock and various discussions and negotiations were had with potential purchasers. The offer made by Interested Party, a life insurance company, appears to be the only viable one. Other potential purchasers declined to make or did not follow through on offers after completing their due diligence review of the financial status of Guardian.

B. Order Appointing Rehabilitator of Guardian Healthcare, Inc.

On October 12, 2010, the Honorable Alison R. Lee placed Guardian in receivership and issued an order appointing Scott H. Richardson Rehabilitator and vesting title of Guardian's assets in the Rehabilitator; and directing the Rehabilitator to take possession of Guardian's books, records, and assets and to conduct as Rehabilitator the business of Guardian. The Rehabilitation Order also provided the Rehabilitator with certain powers and authorities as set forth in both the Order and Chapter 27 of Title 38 of the South Carolina Code. Guardian was placed into rehabilitation because it was financially impaired pursuant to S.C. Code Ann. § 38-9-

80 and deemed to be operating in a hazardous financial condition due to its negative surplus position. Guardian lacked sufficient paid-in capital and surplus to ensure enrollee safety.

C. Guardian's Assets and Liabilities

Guardian's liabilities were estimated as of October 14, 2010 to be in excess of \$20,000,000. Guardian's assets include its name, network, book of business, certain recoverables, South Carolina certificate of authority, office furniture and equipment and certain contracts.

D. Third Party Assumption

Based on Guardian's financial condition and the denial of its appeal by CMS, it was determined that Guardian's business operation was not sustainable. Guardian's Board of Directors has pursued the sale of the company over the past several months with little success. This transaction presents the best opportunity to realize value from the corporate shell and certificates of authority of Guardian. The Interested Party proposes to assume Guardian's Medicare Advantage book of business and certain liabilities as of the Assumption Effective Date as set forth in Assumption Agreement attached as an exhibit.

E. Summary of Assumption

The Rehabilitator proposes that the corporate shell of Guardian, together with its name and certificates of authority to do business in South Carolina, be transferred to Interested Party free and clear of any liabilities other than those liabilities expressly assumed in accordance with the assumption or novation agreements. Interested Party is assuming all liability for all CMS contracts and evidences of coverage issued from, and after, November 1, 2010 which are within the terms of the CMS contracts referenced above. The interested party has also agreed to pay

into the Respondent estate the sum of \$4,000,000 for these assets. The Interested Party has also agreed to assume or novate the lease and to lease certain personal property belonging to Guardian until such property can be sold for the benefit of Guardian.

#### F. Notice of this Application and Rehabilitation Plan

The Rehabilitator plans to provide written notice of this application, the Rehabilitation Plan and the agreements forming the Plan to Guardian's creditors, employees and all persons and entities known to the Rehabilitator to have a substantial unsatisfied claim that may be affected by the Order, the Plan and the Notice of Motion and Motion for Approval of the Preliminary Rehabilitation Plan and any Court orders pertaining thereto. It is intended that Notice will be provided by: 1) electronic mail and/or mailing it first class to the last known address of the person; 2) posting it in five newspapers of general statewide circulation; and 3) placing it on the website of South Carolina Department of Insurance.

## II. **PLAN OF REHABILITATION**

### A. Overview of the Rehabilitation Plan

Copies of the Plan and the agreements comprising the Plan are attached. They will also be made available for review and downloading at: <http://doi.sc.gov/legal/pages/receivershipcompanies.aspx>. Anyone requiring a full and detailed understanding of the terms and provisions of the Plan should carefully read the documents and consult with attorneys, accountants, consultants and other professionals of their own choosing. The Rehabilitator and his representatives cannot provide advice, legal or otherwise, to policyholders, creditors or other interested persons concerning the Plan. The information set forth below is just a summary of the plan.

Under the Plan, as of November 1, 2010, Interested Party will assume the CMS contracts previously issued to Guardian. All premium income, including capitation revenue from CMS, medical recoverable, reserves, etc., related to the Medicare Advantage plans and other will be transferred to Interested Party. Assets not transferred to Interested Party, including reinsurance recoverable, will remain a part of the receivership estate and will be marshaled and used for the purpose of satisfying claims liabilities for services rendered October 31, 2010 and prior. These claims will be administered in accordance with a court approved claims process. This Plan is subject to judicial approval.

B. Retention by Guardian Healthcare Inc. in Rehabilitation of Certain Guardian Assets and Liabilities

The Rehabilitator will retain after the closing certain assets of Guardian for the administration of the rehabilitation. Apart from the assets identified to be transferred to Interested Party in an Assumption Agreement, Interested Party will have no right or interest in the non-transferred assets. In addition, other than claims for services rendered after October 31, 2010, all other claims of any kind or nature against Guardian will not be assumed by Interested Party and therefore, will remain with the rehabilitation estate of Guardian. The distribution of assets from the rehabilitation estate will be governed by the Plan.

C. Administration of Guardian's Retained Assets and Liabilities

The assets and liabilities not transferred to Interested Party will be monetized by the Rehabilitator and subject to the claim priority and asset distribution procedures set forth under South Carolina law. Following the closing of this transaction with Interested Party, it is likely that further orders of rehabilitation and/or liquidation may be requested for the Guardian estate,

and a proof of claims process and claims bar date will be established in accordance with the Plan.

D. Employees of Guardian

Interested Party has agreed to work with the Rehabilitator to identify any employees of Guardian whom Interested Party wishes to hire. Although Interested Party is not obligated to hire any employee of Guardian, the Rehabilitator is optimistic that Interested Party may do so.

**III. BENEFITS OF THE REHABILITATION PLAN**

Upon approval of the Plan, the coordinated care plans under Medicare Advantage will be assumed by Interested Party effective November 1, 2010. As a result of this assumption, the Interested Party will be solely responsible to pay all claims on services rendered after November 1, 2010.

As a part of the closing of the transactions contemplated by the Plan, Interested Party will pay as consideration to the Rehabilitator into the Guardian estate \$4,000,000. In exchange, the Rehabilitator will transfer assets to Interested Party that includes the Guardian Healthcare, Inc. name, its license to transact business in South Carolina and the Medicare Advantage book of business described above.

Assets not transferred by the Rehabilitator to Interested Party shall remain with the Receivership estate of Guardian Healthcare (i.e., Guardian estate) and all other existing assets will be liquidated and applied toward liabilities in accordance with South Carolina law.

The purpose behind this proposed Plan is to maximize the capital resources available to pay claims. There is no South Carolina guaranty fund protection for these types of claims. The Rehabilitator intends to marshal any retained assets and the \$4,000,000 consideration for the

purpose of paying claims on services rendered on or before October 31, 2010. These claims will be administered in accordance with a court-approved plan. Following the closing of these transactions, it is possible that further orders of rehabilitation or liquidation will be requested and a proof of claims process will be established in accordance with applicable South Carolina law. A general description of the proof of claims process is set forth in the attached Plan.

The primary benefits of the Plan are the following:

- a. Effective November 1, 2010, 100% of the allowable Medicare Advantage benefits due and payable under the plans after that date will be paid;
- b. The Plan allows for the continuation of Medicare Advantage benefits for enrollees with minimal disruption in benefits for the enrollees.
- c. The Guardian estate will receive a financial contribution that will enable it to pay some liabilities and claims of certain creditors. The Guardian estate would not have that ability without this contribution.

#### **IV. RISKS OF THE REHABILITATION PLAN**

The primary risks of the Rehabilitation Plan are the following:

- a. Interested Party is an insurance company and there is a risk with any insurance operation. While there can be no absolute guarantee that a well-capitalized company assuming a book of business will never experience financial difficulty in the future, the Rehabilitator is confident that such risks have been properly considered and reasonably addressed.
- b. Due to the limited value of retained assets to pay liabilities and potential claims of Guardian's creditors, some creditors may not be paid, in whole or in part;

- c. Time is of the essence. This transaction must be approved by all necessary parties effective November 1, 2010 for it to be of any benefit to Interested Party; and
- d. Litigation, objections, appeals and future economic conditions could affect the results of the Plan and impact the closing of this transaction.

## **V. RECOMMENDATION OF THE REHABILITATOR**

The Rehabilitator recommends approval of the transactions and agreements set forth in the Plan because the transactions and agreements are fair, rational and in the best interests of Guardian enrollees, creditors and the public. The Rehabilitator's recommendation is based on the following:

1. Interested Party Life Insurance Company, is rated A- by A.M. Best Company. It will assume the contractual liabilities for the CMS contracts referenced above. It is also willing to sublet or novate the lease for the lease of the premises and lease office furniture and equipment. The office space and furniture will be leased to the Interested Party until sold by the Rehabilitator. Interested Party's proposal is the only viable offer for this company. Without it, Guardian will be placed into liquidation immediately where there will be little, if any, funds available to pay claims. Interested Party's offer increases the potential that Guardian's creditors may receive a pro rata portion of their claim. Without this offer, the \$4,000,000 consideration, it is unlikely that any of Guardian's creditor's claims could be paid.
2. By the assumption and transfer of the CMS contracts to Interested Party, there should be minimal, if any, disruption to Guardian enrollees. Interested Party may continue to use the Guardian name through December 31, 2011. Accordingly, Guardian's enrollees are assured that they have continuous coverage and benefits without having to re-enter the

market and obtain coverage through another Medicare Advantage contractor with CMS. Interested Party will execute a novation agreement with CMS.

3. An immediate liquidation of Guardian is not a better alternative to the Plan because without the \$4,000,000, the anticipated lease payments, and recoverables (except capitation and medical), it is unlikely that the claims of any of Guardian's creditors would be paid.

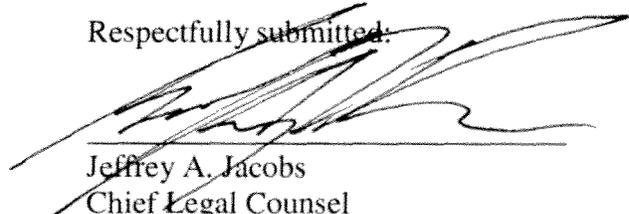
The Rehabilitator believes the Plan is fair, equitable and in the best interest of the creditors of Guardian. Through this transaction, there should be funds available to pay some creditor claims. In all likelihood, there would be little, if any, funds available to pay claims without this transaction. The overriding purpose of the Insurers Rehabilitation and Liquidation Act which, is to protect the interests of insureds, claimants, creditors and the public generally, is best met by the implementation of this Plan. *See* S.C. Code § 38-27-10 et seq. Under the Act, this Court serves in a supervisory capacity over the Rehabilitator, approving or disapproving the recommendations of the Rehabilitator. *See Ins. Comm. v. New South Life Ins. Co.*, 270 S.C. 612, 244 S.E.2d 289 (1978). When acting in such capacity, it is proper for the court to both (1) rely on the Rehabilitator's expertise as Director of Insurance for the State of South Carolina and (2) to evaluate the soundness of the Plan.

As set forth above, the Rehabilitator recommends this Plan with Interested Party because the Plan and the agreements comprising the Rehabilitation Plan appear to be fair, rational, and in the best interest of Guardian's enrollees and creditors.

## VI. CONCLUSION

For the reasons stated above, the Rehabilitator believes that an Order should be entered approving this Plan because it is fair, rational and in the best interests of Guardian's enrollees and creditors. The Petitioner respectfully requests that this Court issue an Order; (1) approving the Plan as proposed; (2) providing for a claims bar date; (3) authorizing the Rehabilitator to carry out the Plan in its entirety; (4) approving the transaction as being in the best interests of Guardian's claimants, creditors and the general public; (5) authorizing Rehabilitator to set up a claims fund, liquidating trust or other mechanism necessary to efficiently and effectively administer any claims that remain after the closing of the sale; and (6) approving the allocation of the contribution and other payments from Interested Party be used by the Liquidation Trust for the administration of the estate and payment of claims.

Respectfully submitted:



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Attorneys for the Petitioner

October \_\_\_\_, 2010

**STATE OF SOUTH CAROLINA  
RICHLAND COUNTY**

**IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT**

Scott H. Richardson, Director of the South  
Carolina Department of Insurance,

Petitioner,

vs.

Guardian Healthcare, Inc.,

Respondent.

