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**CN21-75**

**Certificate of Need Application  
Kidney Disease Treatment Facilities  
Nonspecial Circumstance Projects**

Certificate of Need applications must be submitted with a fee in accordance with Washington Administrative Code [\(WAC\) 246-310-990](#).

Application is made for a Certificate of Need in accordance with provisions in Revised Code of Washington [\(RCW\) 70.38](#) and [WAC 246-310](#), rules and regulations adopted by the Washington State Department of Health. I attest that the statements made in this application are correct to the best of my knowledge and belief.

<b>Signature and Title of Responsible Officer</b> Casey Stowell Regional Vice President – Pacific Northwest Fresenius Medical Care North America	<b>Date:</b> June 1, 2021
<b>Email Address</b> Casey.Stowell@fmc-na.com	<b>Telephone Number:</b> 503-506-9066  <i>Casey Stowell</i>
<b>Legal Name of Applicant</b>  Fresenius Kidney Care Longview, LLC	<b>Provide a brief project description (example: # of stations/location)</b>  <u>Relocation</u> and eleven (11) station <u>expansion</u> of the existing FKC Cowlitz clinic.
<b>Address of Applicant</b> 20900 SW 115 <sup>th</sup> Ave. Suite 190 Tualatin OR 97062	<b>Estimated capital expenditure:</b> <ul style="list-style-type: none"><li>• Relocation: \$6,096,577</li><li>• Expansion: \$225,852</li></ul>
This application is submitted under (check <b>one</b> box only): [ X ] Concurrent Review <b>Cycle 1</b> – Non Special Circumstances  [ ] Concurrent Review <b>Cycle 2</b> – Non Special Circumstance	

**Identify the Planning Area for this project as defined in [WAC 246-310-800\(15\)](#).**

Cowlitz ESRD Planning Area

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- Exhibit 11D. Financial Statements—PeaceHealth Networks (2019 Annual Report)
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- Exhibit 12. Affiliation/Transfer Agreement

## **Applicant Description**

### **1. Provide the legal name(s) and address(es) of the applicant(s)**

**Note: The term “applicant” for this purpose includes any person or individual with a ten percent or greater financial interest in the partnership or corporation or other comparable legal entity.**

The legal name of the applicant is Fresenius Kidney Care Longview, LLC. It is a joint venture between Renal Care Group Northwest, Inc. with 60% interest and Health Ventures with a 40% interest. Renal Care Group Northwest, Inc. is a subsidiary of Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America (“FMCNA”). Health Ventures is a subsidiary of PeaceHealth Networks.

The name of the existing facility related to the project is Fresenius Kidney Care Cowlitz (“FKC Cowlitz”). The address of the applicant is:

600 Broadway St  
Longview, Washington 98632

### **2. Identify the legal structure of the applicant (LLC, PLLC, etc) and provide the UBI number.**

Fresenius Kidney Care Longview, LLC is a limited liability company (LLC). Fresenius Kidney Care Longview, LLC’s UBI number is 604 312 647.

### **3. Provide the name, title, address, telephone number, and email address of the contact person for this application.**

Casey Stowell  
Regional Vice President – Pacific Northwest  
Fresenius Medical Care North America  
20900 SW 115th Ave. Suite 190  
Tualatin, OR 97062  
503.507.4967  
[Casey.Stowell@fmc-na.com](mailto:Casey.Stowell@fmc-na.com)

### **4. Provide the name, title, address, telephone number, and email address of the consultant authorized to speak on your behalf related to the screening of this application (if any).**

Frank Fox, PhD.  
Health Trends  
511 NW 162nd St,  
Shoreline, WA 98177  
206.366.1550  
[frankgfox@comcast.net](mailto:frankgfox@comcast.net)

**5. Provide an organizational chart that clearly identifies the business structure of the applicant(s).**

Fresenius Kidney Care Longview, LLC is a joint venture between Renal Care Group Northwest, Inc. with 60% interest and Health Ventures with a 40% interest. Exhibit 1 contains a copy of the organizational chart.

**6. Identify all healthcare facilities owned, operated by, or managed by the applicant. This should include all facilities in Washington State as well as out-of-state facilities. The following identifying information should be included:**

- **Facility Name(s)**
- **Facility Location**
- **Facility License Number**
- **Facility CMS Certification Number**
- **Facility Accreditation Status**

The FKC Cowlitz clinic is the only healthcare facility owned by Fresenius Kidney Care Longview, LLC. FKC Cowlitz is a CN-approved and CMS certified kidney dialysis facility.

## **Project Description**

### **1. Provide the name and address of the existing facility, if applicable.**

The name of the existing facility related to the project is Fresenius Kidney Care Cowlitz ("FKC Cowlitz").

The address of the existing facility, FKC Cowlitz, is:

600 Broadway St  
Longview, Washington 98632

### **2. Provide the name and address of the proposed facility. If an address is not yet assigned, provide the county parcel number and the approximate timeline for assignment of the address.**

The address of the proposed location is:

600 Triangle Center Dt.  
Longview, WA 98632

### **3. Provide a detailed description of the proposed project.**

Pursuant to Washington Administrative Code ("WAC") 246-310-806, for Nonspecial Circumstance Cycle 1, Fresenius Kidney Care Longview, LLC is requesting CN approval to relocate and expand its current CN-approved facility, FKC Cowlitz, increasing the number of stations in the Cowlitz County Dialysis Planning Area by eleven (11) in-center stations.

Please note that materials included in this application assumes FKC Cowlitz's active application, CN App #21-31, is approved.

### **4. Identify any affiliates for this project, as defined in [WAC 246-310-800\(1\)](#).**

This question is not applicable.

### **5. With the understanding that the review of a Certificate of Need application typically takes 6-9 months, provide an estimated timeline for project implementation, below:**

<b>Event</b>	<b>Anticipated Month/Year</b>
Assumed Completion of CN Review	January 2022
Design Complete	April 2022
Construction Commenced	October 2022
Construction Completed	March 2023
Facility Prepared for Survey	July 2023

**6. Identify the Month/Year the facility is expected to be operational as defined in [WAC246-310-800\(12\)](#).**

Assuming uncontested CN-approval in January 2022, the relocation and expansion stations are expected to be operational by the July 2023.

**7. Provide a detailed description of the services represented by this project. For existing facilities, this should include a discussion of existing services and how these would or would not change as a result of the project. Services can include but are not limited to: in-center hemodialysis, home hemodialysis training, peritoneal dialysis training, a late shift (after 5:00 pm), etc.**

FKC Cowlitz serves patients with end-stage renal disease. FKC Cowlitz offers in-center hemodialysis, home hemodialysis and peritoneal dialysis training and support for dialysis patients. FKC Cowlitz also offers an evening shift, beginning after 5 pm, for dialysis patients.

**8. Fill out the table below identifying the current (if applicable) and proposed configuration of dialysis stations. Note – an exempt isolation station defined under WAC 246-310-800(9) would not be counted in the methodology, but would be included in the total count of certified in-center stations.**

	Before		After	
	CMS Certified Stations	Stations Counted in the Methodology	CMS Certified Stations	Stations Counted in the Methodology
General Use In-center Stations	24*	24*	35*	35*
Permanent Bed Stations	0	0	0	0
Exempt Isolation Station	1	0	1	0
Isolation Station	0	0	0	0
<b>Total Stations</b>	<b>25*</b>	<b>24*</b>	<b>36*</b>	<b>35*</b>

\*Assumes FKC Cowlitz active application, CN App #21-31, is approved

**9. Provide a general description of the types of patients to be served by the facility at project completion.**

This project requests relocation and expansion of FKC Cowlitz' existing services. Therefore, FKC Cowlitz will continue to serve patients and provide services described above in response #7.

**10. Provide a copy of the letter of intent that was already submitted according to [WAC246-310-080](#).**

A copy of the letter of intent is included in Exhibit 2.

- 11. Provide single-line drawings (approximately to scale) of the facility, both before and after project completion. Reference [WAC 246-310-800\(11\)](#) for the definition of maximum treatment area square footage. Ensure that stations are clearly labeled with their square footage identified, and specifically identify future expansion stations (if applicable)**

FKC Cowlitz is still in the process of completing its single-line drawings which it will provide in screening.

- 12. Provide the gross and net square feet of this facility. Treatment area and non- treatment area should be identified separately (see explanation above re: maximum treatment area square footage).**

FKC Cowlitz is still in the process of completing its single-line drawings and corresponding square footage tables, which it will provide in screening.

- 13. Confirm that the facility will be certified by Medicare and Medicaid. If this application proposes the expansion of an existing facility, provide the existing facility's Medicare and Medicaid numbers.**

**Medicare #:** 50-2599

**Medicaid #:** 2147827



## **Certificate of Need Review Criteria**

### **A. Need (WAC 246-310-210)**

**WAC 246-310-210** provides general criteria for an applicant to demonstrate need for healthcare facilities or services. **WAC 246-310-800 through WAC 246-310-833** provide specific criteria for kidney disease treatment center applications. Documentation provided in this section must demonstrate that the proposed facility will be needed, available, and accessible to the community it proposes to serve. Some of the questions below only apply to existing facilities proposing to expand. If this does not apply to your project, so state.

- 1. List all other dialysis facilities currently operating in the planning area, as defined in WAC 246-310-800(15).**

Please see Table 1 below a provider list of certificate of need approved stations in the Cowlitz County Dialysis Planning Area.

**Table 1. Cowlitz County Dialysis Planning Area Providers**

<b>NAME</b>	<b>Station Count</b>
FKC Cowlitz	22
FKC Longview	4

Note: station count excludes 1 isolation station

- 2. Provide utilization data for the facilities listed above, according to the most recent Northwest Renal Network / Comagine ESRD Network 16 modality report. Based on the standards in WAC 246-310-812(5) and (6), demonstrate that all facilities in the planning area either:**
  - a) have met the utilization standard for the planning area;**
  - b) have been in operation for three or more years; or**
  - c) have not met the timeline represented in their Certificate of Need application.**

Table 2 below presents the utilization reported by Cowlitz County Dialysis Planning Area provider(s) according to the applicable Northwest Renal Network ("NWRN") modality report (December 30, 2020).

**Table 2. Cowlitz County Dialysis Planning Area Provider Utilization – 4Q2020**

<b>Facility</b>	<b>Number of Stations</b>	<b>Number of Patients Per Quarterly In-Center Data</b>	<b>Patients/ Station</b>
FKC Cowlitz	24*	126	5.73
FKC Longview	4	Not Yet Operational	N/A

Note: station count excludes 1 isolation station

\*Assumes FKC Cowlitz active application, CN App #21-31, is approved

Source: Northwest Renal Network Modality Reports, 12/30/20

A description of planning area providers' conformance to standards under WAC 246-310-812(5) is provided below:

- FKC Cowlitz is over the 4.5 patient per station standard.
- FKC Longview is not yet operational and is past the operational timeline presented in its application.

3. Complete the methodology outlined in [WAC 246-310-812](#). For reference, copies of the [ESRD Methodology](#) for every planning area are available on our website. Please note, under [WAC 246-310-812\(1\)](#), applications for new stations may only address projected station need in the planning area where the facility is to be located, unless there is no existing facility in an adjacent planning area. If this application includes an adjacent planning area, station need projections for each planning area must be calculated separately.

In-center dialysis station need was determined by applying the five-step methodology set forth in WAC 246-310-812. The specific methodology applied to the Cowlitz County Dialysis Planning Area is detailed below:

**Step (a)**  
**Determine the Type of Regression Analysis to be Used**

*Determine the type of regression analysis to be used to project resident in-center station need by calculating the annual growth rate in the planning area using the end-of-year number of resident in-center patients for each of the previous six consecutive years, concluding with the base year.*

*(i) If the planning area has experienced less than six percent growth in any of the previous five annual changes calculations, use linear regression to project station need; or*

*(ii) If the planning area has experienced six percent or greater growth in each of the previous five annual changes, use nonlinear (exponential) regression to project station need.*

Table 3 details the year-end number of in-center hemodialysis patients in the Cowlitz County Dialysis Planning Area. As Table 3 demonstrates, growth in years 2016, 2018, and 2020 were less than 6%. As such, a linear regression is to be used to project station need.

**Table 3. Cowlitz County Dialysis Planning Area Year-End Resident In-Center Hemodialysis Patients and Annual Rate of Change from Prior Year.**

Year	2015	2016	2017	2018	2019	2020
Number of Patients	95	100	121	126	139	134
Rate of Change from Prior Year	--	5.3%	21%	4.1%	10.3%	-3.6%

Source: Northwest Renal Network Modality Reports. Please see also <https://www.doh.wa.gov/portals/1/Documents/pubs/KDCowlitz.pdf>

**Step (b)**  
**Project the Number of Resident In-Center Patients**

*Project the number of resident in-center patients in the projection year using the regression type determined in (a) of this subsection. When performing the regression analysis use the previous five consecutive years of end-of-year data concluding with the base year.*

Per WAC, the projection year for dialysis station need is defined as the fifth year after the base year. The base year is defined as the most recent calendar year for which December 31 data is available as of the first day of the application submission period from the *Northwest Renal Network's Modality Report*. In this case, the base year is 2020 and the projection year is 2025. Accordingly, Table 4 details the number of projected in-center patients in the Cowlitz County Dialysis Planning Area in the years 2021 – 2025 using a linear regression.