**PLAN OF REHABILITATION**

C.A. No. 2010-CP-40-7093

Pursuant to S.C. Code Ann. § 38-27-330(d) (2002), Rehabilitator Scott H. Richardson, by and through the undersigned counsel, hereby submits his proposed plan of rehabilitation of Respondent, Guardian Healthcare, Inc. in Rehabilitation.

Respondent is a Medicare Advantage provider domiciled in South Carolina. Because it is an insurance company participating in a federal health insurance program, it is subject to dual regulation by both the federal government and the State of South Carolina. The Center for Medicare and Medicaid Services (CMS) within the United States Department of Health and Human Services administers federal rules and regulations governing rates, forms, marketing, provider networks, etc., essentially, all aspects of the Medicare Advantage program and participating insurance contractors, with the exception that the State is the primary regulator of solvency-related issues, including rehabilitation. Moreover, because any rehabilitation plan will almost certainly impact operations subject to federal oversight, coordination between the Rehabilitator and CMS has been and continues to be an essential part of the rehabilitation process. CMS has been served with a copy of and has reviewed this Plan; and CMS voices no

Exhibit     A

objection to it. Accordingly, the Rehabilitator now seeks the approval of this court of the Plan set forth below.

### **ARTICLE I: PURPOSE OF THE PLAN**

The primary purpose of the Plan is to provide a means for effectively dealing with past and present (through October 31, 2010) outstanding claims. It is also designed to put in place a mechanism to ensure that future claims (from November 1, 2010 forward) are properly administered and paid in a timely fashion in accordance with applicable state and federal law.

The Rehabilitator proposes to accomplish these objectives through (1) the assumption and novation of certain assets and liabilities of Respondent by Interested Party Life Insurance Company, and (2) the transfer of retained assets and liabilities to a liquidating trust. Incorporated into the Plan are four agreements that, together, provide the framework for its implementation: (1) the Guardian Liquidating Trust Agreement between Guardian Healthcare, Inc. in Rehabilitation and the Trustee (Liquidating Trust Agreement), Exhibit A hereto; (2) an assumption agreement between Guardian and the Assuming Insurer (Assumption Agreement), Exhibit B hereto; (3) the Contribution, Assignment, Access and License Agreements; Exhibit C hereto; and (4) CMS Novation Agreement Exhibit D hereto.

### **ARTICLE II: STRUCTURE AND OPERATION OF THE PLAN**

2.1: *Plan Overview.* The Plan generally provides for (a) the transfer to and assumption by Interested Party of certain assets and liabilities as of the Assumption Effective Date; (b) the transfer of the remaining assets and certain liabilities to the Liquidation Trust including the consideration for the assumption transaction; (c) the filing with and allowance of Claims by the Rehabilitator; (d) the marshaling and liquidation of the assets of the Guardian estate by the Rehabilitator as trustee of the Liquidation Trust and Liquidator of the Guardian

estate; (e) the distribution of the net proceeds of the Guardian estate in payment of allowed claims; and (f) the early and orderly closure of the Rehabilitation Proceedings and dissolution of the Liquidation Trust.

2.2 *The Liquidation Trust.* The Rehabilitator shall establish the Liquidation Trust under the form of the Liquidation Trust Agreement attached as Exhibit A.

2.3 *Assumption and Novation Agreements (Assumption Agreements).* On the closing date, the Rehabilitator will execute an assumption agreement transferring certain assets and liabilities (as of November 1, 2010) to Interested Party Life Insurance Company (Interested Party), Exhibit B. Concurrently, Interested Party will execute a novation agreement, Exhibit D, with the Center for Medicare and Medicaid Services (CMS). Interested Party will take over Respondent's book of business and be substituted for the Respondent as the insurer via this novation agreement with CMS.

2.4 *Transfer of Retained Assets and Liabilities.* On the closing date, the Rehabilitator shall cause the Liquidation Trust to assume all of the retained liabilities. The reinsurance and assumption of the retained contract obligations will be pursuant to the assumption agreement to be executed by the Trustee and the Rehabilitator subject to the Court's approval. In consideration of its assumption of the retained liabilities, the Liquidating Trust will receive the retained assets. The sale and conveyance of the retained assets to the Liquidation Trust will be pursuant to an assignment agreement which will be submitted to the Court for approval.

2.5 *Discharge and Release of Liabilities.* From and after the closing date, Guardian will be released and discharged of and from all of the retained liabilities whatsoever, whether or not such liabilities or obligations are reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured

including without limitation any liabilities arising in connection with any contract, ceding or retrocession agreement, of Guardian arising out of any act, event, condition or circumstances existing or occurring at any time on or prior to the Closing Date. The release and discharge shall be confirmed by the Court in the Order approving this Plan.

2.6 *Termination of the Liquidation Trust.* As soon as practicable following the Rehabilitator's determination in his sole discretion as Rehabilitator that substantially all known assets of the Guardian estate have been marshaled, collected and distributed, the Rehabilitator shall apply to the Court for an order of discharge which shall authorize the termination of the Liquidation Trust. The Court may grant the discharge and other relief as may be appropriate under the circumstances. Upon discharge of the Trustee, the proceedings shall terminate and the Liquidation Trust shall be dissolved. Thereafter, the Director or other interested party may at any time petition the Court to reopen the proceedings for cause shown.

### **ARTICLE III: FILING AND ALLOWANCE OF CLAIMS**

3.1: *Proofs of Claims.* Proofs of claims shall be made in the form set forth in Proof of Claim form approved by the Court. The Rehabilitator need not consider or allow any claim unless a timely proof of claim is filed containing substantially all of the information requested in the Proof of Claim form. Notwithstanding the submission of a completed proof of claim, the Rehabilitator shall have the right to require that the claim holder: a) present additional information or evidence; b) produce documents; c) file affidavits; and/or d) submit to deposition, all as may reasonably be required to determine the basis, allowability and amount of the claim.

3.2: *Incurred and Reported Requirement.* Claims under contract shall be eligible only if and to the extent that the insured event in respect of which the claim is made or on which the claim is otherwise founded occurred and is reported to Guardian by the Bar date.

3.2: *Claims Bar Date.* As a part of the Order confirming this plan, the Court shall order that all claim holders file their claims with the Rehabilitator together with proper proofs no later than December 31, 2011 or such other date as the Court may designate in its discretion. The Rehabilitator shall cause notice of the bar date to be given in a manner to be determined by the Court.

3.3: *Executory Contracts.* The Rehabilitator shall affirm or reject executory contracts and unexpired leases to which Guardian is a party by written notice to the counterparty. An executory contract or unexpired lease that has not been confirmed or rejected by the closing date shall be deemed affirmed and shall be retained and assumed by the Liquidation Trust as a part of the retained assets, subject to the Rehabilitator's continuing right to affirm or reject such executory contracts and unexpired leases at any time prior to the Bar date. The counterparty to a rejected executory contract or unexpired lease shall have a priority comparable to that of a general creditor (class VI) as set forth in S.C. Code Ann. § 38-27-610 (2002).

3.4: *Claims Adjudication and Priority of Distribution.* Claims shall be reviewed and adjudicated in accordance with the procedures approved by the Court. The Rehabilitator shall review all claims timely and make the investigation necessary to determine the basis for and the allowability and amount of the claims. The Rehabilitator may compromise and negotiate the amount for which claims shall be allowed. To the extent practicable, the Rehabilitator shall use the Priority of Distribution systems set forth in S.C. Code Ann. § 38-27-610 to determine the priority of distributions from the Liquidation Trust.

3.5: *Administrative Expenses.* The costs and expenses of the Rehabilitator and the Liquidation Trust (including but not limited to any liability or obligation of the Liquidation Trust to Guardian) which would otherwise qualify as administrative claims under S.C. Code Ann. §

38-27-610 shall not be subject to the Bar Date or any other time limit for presentation or payment. The Rehabilitator shall be authorized to pay such administrative claims from time to time when and as due, subject to the approval of such accounting as may be required by the Court. The Rehabilitator shall be authorized to establish reasonable reserves for the payment of claims and expenses whether accrued or projected, in any accounting of, or report with respect to, the Guardian Estate and the amounts then available for distribution.

#### **ARTICLE IV: MISCELLANEOUS PROVISIONS**

4.1 *Reservation of Rights.* Neither the filing of this Plan nor the existence of any statement or provision contained herein, nor the taking or withholding of any action by Guardian or the Rehabilitator with respect hereto, shall be an admission as to, or waiver of any rights, claims or defenses of the Rehabilitator or Guardian unless and until closing of all of the transactions contemplated by the Plan has occurred. In the event the Plan is withdrawn or otherwise terminated without such closing having occurred, no statement contained herein may be used or relied upon in any manner in any suit, action or proceeding within or independent of the rehabilitation proceedings.

4.2: *Withdrawal or Modification of the Plan.* The Rehabilitator reserves the right to withdraw, amend or modify the Plan prior to the entry of the Approval Order Order Approving the Plan of Rehabilitation (Approval Order). Material modifications of the Plan shall be filed with the Court and notice of such modifications shall be given in a manner to be approved by order of the Court. Following entry of the Approval Order, the Rehabilitator may amend or modify the Plan to correct technical defects, omissions, and inconsistencies as necessary to carry

out the purpose and intent of the Plan (collectively technical corrections). Notice of any such technical correction shall be filed with the Court.

The Rehabilitator may file amendments to address issues not addressed by this Plan or requiring clarification.

4.3. *Financial Reports.* The Rehabilitator shall submit to the Court those accountings and reports required or otherwise contemplated by Section 38-27-320(b) of the South Carolina Code of Laws, 1976, as amended.

4.4.: *Settlements.* Except as otherwise provided or authorized by the Plan documents, no compromise or settlement of Guardian's or the Liquidation Trust's rights, and no disposition of either of their assets, shall be effective without the prior approval of the Court or the prior approval of guidelines and limitations to which the compromise, settlement, or asset disposition as applicable was made; provided however, the Rehabilitator shall have the authority without the necessity of application to the Court and subject to compliance with all other terms of the Plan Documents and Chapter 27 of Title 38 of the South Carolina Code to compromise and settle or otherwise dispose of any other rights, assets or liabilities of Guardian or the Liquidation Trust that involves the amount in any single transaction not to exceed the sum of \$100,000.

4.5.: *Powers of the Rehabilitator.* The Rehabilitator and his Special Deputy Rehabilitator shall have the full powers delegated to him and them under the South Carolina Rehabilitation Act, those additional and further powers as have been and/or may hereafter be delegated to them by the Court and any other powers granted by applicable law.

4.6.: *No Admission as to Rights.* The rights, title and interest, as described herein of claimants, third party claimants, and any other persons accorded benefits under this Plan have been stated by the Rehabilitator only for purposes of the Plan. Such statement shall not operate

or be effective as an admission by the Rehabilitator of any such person's right, title or interests in, to or under Guardian's property, their agreements with Guardian, obligations owed to them by Guardian or otherwise if this Plan is withdrawn, terminated or is not approved by the Court.

4.7.: *Reserved Jurisdiction.* The Richland County Court of Common Pleas (Court) shall reserve jurisdiction to control and administer any matter presented for resolution and to adjudicate those matters in accordance with applicable South Carolina law.

4.8.: *Premium Payments.* Prior to the Assumption Effective Date, any person other than the enrollee responsible for the payment of premium or returned premium to Guardian shall be obligated to pay the Liquidation Trust any unpaid collected premium held by such person, whether earned or unearned; any recoverables and any unpaid earned premium all as shown in Guardian's records. No credit or set-off shall be allowed for the unearned portion of premium under a contract unless the contract was canceled prior to the Rehabilitation date. Unpaid earned premium due to Guardian must be paid to the Liquidation Trust.

4.9: *Notice to the Rehabilitator.* Any notice, request, claim, proof of claim, demand, waiver, consent approval or other communication required or permitted to be given to the Rehabilitator hereunder shall be in writing and shall be deemed given only if delivered by hand, or mailed by certified or registered mail with postage prepaid and return receipt requested, as follows:

Guardian Healthcare Inc., In Rehabilitation  
Attention: Scott H. Richardson  
Post Office Box 100105  
Columbia, South Carolina 29202-3105

A different address may be specified by the Rehabilitator for particular types of claimant communications. Notice of such address shall be provided in such form as may be approved by the Court upon application of the Rehabilitator.