**Table 4. Cowlitz County Dialysis Planning Area Projected Year-End Resident In-Center Hemodialysis Patients. Linear Projection.**

Year	2021	2022	2023	2024	2025
Number of Patients	150	158	167	176	184

Source: Applicant. Please see also

<https://www.doh.wa.gov/portals/1/Documents/pubs/KDCowlitz.pdf>

#### **Step (c)**

#### **Determine the Number of Dialysis Stations Needed**

*Determine the number of dialysis stations needed to serve resident in-center patients in the planning area in the projection year by dividing the result of (b) of this subsection by the appropriate resident in-center patient per station number from subsection (3) of this section. In order to assure access, fractional numbers are rounded up to the nearest whole number.*

As noted above, the projection year is 2025. For the Cowlitz County Dialysis Planning Area, the appropriate resident in-center patient per station number is 4.8. Assuming 184 patients in 2025 (step b), dividing by 4.8 and rounding up yields thirty-nine (39) total stations needed in 2025.

#### **Step (d)**

#### **Determine Net Station Need**

*To determine the net station need for a planning area, subtract the number calculated in (c) of this subsection from the total number of certificate of need approved stations located in the planning area. This number does not include the one department recognized exempt isolation station defined in WAC 246-310-800(9). For example, a kidney dialysis facility that is certificate of need approved and certified for eleven stations would subtract the one exempt isolation station and use ten stations for the methodology calculations.*

Subtracting existing stations from 2025 need identifies a net station need of eleven (11) stations.

**Table 5. Cowlitz County. Analysis of Current Supply vs. Net Station Need**

	Stations
FKC Cowlitz	24*
FKC Longview	4
<b>Total Supply</b>	<b>28</b>
2025 Projected Need	39
<b>Net Station Need</b>	<b>11</b>

\*Assumes FKC Cowlitz active application, CN App #21-31, is approved

Source: Applicant. Please see also

<https://www.doh.wa.gov/portals/1/Documents/pubs/KDCowlitz.pdf>

4. For existing facilities, provide the facility's historical utilization for the last three fullcalendar years.

**Table 6. FKC Cowlitz Historical Utilization.**

		Sep – Dec 2019	2020
Total in-center stations	Acquired clinic in Sep. 2019	22	22
Total in-center patients		101	127
Total in-center treatments		6,019	17,879
Total home patients		23	29
Total home treatments		1,568	4,292

\*Station count excludes 1 isolation station.

5. Provide projected utilization of the proposed facility for the first three full years of operation. For existing facilities, also provide the intervening years between historical and projected. Include all assumptions used to make these projections.

**Table 7. FKC Cowlitz Utilization Forecast**

	2021	Jan-Jun 2022	Jul-Dec 2022	2023	2024	2025
Total in-center stations*	24	24	35	35	35	35
Total in-center patients	127	127	135	148	165	174
Total in-center treatments	17,879	8,940	9,503	20,835	23,229	24,496
Total home patients	29	29	31	34	38	40
Total home treatments	4,292	2,146	2,294	5,032	5,624	5,920

\*Station count excludes 1 isolation station. Any patients included in table above requiring medically necessary isolation will have access to FKC Cowlitz's one isolation room.

Table 7 presents the projected utilization at FKC Cowlitz. Given the three additional station is anticipated to become operational by July 2023, the first full year of operation will be 2024.

### **Utilization Forecast Methodology**

Please see below for a description of the methodology used to construct the in-center and home patient projections.

#### In-Center Patients

Incremental growth for in-center patient is assumed when the new stations become operational (July 2023) and is based on the cumulative incremental growth featured in step (b) of the need methodology which is added to the 2020 FKC Cowlitz in-center patient census (see Table 6). It is assumed the number of treatments per patient is 140.8 treatments per year based on CY2020 utilization.

#### Home Patients

Home projections are forecasted at 22.8% of in-center patients, rounded to the nearest whole

number (based on CY2020 utilization). It is assumed the number of home treatments per patient is 148.0 treatments per year based on CY2020 utilization.

**6. For existing facilities, provide patient origin zip code data for the most recent full calendar year of operation.**

**Table 8. FKC Cowlitz Patient Origin, 2020**

Zip Code	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
97016	1	2	2	3	2	2	2	2	2	2	2	2
97048	5	5	5	5	5	5	5	5	4	4	4	4
97056			1	1	1	1	1	1				
97209	1	1	1	1	1	1						
98581	1	1	1	1	1	1	1	1	1	1	1	1
98591									2	1	1	1
98593										1	1	1
98596	1	1	1	1	1	1	1	1	2	1	1	1
98604	1	1	1	1	1	1	1	1	1	1	1	1
98611	13	12	12	12	12	11	11	12	12	11	12	11
98612	5	5	5	4	4	4	4	4	3	3	3	3
98623	1	1	1	1	1	1	1	1	1	1		
98625	6	5	6	5	4	4	3	3	3	2	2	3
98626	36	35	36	38	37	37	38	38	40	41	41	40
98632	85	88	87	87	88	85	87	83	81	86	88	93
98640	1	1	1	1	1	1	1	1	1	1	1	
98645	2	2	1	1	1	1	1	2	2	1	1	1
98661								1	1	1	1	1
98663	1	1	1	1	1	2	2	2	1			
98665										1	1	1
98668	1	1										
98674			1	1	1	1	1	1	2	2	2	2
98684	1	1										

**7. Identify any factors in the planning area that could restrict patient access to dialysis services. [WAC 246-310-210\(1\), \(2\)](#).**

Patient access is critical to improving the health and quality of life of our patients. But patient access is multi-faceted and not simply represented by the aggregate number of stations available. Patients require access to the specific treatment modality and convenient hours of operation that meet their individual clinical and personal needs. Further, continuity of care with the same physician and dialysis care team is often integral to addressing patients' care need.

Patients with limited financial means also face additional barriers to care due to the financial burden of out-of-pocket expenses. However, Fresenius Kidney Care Longview, LLC strives to address this issue for our patients when needed by providing charity. A copy of our charity care policy is contained in Exhibit 3.

**8. Identify how this project will be available and accessible to low-income persons, racial and ethnic minorities, women, mentally handicapped persons, and other under-served groups. [WAC 246-310-210\(2\)](#)**

All individuals identified as needing dialysis services will continue having access to FKC Cowlitz. FKC Cowlitz's admission policies prohibits discrimination on the basis of race, income, ethnicity, sex or handicap. A copy of the admission policy is contained in Exhibit 4.

A copy of our charity care policy is contained in Exhibit 3.

**9. If this project proposes either a partial or full relocation of an existing facility, provide a detailed discussion of the limitations of the current site consistent with [WAC 246-310-210\(2\)](#).**

The current site is limited in capacity to accommodate further expansion necessary to meet planning area need.

**10. If this project proposes either a partial or full relocation of an existing facility, provide a detailed discussion of the benefits associated with relocation consistent with [WAC 246-310-210\(2\)](#).**

The proposed relocation clinic is located in a building that will provide the most state-of-the-art levels of patient care.

- a. All new clinic designed to the latest in patient care standards.
- b. Nurse and tech stations designed with patient observation in mind.
- c. Industry leading Water room and Central Water Processing equipment.
- d. Onsite parking and immediate access for patients, staff and Doctors.
- e. Home Therapies suites designed for the latest in PD and Home Hemo modalities.

**11. Provide a copy of the following policies:**

- **Admissions policy**
- **Charity care or financial assistance policy**
- **Patient Rights and Responsibilities policy**
- **Non-discrimination policy**
- **Any other policies directly associated with patient access (example, involuntary discharge)**

Attached, please find the following exhibits applicable to the FKC Cowlitz clinic:

- Exhibit 3. Charity Care/Indigence Policy
- Exhibit 4A. Patient Admission Policy
- Exhibit 4B. Patient Rights and Responsibilities Policy
- Exhibit 4C. Patient Rights and Responsibilities List
- Exhibit 4D. Patient Acknowledgement of Receipt of Rights and Responsibilities
- Exhibit 4E. Patient Nondiscrimination

## **B. Financial Feasibility ([WAC 246-310-220](#))**

Financial feasibility of a dialysis project is based on the criteria in [WAC 246-310-220](#) and [WAC 246-310-815](#).

- 1. Provide documentation that demonstrates the immediate and long-range capital and operating costs of the project can be met. This should include but is not limited to:**
  - **Utilization projections.** These should be consistent with the projections provided under the Need section. Include all assumptions.
  - **Pro Forma financial projections for at least the first three full calendar years of operation.** Include all assumptions.
  - **For existing facilities proposing a station addition, provide historical revenue and expense statements, including the current year. Ensure these are in the same format as the pro forma projections. For incomplete years, identify whether the data is annualized.**

Please see Exhibit 5A for historical FKC Cowlitz expense and revenue statements. Note that because FKC Cowlitz was acquired in September 2019, there is not three years of historical data available.

Exhibit 5B includes the required pro forma financial statements. Exhibit 5B also provides key financial pro forma assumptions and sources of information used to prepare the projections, including staffing and salaries, wages, and benefits assumptions.

Utilization projections, including the assumptions used to derive the forecasts, are presented and discussed in Table 7 above and surrounding text.

### **2. Provide the following agreements/contracts:**

- **Management agreement.**
- **Operating agreement**
- **Medical director agreement**
- **Development agreement**
- **Joint Venture agreement**

**Note, all agreements above must be valid through at least the first three full years following completion or have a clause with automatic renewals. Any agreements in draft form must include a document signed by both entities committing to execute the agreement as submitted following CN approval.**

The existing medical director agreement is included in Exhibit 6A. The future medical director agreement is included in Exhibit 6B

The joint venture agreement is included in Exhibit 7A and the administrative services agreement is included in Exhibit 7B. All other agreements listed above are not applicable to the current request.

3. **Provide documentation of site control. This could include either a deed to the site or a lease agreement for the site. If a lease agreement is provided, the terms must be for at least five years following project completion.**

FMENA will provide the lease agreement for the proposed site in screening. Fresenius Kidney Care Longview, LLC is the tenant and Triangle Town Center NW LLC is the landlord. Exhibit 8 contains property information from the Cowlitz County Assessor's Office indicating Triangle Town Center NW LLC (LANDLORD) is the owner of the site.

4. **Provide county assessor information and zoning information for the site. If zoning information for the site is unclear, provide documentation or letter from the municipal authorities showing the proposed project is allowable at the identified site.**

Zoning documentation will be provided in screening.

5. **Complete the table below with the estimated capital expenditure associated with this project. Capital expenditure for the purposes of dialysis applications is defined under [WAC 246-310-800\(3\)](#). If you have other line items not listed below, include the definition of the line item. Include all assumptions used to create the capital expenditure estimate.**

**Table 9. FKC Cowlitz Capital Expenditures, by Type**

RELOCATION			
Item	Applicant	Landlord	Cost
a. Land Purchase	\$	\$	\$
b. Utilities to Lot Line	\$	\$	\$
c. Land Improvements	\$	\$	\$
d. Building Purchase	\$	\$	\$
e. Residual Value of Replaced Facility	\$	\$	\$
f. Building Construction	\$4,571,093	\$	\$4,571,093
g. Fixed Equipment (not already included in the construction contract)	\$601,223	\$	\$601,223
h. Movable Equipment	\$553,298	\$	\$553,298
i. Architect and Engineering Fees	\$370,963	\$	\$370,963
j. Consulting Fees	\$	\$	\$
k. Site Preparation	\$	\$	\$
l. Supervision and Inspection of Site	\$	\$	\$
m. Any Costs Associated with Securing the Sources of Financing (include interim interest during construction)			
1. Land	\$	\$	\$
2. Building	\$	\$	\$
3. Equipment	\$	\$	\$
4. Other	\$	\$	\$



n. Washington Sales Tax	Included above	\$	Included above
<b>Total Estimated Capital Expenditure</b>	<b>\$6,096,577</b>	<b>\$</b>	<b>\$6,096,577</b>

<b>EXPANSION</b>			
<b>Item</b>	<b>Applicant</b>	<b>Landlord</b>	<b>Cost</b>
a. Land Purchase	\$	\$	\$
b. Utilities to Lot Line	\$	\$	\$
c. Land Improvements	\$	\$	\$
d. Building Purchase	\$	\$	\$
e. Residual Value of Replaced Facility	\$	\$	\$
f. Building Construction	\$	\$	\$
g. Fixed Equipment (not already included in the construction contract)	\$14,362	\$	\$14,362
h. Movable Equipment	\$211,490	\$	\$211,490
i. Architect and Engineering Fees	\$	\$	\$
j. Consulting Fees	\$	\$	\$
k. Site Preparation	\$	\$	\$
l. Supervision and Inspection of Site	\$	\$	\$
m. Any Costs Associated with Securing the Sources of Financing (include interim interest during construction)			
1. Land	\$	\$	\$
2. Building	\$	\$	\$
3. Equipment	\$	\$	\$
4. Other	\$	\$	\$
n. Washington Sales Tax	Included above	\$	Included above
<b>Total Estimated Capital Expenditure</b>	<b>\$225,852</b>	<b>\$</b>	<b>\$225,852</b>

**6. Identify the entity responsible for the estimated capital costs identified above. If more than one entity is responsible, provide breakdown of percentages and amounts for all.**

Please see the tables included under Table 9 above. A breakdown of percentages by responsible party is provided below.

- Relocation: Applicant 100% and Landlord 0%
- Expansion: Applicant 100% and Landlord 0%

**7. Provide a non-binding contractor's estimate for the construction costs for the project.**

A non-binding contractor letter will be provided in screening.