4.10.: *Notices to Claimants and Creditors.* Notices to claimants and creditors shall be sent by first class mail, postage prepaid at the addresses shown in Guardian's books and records or to such other address written notice of which is provided to the Rehabilitator by a claimant. With approval of the Court, notices required to be provided by the Rehabilitator to all claimants and or creditors may be made by publication in five newspapers of general statewide circulation i.e., the State Newspaper, the Charleston Post and Courier, The Greenville News, the Charlotte Observer, and the Darlington News and Press or such other publications of general circulation as may be proposed by the Rehabilitator and approved by the Court. Additionally, notice may be provided by electronic mail to the email address of the claimant as indicated in Guardian's records.

4.11.: *Headings.* The headings used in the Plan are inserted for convenience only and shall not be deemed part of the plan.

4.12.: *Successors and Assigns.* The rights, benefits and obligations of any person named or referred to in the Plan shall be binding upon and shall inure to the benefit of his successors and assigns.

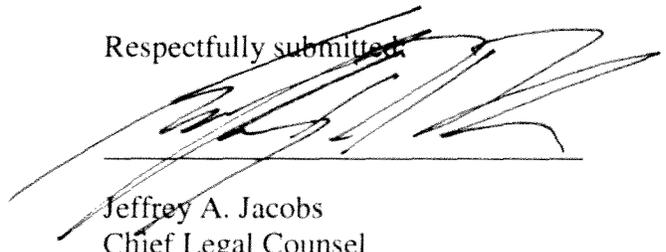
4.13.: *Capacity of the Director.* The Director is a party to this Plan and the agreements only in his representative capacity as Rehabilitator of Guardian and the Liquidator of the Guardian estate, and not individually. The Rehabilitator shall not have any personal liability for any matters or obligations hereunder nor shall the State of South Carolina be deemed a party hereto or have any liability hereunder.

4.14.: *Entire Agreement.* The Agreements, together with the Plan constitute the entire agreement among the parties to the Plan, with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations, and discussions whether written or oral of the parties. There are no representations, promises, warranties, covenants or undertakings other than those expressly set forth or referred to in the Plan and the Agreements.

4.15.: *Coordination.* The Plan and the Agreements shall be construed so far as possible in a manner that gives effect to each of their respective terms and avoids inconsistency among them. In the event of an irreconcilable inconsistency between the Plan and any of the Agreements, the terms of the Plan shall control.

4.16.: *Governing Law.* The Plan documents shall be governed and construed in accordance with the laws of the State of South Carolina, without giving effect to the principles of conflicts of laws thereof.

Respectfully submitted,



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Attorneys for the Petitioner

October 22, 2009

Exhibit A  
Liquidating Trust Agreement

## GUARDIAN HEALTHCARE LIQUIDATING TRUST AGREEMENT

THIS TRUST AGREEMENT ("Agreement") is made and entered into as of the \_\_\_ day of October, 2010, by and between SCOTT H. RICHARDSON, in his capacity as Rehabilitator of GUARDIAN HEALTHCARE, In Rehabilitation ("Guardian"), as Grantor, and \_\_\_\_\_ in capacity as trustee ("Trustee") of THE GUARDIAN HEALTHCARE LIQUIDATING TRUST ("Trust").

### Recitals

WHEREAS, On October 12, 2010, Guardian was placed into rehabilitation proceedings upon application of the Director of Insurance in that certain action pending in the Richland County Court of Common Pleas of the State of South Carolina, (the Court) Scott H. Richardson, Director of Insurance v. Guardian Healthcare, Inc., (In Rehabilitation), *CA No. 2010-CP-40-7093*.

WHEREAS, on \_\_\_\_\_, the Court confirmed a Plan of Rehabilitation developed and proposed by the Director ("Plan") pursuant to which substantially all of the assets ("Retained Assets") and liabilities ("Retained Liabilities") of Guardian (collectively, the "Guardian Estate") are to be transferred to, and assumed by, the Trust. Following such transfer and assumption, the retained liabilities are to be liquidated as detailed in the Plan.

WHEREAS, the Plan contemplates that the Trustee of the Trust, will (i) receive the Retained Assets; (ii) marshal and liquidate the Retained Assets; (iii) assume the Retained Liabilities; (iv) review and adjust the Retained Liabilities as Allowed Claims against the Guardian Estate; and (v) distribute the proceeds of the Retained Assets in payment of Allowed Claims.

WHEREAS, this is the Liquidating Trust Agreement referred to at Section \_\_\_ of the Plan pursuant to which the Director shall establish the Trust to receive the Retained Assets and Retained Liabilities, and perform the Trust obligations contemplated by the Plan.

### Agreement

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, agree as follows:

#### **Article I: Definitions**

Capitalized terms used in this Agreement and not defined herein shall have the meaning given to those terms in the Plan and the other Definitive Agreements. In addition, the following words or phrases when used herein shall have the following meanings:

1.1 "Administration Costs" means, without limitation, all expenses incurred in connection with the Trust Estate or with the administration and management of the Trust Estate, including taxes assessed or reimbursable with respect to any portion of the Trust Estate (e.g., excise or property taxes), premiums on insurance, repairs on properties, office expenses, postage, salaries and benefits of any employees deemed necessary by the Trustee, expenses and fees of attorneys or other professionals retained by the Trustee (including, expenses and fees paid to Persons retained

This Agreement is in the form of agreement the parties are contemplating executing. It is a draft and still subject to edits.

pursuant to section 7.1 hereof), costs of prosecuting, maintaining or defending any claim, action or lawsuit, accounting fees, and all other costs, expenses and fees incurred by the Trust.

1.2 "Allowed Claims" means claims that have been investigated and approved by the Trustee or Deputy Trustee.

1.3 "Cash Proceeds" means all Trust assets comprised of cash and all cash realized by the Trust on or with respect to the assets comprising the Trust Estate, including, without limitation, all cash realized from prosecution or settlement of claims, sales, dividends, interest, redemptions, exchanges, distributions, payments of principal, liquidations or other dispositions of assets comprising the Trust Estate.

1.4 "Code" means the Internal Revenue Code of 1986, as amended.

1.5 "Custodian" means such custodian bank as may be appointed by the Trustee from time to time hereunder.

1.6 "Deputy Trustee" has the meaning given to such term in section 2.4 hereof.

1.7 "Distributable Assets" means those assets of the Trust described in section 5.1 hereof.

1.8 "Grantor" means Guardian.

1.9 "Income" means all receipts of money or other property received or other return derived from Principal, excluding any Net Sales Proceeds.

1.10 "Insurance Code" means the South Carolina Insurance Code, as amended.

1.11 "Net Income" means, for purposes of making distributions, all Income after payment of Administration costs.

1.12 "Net Sales Proceeds" means the gross proceeds received, in cash or other property, from the disposition of any asset of the Trust Estate, less any commissions paid or direct costs incurred in the disposition of such asset.

1.13 "Permitted Investments" has the meaning given to such term in Article VIII hereof.

1.14 "Plan" means the Plan of Rehabilitation filed in Scott H. Richardson, Director Insurance v. Guardian Helathcare, Inc., in Rehabilitation.

1.15 "Principal" means the Transferred Assets, plus any substitutions, replacements or other property received in exchange therefor.

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1.16 "Retained Cash" means cash held in the Trust which is reserved by the Trustee, in his reasonable discretion, as being necessary for payment of future Administration costs, including expenses incurred in connection with prosecuting, maintaining or defending any claim, action or lawsuit relating to the liquidation of the Guardian Estate, and, without duplication, cash which is reserved pursuant to Section 9.2.15 hereof.

1.17 "Trust" means the trust established by this Agreement.

1.18 "Agreement" means this Liquidating Trust-Agreement.

1.19 "Trustee" has the meaning given to such term in the caption of this Agreement. The term Trustee as used herein shall, unless otherwise expressed, refer to the Trustee and any Deputy Trustee(s).

1.20 "Trust Beneficiaries" means the beneficiaries of the Trust described at Section 4.1 hereof.

1.21 "Trust Estate" means Principal, Income and Net Sales Proceeds, together with the Transferred Liabilities.

## **Article II: Administration and Purpose**

2.1 Name. The name of the Trust shall be "The Guardian Healthcare Liquidating Trust."

2.2 Place of Administration. The principal place of administration of the Trust shall be in Columbia, South Carolina, or any other place within the State of South Carolina as the Trustee shall from time to time designate. The Trust may have such other offices or places of administration as the Trustee may from time to time designate.

2.3 Establishment of the Trust. The Trust is established pursuant to the Rehabilitation Plan. The Trust became effective on the Assumption Effective Date.

2.4 Administration. The Trust shall be administered by the Trustee. The Trustee shall have the power and authority to designate one or more deputy Trustees (each, a "Deputy Trustee") to administer the Trust on a day to day basis on her behalf. A Deputy Trustee shall, subject to the discretion of the Trustee, have all of the power and authority otherwise granted to the Trustee and may be replaced by the Trustee by the written designation of a substitute Deputy Trustee, provided that any such written substitution shall be filed with the Superior Court. All persons dealing with the Trust shall have the right to rely on the acts of a Deputy Trustee as if such acts were the acts of the Trustee. Counsel to both the Trust and the Trustee shall be selected by the Trustee and shall serve subject to the right of the Trustee to substitute counsel. The rights, duties and obligations of all persons and other entities interested in the assets and liabilities of Guardian or against which Guardian or the Rehabilitator have any claim, action, chose in action, suit or other right of any kind

or nature, choate or inchoate, in law or in equity (other than Claims against Guardian expressly released, discharged, altered or otherwise modified pursuant to the Rehabilitation Plan), shall remain unchanged, except that claims against Guardian shall relate to the assets of the Trust, and debts and other obligations owed Guardian or the Rehabilitator shall be due to the Trust, all in accordance with the Rehabilitation Plan and applicable law.

2.5 Statement of Purpose. The purpose of the Trust is to receive and control the Trust Estate and to liquidate and distribute to the Trust Beneficiaries, from time to time, the Trust Estate in a manner authorized and directed in this Agreement and the Plan, and the powers and rights confirmed by this Agreement shall be interpreted as reasonably necessary to, and consistent with, the accomplishment of this purpose. The Trust has no objective to continue or engage in the conduct of any trade or business. The Trustee may perform other activities necessary to, and consistent with the Plan and the purpose set forth in the first sentence of this Section 2.5 including, without limitation (a) pursuing collection of all debts, amounts and other obligations owed to the Guardian estate; (b) reviewing and allowing or disallowing (as applicable) Claims against the Guardian estate; and (c) investing the assets comprising the Trust Estate as permitted under this Agreement. Pending the liquidation of all of the Trust's assets and liabilities, the Trust may enter into such agreements, litigation, actions, settlements, and other arrangements, as the Trustee shall, in good faith, deem necessary or advisable under the circumstances, provided such are in all events consistent with the purposes of the Trust and the Plan. Neither the Trustee nor any of his representatives shall be personally liable for any action taken or omitted to be taken by them, excluding only self-dealing and willful misconduct.

### **Article III: Creation of the Trust Estate.**

3.1 Transfer and Assumption. Guardian hereby conveys, grants, transfers, assigns and delivers to the Trustee the Transferred Assets, all subject to the Transferred Liabilities, together with all of the estate, right, title and interest of Guardian in and to the same. The Trustee shall hold in trust, administer, manage, invest and reinvest the foregoing property, together with the other assets comprising the Trust Estate, in accordance with the uses and purposes set forth herein and in the Plan.

3.2 Acceptance of Trust. The Trustee accepts the Trust hereby created and agrees to perform the same but only upon the terms and provisions of this Agreement and the Plan, and subject to the conditions, terms and limitations set forth herein and therein. The Trustee acknowledges the transfer and assignment to her of the Trust Estate, including receipt of the Retained Assets and assumption by the Trust of the Retained Liabilities.

3.3 Compliance with the Plan. The Trustee shall, and shall cause the Trust to, comply with and perform the terms of the Plan.

### **Article IV: Beneficiaries**

4.1 Identity. The Trust Beneficiaries shall be claimants having Allowed Claims

under the Plan.

4.2 No Title. The Trust Beneficiaries shall have no legal title or interest in the individual assets comprising the Trust Estate and no right to a partition thereof.

4.3 Trust Interests Not Transferable. The beneficial interests, or any part thereof or interest therein, in and to this Trust and under this Agreement are not transferrable, and may not be sold, assigned, pledged, hypothecated or otherwise transferred. Any attempted sale, assignment, pledge, hypothecation or other transfer shall be null, void and have no legal effect whatsoever.