**8. Provide a detailed narrative regarding how the project would or would not impact costs and charges for services. [WAC 246-310-220](#).**

This project has no impact on either charges or payment, as reimbursement for kidney dialysis services is based on a prospective composite per diem rate. In the case of government payers, reimbursement is based on CMS (Center for Medicaid and Medicare) fee schedules which have nothing to do with capital expenditures by providers such as FMCNA. In the case of private sector payers, FMCNA negotiates national, state, and regional contracts with payers. These negotiated agreements include consideration/negotiation over a number of variables, including number of covered lives being negotiated; the provider's accessibility, including hours of operation; quality of care; the provider's patient education and outreach; its performance measures such as morbidity and/or mortality rates; and increasingly, consideration of more broad performance/quality measures, such as the CMS Quality Incentive Program ("QIP") Total Performance Score ("TPS").<sup>1</sup>

FMCNA does not negotiate any of its contracts at the facility-level, thus, the capital costs associated with the proposed FKC Cowlitz project would have no impact on payer negotiations or levels of reimbursement. In this regard, facility-level activities, such as number of FTEs, operating expenses or capital expenditures have no effect on negotiated rates, since such negotiations do not consider facility-level operations. As such, the proposed FKC Cowlitz project will have no effect on rates FMCNA would receive in the Cowlitz County Dialysis Planning Area.

**9. Provide documentation that the costs of the project, including any construction costs, will not result in an unreasonable impact on the costs and charges for healthservices in the planning area. [WAC 246-310-220](#).**

See our response above for an explanation of the basis for FMCNA reimbursement. As described above, FMCNA does not negotiate any of its contracts at the facility-level, thus, the capital costs associated with the proposed FKC Cowlitz project will have no impact on payer negotiations or levels of reimbursement.

As a follow-up to this question regarding impacts on costs, charges and reimbursement, and what elements make up reimbursement, which is what the question focuses on, it should be noted that CMS has implemented QIP with the express purpose of linking payment for care directly to providers' performance on quality of care measures.<sup>2</sup> Over time, all payers will adapt some or all of these same standards, and will increasingly tie reimbursement to TPS measures.

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<sup>1</sup> Please see: <http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/>

<sup>2</sup> As stated on the CMS website, referenced above, the ESRD QIP will reduce payments to ESRD facilities that do not meet or exceed certain performance standards. The maximum payment reduction CMS can apply to any facility is two percent. This reduction will apply to all payments for services performed by the facility receiving the reduction during the applicable payment year (PY). Payment reductions result when a facility's overall score on applicable measures does not meet established standards. CMS publicly reports facility ESRD QIP scores; these scores are available online on [Dialysis Facility Compare](#).

- 10. Provide the historical and projected payer mix by revenue and by patients using the example table below. If “other” is a category, define what is included in “other.”**

**Table 10. FKC Cowlitz Dialysis Center, Payer Mix, by Revenue and by Patient**

<b>Payor Class</b>	<b>Mix Based on Treatments</b>	<b>Mix based on Revenue</b>
Medicare	44.7%	28.2%
Commercial	11.0%	38.2%
Medicaid	3.1%	1.4%
Medicare Adv	26.6%	21.4%
Medicaid Risk	7.8%	5.2%
Misc. Ins	6.8%	5.4%
Self Pay	0.0%	0.0%
Old Revenue Accounts	0.0%	0.1%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

\*Based on FKC Cowlitz CY2020 actuals.

\*\*Projected is assumed to be based on historical.

- 11. If this project anticipates changes in payer mix percentages from historical to project, provide a brief explanation of why the changes are anticipated and any underlying assumptions.**

The project's projected payer mix is based on FKC Cowlitz's CY2020 actuals.

- 12. Provide a listing of all new equipment proposed for this project. The list should include estimated costs for the equipment. If no new equipment is required, explain.**

Please see Exhibit 9 for a list of new equipment.

- 13. Identify the source(s) of financing (loan, grant, gifts, etc.) and provide supporting documentation from the source. Examples of supporting documentation include: a letter from the applicant's CFO committing to pay for the project or draft terms from a financial institution.**

Fresenius Kidney Care Longview, LLC will use existing reserves from its parent companies, FMCNA and PeaceHealth, to fund this project. Exhibit 10 includes a letter from Mr. Mark Fawcett, Senior Vice President and Treasurer with FMCNA, attesting to the availability of funds and a commitment to this project. A letter of financial commitment from PeaceHealth will be provided in screening.

**14. If this project will be debt financed through a financial institution, provide a repayment schedule showing interest and principal amount for each year over which the debt will be amortized. [WAC 246-310-220](#)**

This is not applicable to the proposed project.

**15. Provide the applicant's audited financial statements covering at least the most recent three years. [WAC 246-310-220](#)**

A balance sheet for Fresenius Kidney Care Longview, LLC is provided in Exhibit 11A. Financial statements for Fresenius Medical Care, the parent company, are included in Exhibits 11B and 11C. Financial statements for PeaceHealth Networks, the other parent company, are included in Exhibits 11D and 11E.

## C. Structure and Process (Quality) of Care ([WAC 246-310-230](#))

1. Provide a table that shows FTEs [full time equivalents] by category for the proposed facility. If the facility is currently in operation, include at least the last three full years of operation, the current year, and the first three full years of operation following project completion. There should be no gaps in years. All staff categories should be defined.

Historical and projected FTE staffing, by position and clinical setting, is provided below in Table 11.

**Table 11. FKC Cowlitz, Historical and Proposed Staffing, by FTE and Position**

Productive FTEs, by Type	Jan 17- Aug 18	Sep - Dec 2019	2020	2021	2022	Jan – Jun 2023	Jul - Dec 2023	2024	2025	2026
Admin/Management	N/A	1	1.0	1.0	1.0	1.0	1.00	1.00	1.00	1.00
Outpatient RN		7.44	7.3	7.3	7.3	7.3	7.30	7.40	8.25	8.70
Patient Care Technician		17.87	17.8	17.8	17.8	17.8	17.80	18.50	20.63	21.75
Equipment Technician		1.11	1.0	1.0	1.0	1.0	1.08	1.18	1.32	1.39
Social Worker		0.83	1.2	1.2	1.2	1.2	1.15	1.18	1.32	1.39
Dietitian		1.41	1.5	1.5	1.5	1.5	1.45	1.45	1.45	1.45
Secretary		1.85	1.9	1.9	1.9	1.9	1.90	1.90	1.90	1.90
Home RN		0.35	0.38	0.38	0.38	0.38	0.38	0.38	0.38	0.38
Home Manager		3.01	3.57	3.57	3.57	3.57	3.57	3.57	3.57	3.57
<b>Total</b>		<b>34.87</b>	<b>35.55</b>	<b>35.55</b>	<b>35.55</b>	<b>35.55</b>	<b>35.63</b>	<b>36.57</b>	<b>39.82</b>	<b>41.53</b>

Source: Applicant

2. Provide the assumptions used to project the number and types of FTEs identified for this project.

Information and assumptions used to prepare Table 11 include:

- The wage and salary figures are based on FKC Cowlitz 2020 actuals. They are held constant over the forecast period.
- It is assumed a FTE (“full time equivalent”) employee works 2,080 hours per year.
- Non-productive hours are estimated at 10% of productive hours, based on FMCNA experience.
- Benefits are calculated at 33.8% of wages and salaries based on FKC Cowlitz’s 2020 actuals.
- FTEs for the intervening periods between historical actuals and project completion projections are based on 2020 actuals.
- The staff to patient ratio matrix below was used to construct minimum FTE counts for the projection years based on future patient counts presented in Table 7.