#### **Article V: Distributions**

5.1 Distributable Assets. As of any particular date, that portion of the Trust Estate consisting of cash and Permitted Investments, if any, less Retained Cash and less Administration Costs paid or payable, shall constitute the "Distributable Assets."

5.2 Collection of Trust Estate. Within a reasonable time prior to any distribution under this Agreement, the Trustee shall collect, redeem and otherwise liquidate Permitted Investments to the extent necessary for purposes of the distribution, and shall distribute the cash proceeds thereof as provided in this Article V.

5.3 Distributions. The Trustee shall distribute Distributable Assets based on the Allowed Claims of the Trust Beneficiaries and the priority of such Allowed Claims, all as determined under and in accordance with the terms, conditions and limitations of the Plan, including particularly, but without limitation, Articles II, V and VI of the Plan.

#### **Article VI: Termination of the Trust**

6.1 Termination. The Trust shall terminate on the date when all of the Trust Estate has been marshaled and collected and all Trust assets have been distributed pursuant to Article V hereof.

6.2 Final Distribution. Upon termination of the Trust pursuant to section 6.1, the Trustee shall take full account of the Trust Estate, shall liquidate the assets of the Trust as promptly as is consistent with obtaining fair value therefore, and shall apply and distribute the proceeds in accordance with Article V hereof. Consistent with the foregoing, the Trustee may apply to the Richland County Court of Common Pleas for an order directing the Trustee as to the disposition of any remaining assets of the Trust Estate.

#### **Article VII: The Trustee**

This Agreement is in the form of agreement the parties are contemplating executing. It is a draft and still subject to edits.

7.1 Representatives. The Trustee may appoint one or more Deputy Trustees and the Trustee or a Deputy Trustee may appoint, employ and compensate from the Trust Estate, upon such terms as the Trustee or the Deputy Trustee may reasonably determine, one or more agents, consultants, counsel, financial advisors, asset managers, accountants, attorneys-in-fact, attorneys-at-law, tax specialists, actuaries, brokers and/or other professionals as necessary or proper for the administration of the Trust Estate and Trust. The Trustee also shall be authorized to engage any others to provide administrative services to the Trust. Excluding losses traceable to self-dealing or willful misconduct on the part of the Trustee or Deputy Trustee, as applicable, neither the Trustee nor any Deputy Trustee shall have liability for any misconduct, neglect, default or omission of any person appointed or employed pursuant to this section 7.1.

7.2 Indemnification. The Trustee and any Deputy Trustee appointed hereunder shall at all times be relieved from liability for any and all actions taken or omitted to be taken by them or any of their representatives in administering this Trust, including, without, limitation, any action taken or omitted to be taken in reliance upon the opinion or advice of counsel to the Trust, except to the extent any such action or inaction constitutes willful misconduct or self-dealing. The Trust shall indemnify and hold the Trustee, the Deputy Trustees and their representatives harmless of, from and against any and all liabilities, loss, costs, damages, attorneys' fees and other expenses which the Trustee, the Deputy Trustees or any of their representatives may incur by reason of, or in relation to, their administration of this Trust, excluding however, indemnity for willful misconduct or self-dealing on the part of the Trustee, the Deputy Trustees or their representatives.

### **Article VIII: Investment of the Trust Estate**

Cash Proceeds. Cash Proceeds may be invested by the Trustee in one or more demand deposit accounts maintained at the Custodian or one or more united states treasury obligations with maturities at the time of such investment consistent with anticipated distributions and disbursements from the Trust (collectively, "Permitted Investments"), or in such other classes of investments as shall be approved by the Court, in such amounts as the Trustee shall reasonably determine to be required under the circumstances. All proceeds of the Permitted Investments, net of Administration Costs, including without limitation, all amounts payable due to maturity, redemption, prepayment or otherwise, shall be invested in Permitted Investments. The Trustee shall have no duty to diversify Trust assets.

### **Article IX Appointment and Powers of the Trustee**

9.1 Appointment. The Director or his designee, including any legally appointed successor of the Director or deputy director, shall be Trustee of the Trust.

9.2 Specific Powers of the Trustee. Subject to the jurisdiction of the Court, the Trustee shall have all such powers as shall be necessary or appropriate for the effective administration of the Trust in accordance with the Plan and the Rehabilitation Act, including, but not

limited to, the following:

9.2.1 To hold any property received into the Trust Estate as long as the Trustee may deem advisable.

9.2.2 For the term of this Agreement, to market, sell, convert, assign, convey, exchange, transfer, pledge, encumber, or otherwise dispose of, or grant options with respect to, any of the property comprising the Trust Estate at public or private sale, for such consideration and upon such terms and conditions as the Trustee deems advisable, and without liability on the part of the purchaser to see to the application of the purchase money or to inquire into the validity or propriety of such sale; and to execute and deliver good and sufficient deeds or other evidences of title for any assets, conveying title free and clear of the Trust Estate.

9.2.3 To manage and operate the Trust Estate and any and all of the property or assets at any time held thereunder; to lease all or any part of any real or personal property for such terms and rentals and upon such conditions as the Trustee shall deem advisable, notwithstanding the terms of such lease may extend beyond the life of the Trust; to release, partition, vacate or abandon the same; to grant and acquire licenses and easements with respect thereto; to make improvements to or upon the same; to construct, demolish, alter, repair, maintain and rebuild buildings and other improvements; and to use other assets of the Trust Estate for any of such purposes.

9.2.4 To borrow money for the benefit of the Trust Estate from any source, upon such terms and for such periods as the Trustee may deem advisable; to evidence such borrowing by promissory notes, bonds or other evidences of indebtedness; and to secure the payment of the same by pledge, deed of trust or mortgage of the Trust Estate.

9.2.5 To render liquid the Principal in whole or in part, at any time and from time to time, and to hold cash or readily marketable securities of little or no yield for such period as the Trustee may deem advisable subject to the provisions of Article VIII.

9.2.6 To join or become a party to, or to oppose, any reorganization, readjustment, recapitalization, foreclosure, merger, voting trust, dissolution, consolidation or exchange, and to deposit any securities with any committee, depository or trustee, and to pay any fees, expenses and assessments incurred in connection therewith, and to charge the same to principal, and to exercise conversion, subscription or other rights, and to make any necessary payments in connection therewith, or to sell any such privileges.

9.2.7 To hold stock and securities in the name of a nominee without indicating the trust character of such holding, or unregistered or in such form as will pass by delivery, or to use a central depository and to permit registration in the name of a nominee.

9.2.8 To prosecute, defend, compromise, arbitrate or otherwise adjust or settle Claims in favor of or against the Trustee or the Trust Estate.

9.2.9 To delegate to such extent as the Trustee may deem advisable the administration of any particular property or portion of the Trust Estate in accordance with section 7.1 hereof, and for such purpose to convey or cause to be conveyed to such delegate the title to any such property under such conditions and restrictions as the Trustee may deem proper, and may grant with respect to such property, any part or all of the powers hereunder. The Trustee shall not be liable for the conduct of the delegate in the absence of self-dealing or willful misconduct on the part of the Trustee, but any such delegate shall be and remain obligated to account to the Trustee for any such property and all avails therefrom.

9.2.10 To obtain fire, rent, title, liability, casualty, or other insurance of any nature, in any form and in an amount necessary to protect the Trust Beneficiaries' interest in the Trust Estate.

9.2.11 To reimburse the Trustee (or any of his representatives) from the Trust Estate for any loss or expense incurred by reason of the Trustee's ownership or holding of any of the Trust Estate; to reimburse the Trustee (or any of his representatives) from the Trust Estate for all claims, losses, damages, expenses, charges and costs (including, without limiting the generality of the foregoing, counsel fees, expenses and liabilities incurred in prosecuting or defending any claim, suit or action) which result from the performance of his (or their) duties hereunder, and which are not attributable to willful misconduct or self-dealing.

9.2.12 To perform all obligations of the Trust or the Trustee set forth in the Rehabilitation Plan and/or any of the Definitive Agreements.

9.2.13 To withhold all applicable taxes from any distribution made to any Beneficiary of the Trust, if the Trustee reasonably believes that he is or may be required to withhold such taxes, and to distribute such withheld amount to either.

- (i) the appropriate governmental agency responsible for the collection of such taxes; or
- (ii) the beneficiary from whom such taxes were withheld, but only upon presentation to the Trustee of a final, non-appealable order from a court or from the governmental agency responsible for the collection of such taxes authorizing the payment.

9.2.14 To establish such reserves as the Trustee may, in his reasonable discretion, deem necessary or appropriate, including without limitation, reserves for the payment of any and all taxes of any kind and for the satisfaction of the obligations of the Trust.

9.3 General Powers of the Trustee. Without limiting any of the powers granted to the Trustee under section 9.2 hereof or otherwise, subject to the jurisdiction of the Court, the Trustee shall have full power, authority and discretion to deal with any situation which may arise respecting the Trust Estate or any part thereof in such manner as the Trustee shall deem advisable and in the best interests of Guardian and the Trust Beneficiaries. The grant to the Trustee of any specific power, authority or discretion, or the failure to grant specifically herein any other power, authority or

discretion, except as otherwise expressly provided herein, shall not be construed to limit the general powers and authority given to the Trustee to manage and administer the Trust and the Trust Estate under, in accordance with, and for the purposes of the Plan.

9.4 Administration Costs. Subject to the receipt of any required approval of the Court, the Trustee shall be entitled to pay Administration Costs out of the Cash Proceeds of the Trust Estate from time to time, when and as due, all in accordance with section 5.2.3 of the Plan.

9.5 Limited Liability. Neither the Trustee, any Deputy Trustee nor any of their representatives shall be personally liable for any action taken or omitted to be taken by him or them in the absence of willful misconduct or self-dealing.

9.6 No Bond. Neither the Trustee, any Deputy Trustee nor any of their representatives shall be required in this or any other jurisdiction to furnish any bond or security for the faithful performance of his or their duties.

9.7 Capacity. In accepting the Trust hereby created, the Trustee is acting solely as trustee hereunder and not in his individual capacity. The Trustee may execute any documents and perform any action indicating that he is executing such documents or performing such action as the Trustee and not in his individual capacity, but the failure to do so shall not give rise to any presumption that the Trustee is acting or incurring liability in his individual capacity.

#### **Article X: Jurisdiction of the Court**

10.1 Trust Irrevocable. The Trust and this Agreement shall be irrevocable and shall terminate only in accordance with their terms. This Agreement shall be amended only with the approval of the Court upon application of the Trustee, for good cause shown.

10.2 Custodia Legis of Court. In addition to being held pursuant to the terms and conditions of this Trust, all the assets and liabilities comprising the Trust Estate shall be deemed held by the Court in *custodia legis*, and shall be subject to the exclusive jurisdiction of the Court incident to the Rehabilitation Proceedings.

#### **Article XI: Miscellaneous Terms and Conditions**

11.1 Notice. Any notice, request, demand, waiver, consent, approval or other communication required or permitted to be made hereunder shall be given in accordance with sections 10.9 and 10.10 of the Plan.

11.2 Dispute Resolution. Disputes arising hereunder shall be heard and determined in accordance with Section 10.8 of the Plan.

11.3 Construction. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way

the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. All Recitals referred to herein are intended to be and hereby are specifically made a part of this Agreement. References to Articles and Sections shall refer to Articles and sections of this Agreement, unless expressly stated otherwise.

11.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

11.5 Coordination of Agreements. This Agreement, the Plan and the other Plan Agreements shall be construed so far as possible in a manner that gives effect to each of their respective terms and avoids inconsistency among them. If any term of this Agreement is found to conflict with any term or condition of the Plan, the terms of "the Plan shall control."

11.6 Governing Law. The Trust and this Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of South Carolina, without giving effect to the principles of conflicts of laws thereof.

11.7 Capacity of Rehabilitator. Notwithstanding anything herein to the contrary, the Rehabilitator and any Deputy Rehabilitator signing this Agreement are party hereto only in his or their representative capacity and not individually. Neither shall have any personal liability for any matters or obligations hereunder. The State of South Carolina is not a party to this Agreement and shall have no liability hereunder.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Agreement as of the date first written above.