	Staff to Patient Ratios (FTE Staff)
PCT (1)	1:8
RN (2)	1:20
Equipment Technician (3)	1:125
Social Worker (3)	1:125
Dietician (3)	1:125
Secretary (3)	1:125
Nurse Manager (4)	1

- (1) A PCT works two shifts of patients each day, with 4 patients per shift.  
(2) A RN works two shifts of patients per day, with 10 patients per shift.  
(3) These FTEs are staffed based on staff-to-patient ratios identified in the table.  
(4) The Center for Medicare and Medicaid (“CMS”) requires that a dialysis facility be staffed with one FTE manager, irrespective of size of the facility or number of patients.

**3. Identify the salaries, wages, and employee benefits for each FTE category.**

Salary and benefit information, by FTE category and clinical setting, is contained in the pro forma financials (Exhibit 5B).

**4. Provide the name and professional license number of the current or proposed medical director. If not already disclosed under 210(1) identify if the medical director is an employee or under contract.**

FKC Cowlitz contracts with Sandeep Vetteth, MD for medical director services. Dr. Sandeep Vetteth’s professional license number is MD60594991 A copy of the Medical Director agreement is included in Exhibit 6A.

**5. Identify key staff, if known. (nurse manager, clinical director, etc.)**

FKC Cowlitz employs Len Hallock as its manager/administrator.

**6. For existing facilities, provide names and professional license numbers for current credentialed staff.**

Please see Table 12 below.

**Table 12. Names and License Numbers of Current Staff at FKC Cowlitz**

Name	License Number	License Type
Edwards,Shyanne Nicole	RN60918094	Registered Nurse
Porter,Casandra A	RN60743654	Registered Nurse
Sager,Calvin Lee	RN60532987	Registered Nurse
Nelson,Stephanie Williams	RN60428684	Registered Nurse
Hallock,Len Paul	RN60385788	Registered Nurse
Jones,Thor Jacob	RN60235311	Registered Nurse
Burckhardt,Thomas J	RN60234681	Registered Nurse
Bullock,Kendra	RN00176798	Registered Nurse
Fierst,David Andrew	RN00165321	Registered Nurse
Eader,Victoria F	RN00093803	Registered Nurse
Wilks,Teresa Sue	RN00074771	Registered Nurse
Blake,Kristi	RN60668620	Registered Nurse
Lauzis-Oliver,Angela Lynn	HT60891253	Certified Hemodialysis Tech
Johnson,Dylan	HT60876101	Certified Hemodialysis Tech
Eaton,Shellee A	HT60712302	Cert Clinical Hemo Tech
Bloomstrom,Danyelle	DI60807281	Registered Dietitian
Smith,Hailey	SC60888409	Licensed Social Worker
Koeppen,Brigid	SA61076168	Lic Clinical Social Worker
Greenough,Emily	DI0001923	Registered Dietitian

**7. Describe your methods for staff recruitment and retention. If any barriers to staff recruitment exist in the planning area, provide a detailed description of your plan to staff this project.**

FKC Cowlitz is an operational dialysis facility, which is staffed with qualified clinical and support personnel. Table 11 provides the number of current and proposed FTEs, by type. By virtue of our geographic location, any additional staff would be expected to principally come from Cowlitz County as well as from neighboring counties in the region. To be effective in staff recruitment and retention, Fresenius Kidney Care Longview, LLC offers competitive wage and benefit packages. Further, to ensure that we have adequate staff across all our facilities in Washington, we have built a local float pool of WA Licensed Patient Care Techs and RN's to ensure we have coverage for patient care. FMCNA also has an internal staffing agency, Fresenius Travel, in which we can request assistance. We also have the capability of using outside staffing agencies to fill critical needs.

**8. Provide a listing of proposed ancillary and support agreements for the facility. For existing facilities, provide a listing of the vendors.**

Please see Table 13 below.

**Table 13. List of ancillary and support agreements for FKC Cowlitz**

NAME	DESCRIPTION
Staples	Water
Staples	Office Supplies
UPS	Carrier Service
Dell	Equipment
Henry Schein	Medical Supplies
Comcast	Entertainment
MarCor	Equipment
Clean Net Inc	Janitorial
Staples	Linen, Gowns Etc.
Sedgwick Claims	Benefits Services
AMR	Transportation Services

**9. For existing facilities, provide a listing of ancillary and support service vendors already in place.**

Please see our response above for a list of ancillary and support service vendors already in place.

**10. For new facilities, provide a listing of ancillary and support services that will be established.**

FKC Cowlitz is an existing facility. Therefore, this question is not applicable.

**11. Provide a listing of ancillary and support services that would be provided on site and those provided through a parent corporation off site.**

All patient care and support services except senior management, financial, legal, planning, marketing, architectural/construction and research and development are provided on-site at each clinic.

**12. Identify whether any of the existing ancillary or support agreements are expected to change as a result of this project.**

There are no anticipated changes to the existing ancillary or support agreements as a result of this project.

**13. Provide a listing of ancillary and support services that would be provided on site and those provided through a parent corporation off site.**

See response #11 above.



**14. If the dialysis center is currently operating, provide a listing of healthcare facilities with which the dialysis center has working relationships.**

FKC Cowlitz has a transfer/affiliation agreement with PeaceHealth St. John Medical Center (see Exhibit 12).

FKC Cowlitz also has working relationships with Good Samaritan, Kaiser Permanente (includes Sunnyside), Legacy Salmon Creek Americana Health, Canterbury Inn/Gardens, Frontier Extended, Monticello Park, PeaceHealth: St. John's Medical Center and Southwest (Vancouver), OHSU, and the Portland VA.

**15. For new a new facility, provide a listing of healthcare facilities that the dialysis center would establish working relationships.**

FKC Cowlitz is an existing facility. Therefore, this question is not applicable.

**16. Provide a copy of the existing or proposed transfer agreement with a local hospital.**

FKC Cowlitz has a transfer/affiliation agreement with PeaceHealth St. John Medical Center (see Exhibit 12).

**17. Clarify whether any of the existing working relationships would change as a result of this project.**

There are no anticipated changes as a result of this project.

**18. Fully describe any history in the last three calendar years of the applicant concerning the actions noted in Certificate of Need rules and regulations [WAC246-310-230\(5\)\(a\)](#). If there is such history, provide documentation that the proposed project will be operated in a manner that ensures safe and adequate care to the public to be served and in conformance with applicable federal and state requirements. This could include a corporate integrity agreement or plan of correction.**

FMCNA is committed to conducting its business activities in compliance with applicable law. The company has long maintained a corporate compliance program which includes a Code of Ethics and Business Conduct, ongoing compliance related education and training for employees, a Compliance Department to support the company and its employees with compliance concerns, including a compliance line for anonymous reporting, and monitoring and auditing of business activities.

FMCNA, as one of the largest dialysis providers in the country, is routinely involved in claims, lawsuits, regulatory matters and investigations in the ordinary course of business. As for matters responsive to the application questions, FMCNA has no history of criminal convictions relating to the ownership or operation of a health care facility within the United States within the last three

(3) calendar years.<sup>3</sup> FMCNA also has no history of license revocations or decertifications for facilities in Washington State. In the past three (3) years, a dialysis facility located in Coeur D Alene, Idaho (Fresenius Kidney Care North Idaho) was decertified on November 22, 2019.

**19. Identify whether any facility or practitioner associated with this application has a history of the actions listed below. If so, provide evidence that the proposed or existing facility can and will be operated in a manner that ensures safe and adequate care to the public and conforms to applicable federal and state requirements. WAC 246-310-230(3) and (5).**

- **A criminal conviction which is reasonably related to the applicant's competency to exercise responsibility for the ownership or operation of a healthcare facility; or**
- **A revocation of a license to operate a healthcare facility; or**
- **A revocation of a license to practice as a health professional; or**
- **Decertification as a provider of services in the Medicare or Medicaid program because of a failure to comply with applicable federal conditions of participation.**

Please see response to question 18. Additionally, FMCNA performs background checks on all newly hired employees. FMCNA validates the professional licenses and/or certifications of certain employee categories as required by federal, state or local laws and regulations. FMCNA screens current and new employees, potential new employees, Medical Directors, attending physicians, physician extenders (e.g., NP's, PA's), independent contractors, and vendors against the Office of Inspector General's List of Excluded Individuals/Entities and the General Services Administration's List of Parties Excluded from Federal Programs, as well as state specific exclusion lists, OFAC, etc. FMCNA will not engage a person or company that is excluded from participating in federally funded health care programs such as Medicare.

Individuals or entities may be excluded for committing healthcare fraud or committing other crimes with impact on the federal government. Individuals may also be excluded for things like defaulting on federal school loans. In some situations, an individual may be reinstated from their exclusion. However, while the individual or entity is on the exclusion list, FMCNA will not hire or allow them to perform work for the company.

As of the date of this application, to the best of the applicant's knowledge, no practitioner associated with this application has a history of the actions listed above.

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<sup>3</sup> Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America, the parent company of the applicant, is also the parent company to numerous other subsidiary companies which offer a range of health care services and products in North America. For the purpose of responding to questions 18 and 19, the applicant is responding to such questions with respect to dialysis clinics owned, operated or managed by Fresenius Medical Care Holdings, Inc. and its subsidiaries.

**20. Provide documentation that the proposed project will promote continuity in the provision of health care services in the planning area, and not result in an unwarranted fragmentation of services. [WAC 246-310-230](#)**

The proposed project promotes continuity of care as it seeks to continue FKC Cowlitz's existing dialysis care services and is supported by the Department's numeric need methodology.

**21. Provide documentation that the proposed project will have an appropriate relationship to the service area's existing health care system as required in [WAC 246-310-230](#).**

As an existing facility, FKC Cowlitz has an established relationship with the community. Additional stations will not only ensure timely access to dialysis services, but it will also realize increased efficiency and economies of scale.

See Exhibit 12 for FKC Cowlitz's transfer agreement with PeaceHealth St. John Medical Center.

## D. Cost Containment ([WAC 246-310-240](#))

### 16. Identify all alternatives considered prior to submitting this project.

The following options evaluated in the alternatives analysis for nonspecial cycle one include:

- Option One: Relocate and add eleven (11) stations to existing facility —The Project
- Option Two: Postponing the request—Do Nothing

### 17. Provide a comparison of the project with alternatives rejected by the applicant. Include the rationale for considering this project to be superior to the rejected alternatives. Factors to consider can include, but are not limited to: patient access to healthcare services, capital cost, legal restrictions, staffing impacts, quality of care, and cost or operation efficiency.

Please see Tables 14-17, respectively. They provide a summary of advantages and disadvantages of each of the options based on the following evaluative criteria: Promoting availability, or access to healthcare services; Promoting Quality of Care; Promoting Cost and Operating Efficiency; and Legal Restrictions.

**Table 14. Alternatives Analysis: Promoting Access to Healthcare Services.**

Option:	Advantages/Disadvantages:
<b>Option One</b> Relocate and add eleven (11) stations to existing facility —The Project	<ul style="list-style-type: none"><li>• Adds additional dialysis stations to the Planning Area, as warranted by the department's dialysis forecast model. (Advantage ("A")).</li><li>• Residents of the Cowlitz County Dialysis Planning Area will be better able to access needed facility dialysis services and would not be forced to out-migrate to other facilities outside the planning area--improves access (A).</li></ul>
<b>Option Two</b> Do nothing	<ul style="list-style-type: none"><li>• Would do nothing to improve access (Disadvantage ("D")).</li><li>• Outmigration would increase (D).</li></ul>

**Table 15. Alternatives Analysis: Promoting Quality of Care.**

Option:	Advantages/Disadvantages:
<b>Option One</b> Relocate and add eleven (11) stations to existing facility —The Project	<ul style="list-style-type: none"> <li>• Adds additional dialysis station capacity as warranted by the station forecast model (A).</li> <li>• This promotes access, reduces fragmentation, thus, promotes quality (A).</li> <li>• Residents of Cowlitz County Planning Area would have increased dialysis station capacity--this improves quality of care inasmuch as it improves continuity of care (A).</li> </ul>
<b>Option Two</b> Do nothing	<ul style="list-style-type: none"> <li>• Planning Area residents will need to out-migrate to receive care, and do so in increasing numbers without added capacity. As such, patient care will be fragmented, which harms access and quality of care (D)</li> </ul>

**Table 16. Alternatives Analysis: Promoting Cost and Operating Efficiency.**

Option:	Advantages/Disadvantages:
<b>Option One</b> Relocate and add eleven (11) stations to existing facility —The Project	<ul style="list-style-type: none"> <li>• Due to the limited capacity of existing site, this option requires relocation to a new site which requires significant capital costs. (D)</li> <li>• New site will be designed to offer state-of-the-art levels of patient care. This will greatly improve operating efficiency. (A)</li> </ul>
<b>Option Two</b> Do nothing	<ul style="list-style-type: none"> <li>• Capital and operating costs would be least under this option, since there would be none (A).</li> <li>• Suffers from significant disadvantages by not promoting access and continuity of care. Forces patients to out-migrate, which is inefficient and costly for planning area residents (D).</li> </ul>

**Table 17. Alternatives Analysis: Legal Restrictions.**

Option:	Advantages/Disadvantages:
<b>Option One</b> Relocate and add eleven (11) stations to existing facility —The Project	<ul style="list-style-type: none"> <li>• This option requires certificate-of-need approval.</li> </ul>
<b>Option Two</b> Do nothing	<ul style="list-style-type: none"> <li>• There are no legal implications with this option.</li> </ul>

**18. For existing facilities, identify your closest two facilities as required in [WAC 246-310-827\(3\)\(a\)](#).**

The closest facilities to FKC Cowlitz include:

**FKC St. Helens**

500 N Columbia River Hwy, Ste 510  
Saint Helens, OR 97051

**FKC Clark**

3921 SW 13th Ave  
Battle Ground, WA 98604

Because FKC Cowlitz has missing information in the 2021 DOH Superiority Workbook, the next closest facility is provided below:

**FKC Chehalis**

1684 Bishop Rd  
Chehalis, WA 98532

**19. For new facilities, identify your closest three facilities as required in [WAC 246-310-827\(3\)\(b\)](#).**

This question is not applicable as FKC Cowlitz is an existing facility.

**20. Do any other applications you submitted under this concurrent review cycle rely on the same facilities listed in response to questions 3 or 4? If yes, identify the applications. [WAC 246-310-827\(3\)\(c\)](#). (Note: A maximum of two applications can rely on the same three facilities.)**

No, the applicant does not rely on the same three facilities for multiple applications this cycle.

**21. Identify whether any aspects of the facility's design could lead to operational efficiency. This could include but is not limited to: LEED building, water filtration, or the methods for construction, etc. [WAC 246-310-240\(2\) and \(3\)](#).**

Any proposed changes would meet Fresenius Kidney Care Longview, LLC and FMCNA internal standards which have been engineered and tested to ensure that they support our high quality, efficient and patient-focused standards. Our standards also meet and or exceed all applicable state and local codes, including compliance with the State Energy Code, latest edition.

**Exhibit 1.**  
**Organizational Chart**

# Fresenius Kidney Care Longview, LLC

Renal Care Group NW, Inc.

60% Ownership

JV Board Members:

Casey Stowell, Regional Vice President

Kendall Beatty, Director of Operations

Jarremy Morgan, Director of Finance

Health Ventures

40% Ownership

JV Board Members:

Sean Gregory, Chief Executive

Erin Gerner, Chief Financial Officer

Renal Care Group, Inc.

100% Ownership

PEACEHEALTH NETWORKS

100% Ownership

Fresenius Medical Care Holdings, Inc.

100% Ownership

Date: 11-24-2020



**Exhibit 2.**  
**Letter of Intent**



April 30, 2021

Eric Hernandez, Program Manager  
Certificate of Need Program  
Washington State Department of Health  
111 Israel Road SE  
Tumwater, WA 98501

**RECEIVED**

By CERTIFICATE OF NEED PROGRAM at 3:14 pm, May 03, 2021

**LOI21-05FreKDC6**

**ex: June 01, 2021**

**Re: Letter of Intent: Relocation and Expansion of FKC Cowlitz in the Cowlitz ESRD Planning Area**

Dear Mr. Hernandez:

Pursuant to Washington Administrative Code ("WAC") 246-310-806, for Nonspecial Circumstance Cycle 1, Fresenius Kidney Care Longview, LLC intends to file a certificate of need to relocate and expand its current CN-approved kidney dialysis center, d.b.a Fresenius Kidney Care Cowlitz ("FKC Cowlitz") located at 600 Broadway St, Longview, WA 98632. In accordance with WAC 246-310-080, the following information is provided:

1. Description of the services proposed:

A relocation of the existing FKC Cowlitz facility and expansion of eleven (11) additional stations.

2. Estimated Cost of the Proposed Project:

- The estimated relocation capital expenditures are \$6,615,016.
- The estimated expansion capital expenditures are \$225,852.
- Total estimated capital expenditures are \$6,840,868.

3. Description of the Service Area:

The service area is the Cowlitz ESRD Dialysis Planning Area.

Please feel free to contact me if there are any questions on this letter of intent. I can be reached at 503.507.4967 or [Casey.Stowell@fmc-na.com](mailto:Casey.Stowell@fmc-na.com).

Sincerely,

*Casey Stowell*

Casey Stowell  
Regional Vice President – Pacific Northwest  
Fresenius Medical Care

**Exhibit 3.**  
**Charity Care/Indigence Policy**

**Exhibit 6.**  
**Charity Care/Indigence Policy**

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## Indigent Waiver Program

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### Key Points

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1. The Indigent Waiver Program assists eligible patients who:
    - Are unable to obtain insurance coverage
    - Lack the financial resources to pay for medical services

**Note:** FreseniusRx operates a different Indigent Waiver Program for qualified low-income Medicare Part D Extra help patients. \*
  2. The Indigent Waiver Program applies only to charges the patient is personally liable for.
  3. The Indigent Waiver Program is a “last resort” when there are no other payment options for the patient.
  4. Patients may qualify for full or partial waivers based on a sliding scale schedule.
  5. The Indigent Waiver Program cannot be advertised to patients, prospective patients or referral sources.
  6. Indigent waivers are valid for one (1) year from date of approval.
- 

\* See the *Financial Assistance Program: Compliance Requirements Policy* for additional information.  
[https://fmc4me.fmcna.com/idc/idcplg?IdcService=GET\\_FILE&Rendition=Primary&RevisionSelectionMethod=Latest&dDocName=PDF\\_3000071822](https://fmc4me.fmcna.com/idc/idcplg?IdcService=GET_FILE&Rendition=Primary&RevisionSelectionMethod=Latest&dDocName=PDF_3000071822)

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**Definition:**  
**Indigent Waiver** An Indigent Waiver excuses all or part of a patient's financial obligation to pay for items or services provided by FMCNA.

**Definition:**  
**Family** "Family" is defined as the patient and immediate family members residing with the patient or who are legally financially responsible for the patient.

**Qualifications** The Patient applying for the waiver program must meet eligibility criteria for both:

1. Annual Income
2. Net Worth (Assets)

When appropriate, patients may qualify for partial indigent waivers based upon a Sliding Fee Scale Matrix, as determined by the FMCNA Business.

	<b>Eligibility Criteria</b>
Annual Income Limit	The annual income limit will be determined by each FMCNA business based on industry research conducted, and documented, by the business.
Net Worth	Must have a family net worth less than [amount determined by the business] at the time of application.

**Retroactive Waivers**

- Patients may be eligible for retroactive waivers if they meet the business specific criteria for annual income and net worth for the entire period requested.
- Retroactive waivers > than six (6) months require approval of a VP level manager or above.

*Continued on next page*

**Documentation** • The Indigent Waiver Form must be completed.

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**Requirements  
for Individual  
Patient Waiver**

- All required fields must be completed.

**Documents for  
Qualifying the  
Patient for the  
Program**

The following is a sample of documents that can be used to determine a patients' family income. For those documents that may be direct deposit, a copy of the account statement is required:

- Pay Stub – (Pt/Spouse/Dependents)
- Social