GUARDIAN HEALTHCARE, INC.  
(In Rehabilitation)

\_\_\_\_\_  
REHABILITATOR

DATE: \_\_\_\_\_

The creation of the Trust and the assumption of the Trustee's duties and Obligations thereunder are hereby acknowledged, accepted and confirmed:

\_\_\_\_\_  
DATE: \_\_\_\_\_

This Agreement is in the form of agreement the parties are contemplating executing. It is a draft and still subject to edits.

TRUSTEE

**This Agreement is in the form of agreement the parties are contemplating executing. It is a draft and still subject to edits.**

Exhibit B  
Assumption Agreement

**AGREEMENT**  
between  
**GUARDIAN HEALTHCARE, INC., In Rehabilitation**  
and  
**an INTERESTED PARTY, a life insurance company**

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**ASSUMPTION AGREEMENT**

**THIS AGREEMENT** (hereinafter referred to as the ("Agreement")) is made and entered into this \_\_\_th day of October, 2010 by and between **GUARDIAN HEALTHCARE, INC., In Rehabilitation**, a South Carolina domiciled insurance company (hereinafter referred to as the "Guardian") and a life insurance company registered in South Carolina (hereinafter referred to as the "Interested Party"). Guardian and Interested Party shall sometimes be referred to individually as "Party" and collectively as "Parties."

**WHEREAS**, Guardian is the insurer of certain Medicare Advantage risks and provides Certificates on those risks pursuant to contracts with the Centers for Medicare & Medicaid Services (hereinafter referred to as "CMS), and

**WHEREAS**, Guardian will cede its Medicare Advantage risks to the Interested Party on an assumption basis pursuant to a Novation Agreement with CMS.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, and in reliance upon the representations, warranties, conditions and covenants contained herein, and intending to be legally bound hereby, the Guardian and the Interested Party hereby agree as follows:

**ARTICLE I: DEFINITION OF TERMS**

It is intended that capitalized terms should have the following meanings when used in this Agreement:

1.1 *Assumed Business* shall mean each and all Certificates and risks that have been assumed by the Interested Party pursuant to the terms of the CMS Novation Agreement and this Agreement between the Interested Party and Guardian.

**This Agreement is substantially in the form of the Agreement the parties plan to execute.  
It is a draft and still subject to edits.**

1.2 *Agreement* shall have the meaning set forth in the preamble.

1.3 *Assumption Certificate* shall mean the certificate, a CMS approved form of which is set forth in Schedule 1.5, to be issued by the Interested Party to the Medicare Member of any Assumed Business under the provisions of this Agreement.

1.4 *Assumption Effective Date* shall mean the date upon which any of the Business is to be assumed by the Interested Party under the provisions of the CMS Novation Agreement.

1.5 *Business* shall mean the Medicare Advantage insurance coverage plans located in the State of South Carolina that are the subject of the CMS Novation Agreement.

1.6 *Certificates* are the evidence of coverage provided to enrollees in a Medicare Advantage Plan.

1.7 *Medicare Member* shall mean any individual entitled to benefits under a Medicare Advantage Plan that is the subject of this Agreement and the Novation Agreement with CMS.

1.8 *Consideration* shall be as set forth in Section 2.5.

1.9 *Effective Date* of this Agreement shall be the same as the Assumption Effective Date.

1.10 *Extra-contractual Liabilities* shall mean any claim or liability under, in connection with or with respect to the Business for bad faith, punitive, exemplary or other extra-contractual damages that are based upon, relate to or arise out of any act, error or omission of a Party, or any of such Party's officers, directors, agents or employees, whether intentional or otherwise.

1.11 *Loss* shall mean, for purposes of Section 5.2, all costs and expenses (including interest, penalties, reasonable attorneys' accountants' and actuaries' fees, and any other costs and expenses incident to any suit, action or proceeding), damages, charges, deficiencies, liabilities, obligations, claims and judgments sustained or incurred by, or asserted against, a Party entitled to indemnity hereunder.

1.12 *Losses* shall mean, for purposes of Sections 1.15, 1.16 and 2.6, regardless of whether occurring prior to or after the Assumption Effective Date, any care, service, treatment, diagnosis, event or occurrence resulting in liabilities and obligations to make payments to providers, Medicare Members, beneficiaries and/or other third party claimants under the Business

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(including, without limitation, liabilities or assessments arising from Guardian's participation, if any, in any voluntary or involuntary pools, guaranty funds, or other types of government-sponsored or government-organized insurance funds) and all loss adjustment expenses and defense costs, including, without limitation, (i) all expenses reinsured or incurred by or on behalf of Guardian related to the investigation, adjudication, appraisal, adjustment, litigation, defense or appeal of claims under or covered by the Certificates and/or coverage actions under or covered by the Certificates, (ii) all liabilities for consequential, exemplary, punitive or similar extra contractual damages, or for statutory or regulatory fines or penalties, or for any loss in excess of the limits arising under or covered by any Certificate, and (iii) court costs accrued prior to final judgment, prejudgment interest or delayed damages and interest accrued after final judgment.

1.14 *Party or Parties* shall have the meaning set forth in the preamble.

1.15 *Post-Assumption Loss* shall mean actual or alleged Losses incurred under any Assumed Business on or after the Assumption Effective Date.

1.16 *Pre-Assumption Loss* shall mean actual or alleged Losses incurred under any Assumed Business prior to the Assumption Effective Date regardless of when a claim is made on said Losses.

1.17 *Premium(s)* shall mean all gross written premium(s), considerations, deposits, premium adjustments, fees and similar amounts related to the Business, including capitation amounts paid by CMS, less cancellation and return premiums.

1.18 *Required Assumption Approvals* shall mean the approvals of, or pre-closing notice filings with, any insurance regulatory authorities and any Federal Agencies that may be required in connection with and necessary to give effect to the assumption of any of the Business by the Interested Party on an assumption basis, including, but not limited to, the approvals listed on Schedule 1.25.

## **ARTICLE II: BASIS OF RISK ASSUMPTION**

### **2.1 Risk Assumption.**

(a) As of the Assumption Effective Date and subject to receipt of all Required Assumption Approvals, Guardian hereby cedes to the Interested Party and the Interested Party hereby

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assumes all of the contractual rights, obligations, liabilities and risks of Guardian under or with respect to each covered risk except as relates to any Pre-Assumption Loss. The Parties intend to accomplish as soon as practicable transfers of Guardian's contractual rights, obligations, liabilities and risks with respect to such covered risks, with the result that the Interested Party, as transferee, in all respects and conditions including but not limited to the right to the Business granted under the Novation Agreement with CMS, shall succeed Guardian as the insurer under the terms and provisions of each of such Plans and to transfer to the Interested Party, as administrator, full and complete responsibility for servicing and administering the Business in accordance with the terms and conditions of this Assumption Agreement and the transfer of contracts pursuant to the Novation Agreement with CMS.

(b) The Interested Party shall be fully responsible for all claims associated with any Post-Assumption Loss. Guardian shall retain all responsibility for review, administration and adjustment of any claim associated with any Pre-Assumption Loss, including the defense of any claims. The Parties agree to provide the other with all reasonably requested information and assistance necessary to defend and adjust any such claim.

2.2 Conditions Precedent to Assumption: Assumption Approvals. Consummation of the assumption contemplated by this Assumption Agreement with respect to the Business and Guardian's obligations to consummate the transactions contemplated by this Agreement shall be subject to and contingent upon the fulfillment of the following conditions:

(a) Receipt by the Interested Party of all Required Assumption Approvals with respect to the Business.

(b) The Interested Party shall have delivered a certificate, executed on behalf of the Interested Party by its Secretary, dated as of the Assumption Effective Date, certifying that the Interested Party has received all Required Assumption Approvals with respect to the Business and attaching evidence of such Required Assumption Approvals to such certificate.

(c) The Interested Party shall have delivered a certificate, executed on behalf of the Interested Party by its Chief Executive Officer or its Chief Financial Officer, that the covenants and agreements contained in this Agreement to be performed or complied with by the Interested Party, including, but not limited to, those set forth in Sections 3.3 and 4.3 shall have been performed or complied with by the Interested Party.

2.3 Exclusivity. As of the Effective Date, Guardian shall not have negotiated or consummated an assumption of the Business with a any other party.

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## 2.4 Effect of Assumption.

(a) The assumption effected by this Assumption Agreement and the Novation Agreement with CMS is all of the Assumed Business in accordance with each of the terms and conditions thereof, and subject to all rights, privileges, defenses, offsets, cross-actions and counterclaims to which Guardian would have been entitled had it continued to act as the insurer thereunder. It is expressly understood and agreed by the Parties to this Assumption Agreement that no such rights, privileges, defenses, offsets, cross-actions or counterclaims are waived by the execution of this Assumption Agreement or the consummation of the transactions contemplated herein, and that the Interested Party shall be fully subrogated to all such rights, privileges, defenses, offsets, cross-actions and counterclaims except as relates to any Pre-Assumption Loss in which case Guardian retains any and all rights, privileges, defenses, offsets, cross-action and counterclaims which may exist as relates to said Pre-Assumption Loss. From the Assumption Effective Date, Interested Party shall be entitled to any revenue received from CMS and any premium received from a Medicare Advantage member including any adjustments to Medicare capitation revenue relating to the Pre-assumption period, negative or positive, as well as any medical recoverable realized post-assumption. Any other recoverable including reinsurance recoverables from the Pre-assumption period shall be due and payable to Guardian. Subsequent to the assumption effected by this Agreement, the Parties shall provide each other with all reasonably requested information and assistance to administer all aspects of the Assumed Business as contemplated by Section 3.

(b) On the Assumption Effective Date, the Interested Party shall be the successor of Guardian with respect to the Assumed Business, and such Assumed Business shall be the direct obligation of the Interested Party; provided however, that Interested Party shall continue to use the Guardian Healthcare, Inc., tradename and other marks.

(c) On and after the Assumption Effective Date, the providers and the Medicare Member or beneficiaries under the Assumed Business shall have the right to file claims for benefits or health care services under any Assumed Business solely and directly with the Interested Party.

## 2.5 Consideration.

(a) As consideration for the transfer to the Interested Party of the rights and obligations with respect to Assumed Business as provided in this Agreement, the Interested Party shall pay Guardian the sum of \$4,000,000. This sum does not include payments related to the possible assumption of the lease or sublease of the premises or other rental payments referenced in the Contribution Agreement.

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(ii) Interested Party will pay over to Guardian estate any recoverable other than capitation or medical recoverable associated with the Pre-assumption period. This includes reinsurance recoverables.

### **ARTICLE III: UNDERTAKINGS OF INTERESTED PARTY**

#### **3.1 Administration.**

(a) Other than as provided under this Section 3.1, on and after the Assumption Effective Date, the Interested Party shall assume all responsibility for servicing and administration of the Assumed Business, including without limitation, the payment of all allowable claims for benefits under the Assumed Business, except for claims made on a Pre-Assumption Loss in accordance with Sections 2.1(b) and 2.4(c), in accordance with the contractual terms and provisions of the Assumed Business and the investigation, adjustment, appraisal, defense or settlement thereof, at the Interested Party's sole cost and expense; billing and collection of premiums under the Assumed Business; preparation of changes, endorsements, and such other administrative services as the Interested Party, in its sole discretion, deems necessary, appropriate, or lawful in connection with the Assumed Business, as though such Assumed Business were originally issued as direct insurance obligations of the Interested Party. Guardian shall provide the Interested Party with all reasonably requested information and assistance to enable the Interested Party to administer all aspects of the Assumed Business.

3.2 Premium Payments: Negotiation of Checks. Upon and after the Assumption Effective Date, all premium payments under the Assumed Business shall be the sole property of the Interested Party. The Interested Party shall be authorized to endorse for payment all checks, drafts, and money orders payable to Guardian with respect to premiums due and payable after the Assumption Effective Date on the Assumed Business. As of the Assumption Effective Date, Guardian hereby assigns all of its rights and privileges, to the extent permitted by law, to draft or debit the accounts of any Medicare Members for premiums due and payable under the Assumed Business after the Assumption Effective Date pursuant to existing pre-authorized bank draft or electronic fund transfer arrangements between Guardian and such Medicare Members.

3.3 Assumption Certificates. As of the Assumption Effective Date and subject to the receipt of all Required Assumption Approvals, the Interested Party shall issue subject to CMS approval to each of the Medicare Members of the Assumed Business an Assumption Certificate, and

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provide satisfactory evidence thereof to Guardian. The Assumption Certificate shall be effective on the Assumption Effective Date, and shall be mailed to each Medicare Member's last known address of record furnished to the Interested Party by Guardian. Communication to Medicare Members shall be in a form approved by CMS.

3.4 Assessments and Liabilities. The Interested Party shall be and shall remain liable for payment of (i) state guaranty fund assessments; (ii) obligations and liabilities of any kind in respect of residual markets or joint underwriting associations; and (iii) premium taxes based upon or attributable to premiums earned under the Assumed Business on and after the Assumption Effective Date.

3.5 Forwarding Checks and Correspondence. On and after the Assumption Effective Date, and other than those notices, claims and correspondence handled by Guardian pursuant to its obligations under Section 3.1(b) and those relating to a Pre-Assumption Loss, all notices, claims and correspondence received by Guardian pertaining to the Assumed Business, including applications for reinstatements of lapsed certificates, will be forwarded promptly by Guardian to the Interested Party.

#### ARTICLE IV: REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Representations and Warranties of Guardian. Guardian represents and warrants that as of the Effective Date:

(a) Guardian has authority to enter into this Agreement and to carry out the transactions contemplated hereby.

(b) Guardian has taken all action required by law and all other necessary actions to authorize the execution and delivery of this Agreement and this Agreement is a valid and binding agreement of Guardian enforceable in accordance with its terms.

4.2 Representations and Warranties of Interested Party. The Interested Party represents and warrants that as of the Effective Date:

(a) The Interested Party is duly organized and validly existing under the laws of its state of incorporation.

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(b) The Interested Party has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

(c) The Interested Party has taken all action required by law and all other necessary corporate actions to authorize the execution and delivery of this Agreement and this Agreement is a valid and binding agreement of the Interested Party enforceable in accordance with its terms.

#### 4.3 Covenants of Interested Party.

(a) The Interested Party shall use best efforts to obtain all Required Assumption Approvals effective as of the Assumption Effective Date at Interested Party's sole cost and expense.

(b) The Interested Party shall ensure that as of the Assumption Effective Date the Interested Party is in compliance with all statutes, laws, regulations, rules, judgments, orders and decrees of all governmental entities applicable to it that relate to its business and has maintained all permits that are required in order to permit it to carry on its business as it is presently conducted.

(c) The Interested Party shall further be responsible for sending all notices to Medicare Members as may be required as a condition of obtaining any Required Assumption Approval.

(d) The Interested Party shall take all other actions necessary for it to fulfill its obligations under this Agreement by the Assumption Effective Date.

### **ARTICLE V: INDEMNIFICATION**

5.1 Claims Identification. As set forth in Section 2.1 (b), all claims under the Assumed Business for a Post-Assumption Loss shall be the responsibility of the Interested Party and all claims under the Assumed Business for a Pre-Assumption Loss shall be the responsibility of Guardian, and each Party shall indemnify and hold the other Party harmless from and against all such respective Post-Assumption Loss and Pre-Assumption Loss claims, including the indemnified Party's costs in connection therewith, as specified in Section 5.2.

5.2 Indemnification. From and after the Assumption Effective Date, each Party shall reimburse the other for, and shall indemnify and hold the other Party harmless and defend the such other Party from and against any and all Loss sustained or incurred by, or asserted against, such other Party (a) with respect to the payment of amounts due under or in connection with a Pre-Assumption Loss or Post-Assumption Loss, as applicable; (b) which arise out of (i) any

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breach or non-fulfillment by a Party of, or any failure by a Party to perform, any of the covenants, terms or conditions of or any of its duties or obligations under this Agreement; or, (ii) any action or inaction of a Party under or with respect to any of the Assumed Business (including, without limitation, any Extra-contractual Liabilities that such Party has incurred or may incur in connection with such Assumed Business); or (c) with respect to any enforcement of this indemnity.

## **ARTICLE VI: TERMINATION**

6.1 Termination. Each Party shall each have the right to terminate this Assumption Agreement if the other Party is unable to fulfill those obligations required to be fulfilled by such other Party, including but not limited to the assumption of the Business by the Interested Party on the Assumption Effective Date. In the event a Party, despite using commercially reasonable efforts, cannot meet the conditions precedent set forth under Section 2.2 of this Assumption Agreement for reasons solely outside the control of such Party, that Party may seek, and the other Party shall grant, a one-time extension of the Assumption Effective Date to an alternate dates mutually agreed to by the parties.

## **ARTICLE VII: SOLICITATION**

7.1 Solicitation. Guardian agrees that the Interested Party would not receive the benefit of its bargain under this Assumption Agreement if the Interested Party could not solicit for hire any employee of Guardian whose primary employment function concerns the Business, including former employees of Guardian employed by the Interested Party as part of the transaction contemplated herein. Therefore, Guardian shall not object to the solicitation of Guardian's employees, present or past.

## **ARTICLE VIII: MISCELLANEOUS PROVISIONS**

8.1 Notices. All notices, requests, consents, approvals and statements given in connection with this Agreement shall be in writing and, if properly addressed to the recipient, shall be deemed given if (a) delivered personally to the recipient; (b) sent by electronic mail or electronic facsimile transmission; (c) sent by registered or certified mail, postage prepaid and return receipt requested, or (d) delivered by a reputable overnight courier service. Notices shall be deemed to be properly addressed to a Party if addressed to its address, facsimile number or electronic mail

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address, as applicable, set forth below, or to such other address or facsimile number as the addressee previously may have specified by written notice to the other Party given in the manner specified in this Section 8.1. Notices shall be deemed received (a) when delivered personally to the recipient; (b) when sent by electronic mail or electronic facsimile transmission if sent during business hours on a business day in the place of receipt and otherwise at the opening of business on the next business day in the place of receipt; (c) five (5) business days after they are mailed if sent by registered or certified mail; or (d) one (1) business day after they are put in possession of the courier if sent by reputable overnight courier service.

If to Guardian:

Guardian Healthcare, Inc. in rehabilitation  
Address: 1201 Main Street, Suite 1000  
Post Office Box 100105  
Columbia, SC 29202-3105  
Tel: (803) 737-6132  
Fax: (803) 737-6229  
Attn: Scott H. Richardson, Rehabilitator

If to the Interested Party:

[Interested Party]  
Address: \_\_\_\_\_  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Attn: \_\_\_\_\_

8.2 Entire Agreement. This Agreement, together with the CMS Novation Agreement and the Contribution, Assignment and Access Agreement, constitutes the sole and entire agreement between the Parties hereto with respect to the subject matter hereof, and supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof, which are merged with and into this Agreement.

8.3 Assignment. This Agreement shall not be assigned by either of the Parties hereto without the prior written approval of the other Party.

8.4 Confidentiality. Each of the Parties shall maintain the confidentiality of all information related to the Assumed Business and all other information denominated as confidential by the other Party provided to it in connection with this Agreement and shall not disclose such

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information to any third parties without prior written consent of the other Party, except as may be required by regulatory authorities, or pursuant to legal process. Neither Party shall make any public announcement of this transaction prior to the Assumption Effective Date without the prior written consent of the other Party, except as required by law, in which case the disclosing Party will notify the other Party as promptly as practicable and shall consider in good faith any comments of the other Party on the proposed disclosure. The parties understand that this agreement shall be a part of the public record.

8.5 Waivers and Amendments. Any term or condition of this Assumption Reinsurance Agreement may be waived at any time by the Party that is entitled to the benefit thereof. Such waiver must be in writing and must be executed by an executive officer of such Party. A waiver on one occasion will not be deemed to be a waiver of the same or any other term or condition on a future occasion. This Agreement may be modified or amended only by a writing duly executed by authorized representatives of both parties.

8.6 Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the Parties and their successors and permitted assigns and, to the extent expressly set forth in this Agreement, those Medicare Members who are insured under Assumed Business.

8.7 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its conflicts of law doctrine.

8.8 Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be resolved as follows:

- (a) the Executive Officers of both Parties shall meet to attempt to resolve such dispute.
- (b) If the Executive Officers cannot resolve such dispute within thirty (30) (twenty (20) days in the event of non-payment) days after either Party requests such a meeting in writing, then upon written notice by either Party to the other Party, such dispute, controversy or claim shall be finally resolved by the Court with jurisdiction over Guardian.

8.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which shall constitute one and the same instrument.

8.10 Headings. The headings in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement.

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8.11 Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision, which shall be replaced with an enforceable provision closest in intent and economic effect as the severed provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any Party.

8.12 CMS Novation Agreement. The Parties acknowledge that the assumption effectuated by this Agreement is subject to approval by CMS. This Agreement is not intended to conflict with the terms of the CMS Novation Agreement. In case of inconsistency, the CMS Novation Agreement provisions will apply.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of October  
\_\_\_\_, 2010.

GUARDIAN HEALTHCARE, INC in rehabilitation

By: \_\_\_\_\_

[INTERESTED PARTY]

By: \_\_\_\_\_

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SCHEDULE 1.25

REQUIRED ASSUMPTION APPROVALS

1. Approval by the Department of Insurance of the State of South Carolina of the transactions contemplated in the Agreement.
2. Approval by the Court of Common Pleas, Richland County, South Carolina, of the Plan of Rehabilitation.
3. Approval by CMS of the transactions contemplated in the Agreement and entry by CMS into a Novation Agreement.
4. Approval by the Department of Insurance of the State of South Carolina of the form of the Assumption Certificate.

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SCHEDULE 2.5

BANK ACCOUNT INFORMATION

1. Guardian Wire Information

[INSERT]

2. Interested Party Wire Information

[INSERT]

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SCHEDULE 1.5

[INTERESTED PARTY]

Address

Certificate No.

John Doe

123 Main Street

City, State, Zip

[FORM OF] CERTIFICATE OF ASSUMPTION

This is to certify that pursuant to the terms of an Assumption Agreement, an Interested Party, a life insurance company registered in South Carolina, has assumed all of the contractual liabilities of Guardian Healthcare, Inc., a South Carolina domiciled insurance Guardian, under this Certificate on the same terms and conditions as set forth in this Certificate except as relates to losses occurring prior to the date of assumption of this Certificate and subject to any available defenses and offsets, and subject to the terms and conditions set forth in the Assumption Agreement and this Assumption Certificate, which will become a part of the Certificate.

As relates to losses occurring prior to the date of assumption of this Certificate, claims are to be submitted to \_\_\_\_\_, however, any such claim will be forwarded to \_\_\_\_\_ which shall continue to be contractually liable under the Certificate to adjust any such claim. From and after the date hereof [the Effective Date?], you should submit all premiums under this Certificate, and all claims under this Certificate, whenever incurred as described above, to the following address:

[INTERESTED PARTY]

Address:

Tel:

Fax:

IN WITNESS WHEREOF, the Interested Party has caused this Certificate to be executed at its administrative office in \_\_\_\_\_, by its President as of the \_\_\_th day of \_\_\_\_\_, 2010, its effective date.

**This Agreement is substantially in the form of the Agreement the parties plan to execute.  
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/s/

\_\_\_\_\_, Secretary

/s/

\_\_\_\_\_, President

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**Exhibit C**  
**Contribution, Assignment, Access and License Agreement**

## CONTRIBUTION, ASSIGNMENT, ACCESS AND LICENSE AGREEMENT

This CONTRIBUTION, ASSIGNMENT, ACCESS AND LICENSE AGREEMENT (this "Agreement"), dated the \_\_\_\_ day of \_\_\_\_\_, 2010, is by and between GUARDIAN HEALTHCARE, INC. in Rehabilitation, a South Carolina domiciled insurance company ("Guardian") and a life insurance company registered in South Carolina ("Interested Party"). Guardian and Interested Party shall sometimes be referred to individually as a "Party" and collectively as the "Parties".

### RECITALS:

**WHEREAS**, Guardian is a private health insurance company engaged in the business of insuring Medicare Advantage risks and providing Policies or Certificates on those risks pursuant to contracts (the "CMS Contracts") with the Centers for Medicare and Medicaid Services ("CMS") (the "Business");

**WHEREAS**, Interested Party is an insurer engaged in the transaction of life, accident and health insurance business and has significant experience with Medicare Advantage products;

**WHEREAS**, in connection with the pending rehabilitation of Guardian by the South Carolina Department of Insurance (the "Rehabilitation"), Interested Party has agreed to assume, as of the Assumed Effective Date, (i) the CMS Contracts pursuant to that certain Novation Agreement among the Parties and CMS dated effective as of [November 1, 2010] (the "Novation Agreement"); and (ii) the Assumed Policies and certain liabilities associated therewith pursuant to that certain Assumption Agreement between the Parties dated as of the date hereof (the "Assumption Agreement", and together with the Novation Agreement, the "Acquisition Agreements"); and

**WHEREAS**, in connection with the Acquisition Agreements and to facilitate the transactions contemplated thereby, Guardian desires to contribute, assign, lease, license and transfer to Interested Party certain assets used in connection with the Business and to grant to Interested Party access to its books and records relating to the Business;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### **I. DEFINITIONS.**

All capitalized terms used herein that are defined in the Assumption Agreement shall have the same meaning herein as set forth therein unless specifically defined in this Agreement.

## II. ACQUIRED AND LEASED ASSETS; ASSUMED LIABILITIES.

### 2.1 Assets to be Acquired.

(a) Contracts. Guardian and Interested Party hereby agree to negotiate in good faith the assignment by Guardian to Interested Party of all of Guardian's rights, benefits and interests under all contracts and agreements, written or oral, listed on Schedule 2.1(a) (the "Contracts"). The Parties acknowledge and agree that it is their mutual intent for Guardian to assign to Interested Party all of the vendor and supplier contracts needed to operate the CMS Contracts. Notwithstanding the foregoing, the Parties acknowledge and agree that Interested Party has the right but not the obligation to accept and assume any of the Contracts and Interested Party may exercise its sole discretion in doing so. The Parties agree to cooperate with one another to facilitate any such assignments or other actions requested by Interested Party with respect to the Contracts, such as termination and renegotiation of any Contract in the event Interested Party declines acceptance of the assignment of such Contract.

(b) Intellectual Property. Guardian does hereby contribute assign, transfer, convey and deliver to Interested Party, and Interested Party does hereby accept, assume and take delivery from Guardian all right, title, and interest in and to the following: all intangible assets, tradenames, trademarks, service marks, service names and copyrights, registrations thereof and applications therefore, including, but not limited to customer, vendor, provider, producer, and supplier lists, and all other intellectual property applicable to or used in connection with the operation of the Business, including, but not limited to the items listed on Schedule 2.1(b) and, subject to Section 4.4 hereof, the Corporate Name (as defined below) (the "Intellectual Property").

(c) Assets. For purposes of this Agreement, "Assets" shall include the Contracts and the Intellectual Property.

2.2 Subcontracting. To the extent that any Contract purported to be assigned by Guardian and assumed by Interested Party pursuant to Section 2.1(a) requires the consent or approval of any third party in order to assign such Contract and such consent or approval has not been obtained by the date hereof (individually, a "Subcontracted Contract" and collectively, the "Subcontracted Contracts"), Guardian shall (a) use its best efforts and cooperate with Interested Party to obtain consent for the assignment of each Subcontracted Contract after the date hereof; (b) execute any documentation reasonably required to obtain such consent or approval or to obtain a novation for each Subcontracted Contract; (c) take all action and do or cause to be done all things as shall in the opinion of Interested Party be reasonably necessary or proper in order that the rights and obligations of Guardian under each Subcontracted Contract shall be preserved; (d) with respect to any Subcontracted Contract that Guardian has not entered into a subcontract agreement with Interested Party on or prior to the date hereof, enter into a subcontract agreement which provides to Interested Party the full benefits and rights under such subcontract agreement and obligates Interested Party to perform the obligations under such subcontract agreement until any required consents or approvals are obtained or the Subcontracted Contract is novated; and (e) honor and comply with all obligations under each subcontract agreement between Guardian and

Interested Party until all required consents and approvals are obtained or a novation occurs with respect to each Subcontracted Contract.

2.3 Assets to be Leased. Guardian and Interested Party hereby agree to negotiate in good faith one or more leases (or subleases, as the case may be) to be effective as of the Assumption Effective Date from Guardian to Interested Party of certain machinery, equipment, furniture, office furnishings, computer hardware and software, and other personal property owned or leased by Guardian on such terms and conditions as determined by Guardian and Interested Party (the "Leased Personal Property"). In addition, Guardian and Interested Party hereby agree to negotiate in good faith a sublease to be effective as of the Assumption Effective Date from Guardian to Interested Party of that certain real property, improvements, and fixtures leased by Guardian (the "Leased Real Property," and together with the Leased Personal Property, the "Leased Assets"). The leases and subleases entered into or to be entered into pursuant to this Section shall be referred to herein as the "Leases."

2.4 Assumption of Liabilities. Interested Party does hereby assume and agree to perform when due only (a) those obligations of Guardian that arise after the Assumption Effective Date under the terms of the Contracts specifically listed on Schedule 2.1(a), other than any of the foregoing which constitute a Subcontracted Contract under Section 2.2 until such time as the necessary consent, approval or novation is obtained for each such Subcontracted Contract in accordance with Section 2.2, and (b) those obligations under the terms of each of the Leases that arise after the Assumption Effective Date. Notwithstanding the foregoing, nothing in this Agreement limits or otherwise affects the liabilities assumed by Interested Party under the Acquisition Agreements.

2.5 Non-Assumption of Certain Liabilities. Except for the contract obligations identified in Section 2.4 and those assumed pursuant to the Acquisition Agreements, Interested Party is not assuming, and shall not have been deemed to have assumed, any debts, liabilities, duties or obligations of Guardian whatsoever, and Guardian shall be responsible for all such debts, liabilities, duties and obligations, including without limitation any and all taxes incurred by or imposed upon Guardian relating to periods prior to the Assumption Effective Date, whether such taxes are assessed before or after the Assumption Effective Date, including without limitation, any taxes incurred by or lawfully imposed upon Guardian and arising out of the consummation of the transactions contemplated by this Agreement.

2.6 Consideration. The consideration for the contribution, assignment, transfer, conveyance and delivery of the Assets and the consummation of the other transactions contemplated herein as of the Assumption Effective Date, shall be as stated in the Assumption Agreement.

### **III. REPRESENTATIONS AND WARRANTIES.**

3.1 Representations and Warranties of Guardian. Guardian represents and warrants that as of the Assumption Effective Date:

(a) Guardian is duly organized and validly existing under the laws of its state of incorporation.

(b) Guardian has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

(c) Guardian has taken all action required by law and all other necessary corporate actions to authorize the execution and delivery of this Agreement, and this Agreement is a valid and binding agreement of Guardian enforceable in accordance with its terms.

(d) Guardian has no liabilities, obligations or commitments related to the Assets or the Leased Assets except for the liabilities and obligations of Guardian that are disclosed on Schedule 3.1(d). Except with respect to the Rehabilitation, there are no outstanding or threatened orders, writs, injunctions or decrees of any court, regulatory or governmental body or arbitration tribunal affecting the Assets or the Leased Assets.

(e) No party to any Contract has given notice of its intent to terminate or cancel any such Contract, and none of the rights of Guardian under any such Contract will be impaired by the delivery, execution or performance of this Agreement or the consummation of the transactions contemplated hereby.

(f) Guardian has not received any charge, complaint, claim or notice alleging interference, infringement, misappropriation or violation relating to any of the Intellectual Property. To the knowledge of Guardian, no third party is currently interfering with, infringing, misappropriating or violating any of Guardian's rights in the Intellectual Property.

3.2 Representations and Warranties of Interested Party. Interested Party represents and warrants that as of the Assumption Effective Date:

(a) Interested Party is duly organized and validly existing under the laws of its state of incorporation.

(b) Interested Party is financially solvent and has a rating of A- by A.M. Best.

(c) Interested Party has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

(d) Interested Party has taken all action required by law and all other necessary corporate actions to authorize the execution and delivery of this Agreement, and this Agreement is a valid and binding agreement of Interested Party enforceable in accordance with its terms.

(e) Interested Party is not aware of any action, complaint, or other issue that prevents or negatively impacts its ability to consummate this transaction.

#### IV. ADDITIONAL AGREEMENTS.

4.1 Access. Upon execution of this Agreement by the Parties, Guardian will permit Interested Party and its representatives to have access to Guardian's employees, the Assets, the Leased Assets, and Guardian's books and records during normal business hours and will promptly furnish to Interested Party such information and documents relating to Guardian and the Business as Interested Party may reasonably request, including but not limited to (a) such information as is necessary for Interested Party to accept and assume the Assets or the Leased Assets hereunder, the Assumed Policies under the Assumption Agreement, and the CMS Contracts under the Novation Agreement, and to otherwise consummate the transactions contemplated by this Agreement and the Acquisition Agreements; (b) the status of any regulatory oversight and compliance issues; (c) Guardian's filing and management systems, including but not limited to its policy and customer management system; (d) Guardian's provider networks; and (e) claims information and matters relating to the transactions contemplated by this Agreement. Upon execution of this Agreement by the Parties, Interested Party will permit Guardian and its representatives to have access to Interested Party's books and records during normal business hours and will promptly furnish to Guardian such information and documents relating to Interested Party as may be necessary to consummate the transactions contemplated by this Agreement and the Acquisition Agreements. Upon request by Interested Party, Guardian shall produce and contribute to Interested Party originals and/or copies of the aforementioned records and items, to the extent such records and items are available in tangible, electronic, or other transferrable format.

4.2 Cooperation. The Parties shall use all reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, or advisable under applicable laws, to consummate the transactions contemplated by this Agreement. The Parties shall use their best efforts to obtain consents of any regulatory authority and other third parties or governmental bodies necessary or desirable for the consummation of the transactions contemplated by this Agreement. The Parties shall cooperate with each other and execute and deliver, or cause to be executed and delivered, all such additional instruments, including instruments of conveyance, assignment and transfer and take all such other actions as may reasonably be requested from time to time in order to effectuate the provisions and purposes of this Agreement or to ensure that each Party receives the full benefit of the transactions contemplated by this Agreement. Each Party shall endeavor in good faith and cooperate one with the other to complete the Schedules called for by this Agreement.

#### 4.3 Confidentiality.

(a) Each Party acknowledges that it may have access to proprietary or confidential information, including but not limited to information obtained by a Party pursuant to Section 4.1 hereof ("Confidential Information") of the other Party, including, but not limited to, trade secrets, customer and supplier lists, and proprietary information relating to the Assets, the Leased Assets, or the Business. Each Party will protect the Confidential Information of the other Party in the same manner in which it protects its own Confidential Information (but in any event will use no less than reasonable care), except as may be specifically permitted hereunder.

(b) The obligations of confidentiality specified above will not apply to any information of a Party which:

(i) was known by the other Party prior to the execution of this Agreement;

(ii) is or becomes public or available to the general public other than through any act or default of the other Party;

(iii) is obtained prior or subsequent to the date of this Agreement from a third party which is lawfully in possession of such information and does not hold such information subject to any confidentiality obligations; or

(iv) is required to be disclosed by one of the Parties pursuant to applicable law or under a government or court order, in which case such Party will, to the extent legally permissible, give notice to the other Party to allow such Party to make efforts to obtain a protective order or take such other actions as will prevent or limit, to the fullest extent possible, public access to, or disclosure of, such Confidential Information.

(c) The Parties shall treat the Confidential Information transferred or assigned by Guardian to Interested Party hereunder as Confidential Information of Interested Party.

4.4 Use of Name. For the duration of the Rehabilitation, Guardian hereby grants to Interested Party the non-exclusive license to use the corporate name "Guardian Healthcare, Inc." (the "Corporate Name") in connection with the CMS Contracts, the Assumed Policies, the Leased Assets, and the Assets acquired by Interested Party pursuant to this Agreement and the Acquisition Agreements. Upon dissolution, liquidation, release or discharge by a court of competent jurisdiction of Guardian, the Corporate Name and all of Guardian's rights and interests therein shall automatically be contributed, transferred and assigned from Guardian to Interested Party. Thereafter, neither Guardian, or its estate or trust, nor any successor, shareholder, or director of any of the foregoing shall directly or indirectly use the Corporate Name or any derivative thereof or any similar name to identify itself.

## V. INDEMNIFICATION.

5.1 Indemnification by Guardian. Guardian agrees to indemnify and hold Interested Party harmless from and against all liability, loss, damages or injury and all costs and expenses (including reasonable attorney's fees and costs of any suit related thereto) suffered or incurred by Interested Party which relate to, result from or arise out of:

(a) the ownership, use or operation of the Assets or the Leased Assets prior to the Assumption Effective Date;

(b) the conduct of the Business, or any actions or omissions, of Guardian prior to the Assumption Effective Date;

(c) any liabilities or obligations of, or claims against or imposed on Guardian (whether absolute, accrued, contingent or otherwise and whether a contractual or any other type of liability, obligation or claim) not expressly assumed by Interested Party pursuant to this Agreement or either of the Acquisition Agreements;

(d) any liabilities or obligations (whether absolute, accrued, contingent or otherwise) in respect of any action, suit or proceeding based upon or arising out of any matter or state of facts existing prior to the Assumption Effective Date;

(e) any breach by Guardian of any covenant, agreement or other undertaking on its part contained in this Agreement or any certificate or other instrument furnished or to be furnished by Guardian hereunder; or

(f) any assets or properties not contributed, assigned, leased or licensed to Interested Party hereunder.

5.2 Indemnification by Interested Party. Interested Party agrees to indemnify and hold Guardian harmless from and against all liability, loss, damages or injury and all costs and expenses (including reasonable attorney's fees and costs of any suit related thereto) suffered or incurred by Guardian arising from breach by Interested Party of any covenant, agreement or other undertaking on its part contained in this Agreement or any certificate or other instrument furnished or to be furnished by Interested Party hereunder.

## **VI. TERMINATION.**

6.1 Termination. This Agreement shall terminate immediately upon termination of the Assumption Agreement. Notwithstanding anything herein to the contrary, the provisions of Article 3 and Sections 5.1(e) and 5.2 shall survive termination of this Agreement for a period of twelve (12) months from the Assumed Effective Date. Notwithstanding anything herein to the contrary, the provisions of Sections 4.3 and 5.1(a), (b), (c), (d) and (f) shall survive termination of this Agreement and continue in perpetuity.

## **VII. MISCELLANEOUS.**

7.1 Notices. All notices, requests, consents, approvals and statements given in connection with this Agreement shall be in writing and, if properly addressed to the recipient, shall be deemed given if (a) delivered personally to the recipient; (b) sent by electronic mail or electronic facsimile transmission; (c) sent by registered or certified mail, postage prepaid and return receipt requested, or (d) delivered by a reputable overnight courier service. Notices shall be deemed to be properly addressed to a Party if addressed to its address, facsimile number or electronic mail address, as applicable, set forth below, or to such other address or facsimile number as the addressee previously may have specified by written notice to the other Party given

in the manner specified in this Section 7.1. Notices shall be deemed received (a) when delivered personally to the recipient; (b) when sent by electronic mail or electronic facsimile transmission if sent during business hours on a business day in the place of receipt and otherwise at the opening of business on the next business day in the place of receipt; (c) five (5) business days after they are mailed if sent by registered or certified mail; or (d) one (1) business day after they are put in possession of the courier if sent by reputable overnight courier service.

If to Guardian:

Guardian Healthcare, Inc. in Rehabilitation  
Address: 1201 Main Street, Columbia, South Carolina 29201  
P.O. Box 100105, Columbia, South Carolina 29202  
Tel: (803) 737-6200  
Fax: (803) 737-6229  
Attn: Scott H. Richardson, Rehabilitator

If to Interested Party:

[Interested Party]  
Address:  
Tel:  
Fax:  
Attn:

7.2 Entire Agreement. This Agreement, together with the Acquisition Agreements, constitutes the sole and entire agreement between the Parties hereto with respect to the subject matter hereof, and supersede all previous discussions and agreements between the Parties with respect to the subject matter hereof, which are merged with and into this Agreement.

7.3 Assignment. This Agreement shall not be assigned by either of the Parties hereto without the prior written approval of the other Party.

7.4 Non-Disclosure. Each of the Parties shall maintain the confidentiality of the existence of this Agreement, except as may be required by regulatory authorities, or pursuant to legal process. Neither Party shall make any public announcement of this transaction prior to the Assumption Effective Date without the prior written consent of the other Party, except as required by law, in which case the disclosing Party will notify the other Party as promptly as practicable and shall consider in good faith any comments of the other Party on the proposed disclosure. The parties understand that copies of the proposed plan will be filed as a part of the Plan of Rehabilitation.

7.5 Waivers and Amendments. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof. Such waiver must be in writing and must be executed by an executive officer of such Party. A waiver on one occasion will not be deemed to be a waiver of the same or any other term or condition on a future occasion. This Agreement may be modified or amended only by a writing duly executed by an

executive officer of Interested Party, and Scott H. Richardson, as Director of the South Carolina Department of Insurance, in his capacity as Rehabilitator of Guardian (the "Rehabilitator").

7.6 Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the Parties and their successors and permitted.

7.7 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its conflicts of law doctrine.

7.8 Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be resolved as follows:

(a) the Rehabilitator and executive officers of both Parties shall meet to attempt to resolve such dispute.

(b) If the parties cannot resolve such dispute within thirty (30) days after either Party requests such a meeting in writing, then upon written notice by either Party to the other Party, such dispute, controversy or claim shall be finally resolved by the Court with jurisdiction over Guardian.

7.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which shall constitute one and the same instrument.

7.10 Headings. The headings in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement.

7.11 Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision, which shall be replaced with an enforceable provision closest in intent and economic effect as the severed provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any Party.

7.12 Effective Date. The effective date of this Agreement shall be the Assumption Effective Date.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

GUARDIAN HEALTHCARE, INC., IN  
REHABILITATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[INTERESTED PARTY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Schedule 2.1(a)**

**Contracts**

[All healthcare provider contracts, including those relating to provider networks]

[Contract with Envision Pharmaceuticals (Pharmacy Benefits Management)]

[Contract with DST Health Solutions (medical management tools)]

[Contract with Sirona Health (nurse advice line/triaging)]

[Contract with AnswerLive (after hours answering service)]

**Schedule 2.1(b)**

**Intellectual Property**

**Schedule 3.1(d)**  
**Liabilities**

#4812-5370-6247 v.5-

**Exhibit D**  
**Novation Agreement**

## NOVATION AGREEMENT

GUARDIAN HEALTHCARE, INC. IN REHABILITATION ("Transferor"), a for-profit corporation duly organized and existing under the laws of the State of South Carolina and in rehabilitation (a form of insurance insolvency under state law); a life insurance company registered in South Carolina ("Interested Party"); and the CENTERS FOR MEDICARE & MEDICAID SERVICES ("CMS") (each individually a "Party" and collectively, the "Parties") enter into this Agreement, which shall be effective as of November 1, 2010.

### RECITALS

**WHEREAS**, CMS has entered into contracts with the Transferor to sponsor a coordinated care plan under the Medicare Advantage and Part D Programs (collectively, the "Contracts").

The phrase "the Contracts" as used in this Agreement includes all modifications made between CMS and the Transferor before November 1, 2010 (whether or not performance and payment have been completed) and releases executed if CMS or the Transferor have any remaining rights, duties, or obligations under the Contracts. Included in the term "the Contracts" also are all modifications made under the terms and conditions of the Contracts between CMS and the Interested Party, on or after November 1, 2010.

**WHEREAS**, pursuant to the Consent Order Commencing Rehabilitation Proceedings & Granting an Injunction & Automatic Stay of Proceedings in the matter of Scott H. Richardson v. Guardian Healthcare, Inc. (Civil Action Number 10-CP-40-7093), entered on October 12, 2010 (the "Consent Order"), Transferor was placed into rehabilitation for purposes of running off liabilities incurred on and before October 31, 2010, and the Rehabilitator is authorized to complete negotiations with the Interested Party for the assumption of Transferor's assets and liabilities as of November 1, 2010;

**WHEREAS**, pursuant to the Consent Order, the Interested Party contributed four million dollars (\$ 4,000,000.00) to be used by the Rehabilitator towards liabilities incurred on and before October 31, 2010, and the remaining liabilities will be assigned to a Claims Fund or Liquidating Trust;

**WHEREAS**, effective on November 1, 2010, the Transferor will transfer to the Interested Party certain assets and liabilities of the Transferor by virtue of an assumption agreement between the Transferor and the Interested Party;

**WHEREAS**, the Interested Party will assume certain assets and liabilities of the Transferor under the Contracts by virtue of the above transfer; and

**WHEREAS**, the Interested Party desires to assume those assets and liabilities of the Transferor under the Contracts as set forth herein and to fully perform all obligations of the Transferor that may exist under the Contracts.

**NOW THEREFORE**, in consideration of these facts, and in reliance on the terms set forth below, the Parties agree as follows:

1. The Transferor confirms the transfer of the Contracts to the Interested Party effective November 1, 2010, and Transferor waives any claims and rights against CMS that it now has or may have in the future in connection with the Contracts.
2. The Interested Party agrees to be bound by and to perform all the duties and responsibilities of Transferor in the Contracts in accordance with the conditions contained in the Contracts arising on and after November 1, 2010. The Interested Party assumes all contract obligations and liabilities to CMS, and all contract claims by CMS against, the Transferor under the Contracts.
3. The Interested Party ratifies all previous actions taken by the Transferor with respect to the plan benefit packages and plan payment rates for CY 2010 and CY 2011, as determined in accordance with the annual bidding cycle and as approved by CMS, with the same force and effect as if the action had been taken by the Interested Party.
4. CMS recognizes the Interested Party as the Transferor's successor in interest in and to the Contracts. From and after November 1, 2010, the Interested Party by this Agreement becomes entitled to all rights, title, and interests of the Transferor in and to the Contracts. On and after November 1, 2010, the terms "Organization" and "Contractor" as used in the Contracts shall refer to the Interested Party.
5. Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of CMS against the Transferor. Notwithstanding any other provision of this Agreement, Transferor remains liable for all acts constituting a breach of the Contracts occurring or arising before November 1, 2010, to the fullest extent of applicable laws and regulations.
6. All payments and reimbursements previously made by CMS to the Transferor shall be considered to have discharged CMS's obligations under the Contracts. All payments and reimbursements made by CMS on or after November 1, 2010 in the name of or to the Interested Party shall have the same force and effect as if made to the Transferor, and shall constitute a complete discharge of CMS's obligations under the Contracts to the extent of the amounts paid or reimbursed.
7. The Transferor and the Interested Party agree that CMS is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from this Agreement other than those that CMS in the absence of this Agreement would have been obligated to pay or reimburse under the terms of the Contracts.
8. The Contracts shall remain in full force and effect except as modified by this Agreement, and the Parties agree that no rights of or obligations to any non-signatory are created hereby.
9. Each Party certifies and warrants that it has full power and authority to enter into this Agreement.

10. Each person executing this Agreement on behalf of a Party certifies and warrants that he or she is authorized to enter into this Agreement on behalf of such Party.

**IN WITNESS WHEREOF**, each Party hereto has executed this Agreement as of the date indicated below its respective signature.

**Centers for Medicare & Medicaid Services**

By: \_\_\_\_\_  
[            ]  
Centers for Medicare & Medicaid Services

Date: \_\_\_\_\_

**Guardian Healthcare, Inc., In Rehabilitation**

By: \_\_\_\_\_  
Scott H. Richardson  
Rehabilitator

Date: \_\_\_\_\_

**Interested Party**

By: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

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CERTIFICATE OF SERVICE

I hereby certify that I have served the below-named individuals or entities with a copy of the attached Motion for Approval of Plan of Rehabilitation, Memorandum in Support and proposed Order by depositing same in the U.S. Mail postage prepaid, on October \_\_\_\_, 2010 at the following addresses:

James C. Gray, Jr., Esq.  
Sally H. Caver, Esq.  
Nelson Mullins Riley & Scarborough LLP  
Meridian, 17th Floor  
1320 Main Street  
Columbia, SC 29201

Centers for Medicare & Medicaid Services  
Center for Medicare  
Office of the Administrator  
7500 Security Boulevard  
Baltimore, MD 21244

Nancy E. Taylor, Esq.  
Greenberg Traurig  
2101 L Street, N.W.  
Suite 1000  
Washington, DC 20037

JEANETTE A. MORRIS  
C.C.P. & G.S.

2010 OCT 22 PM 4:37

FILED

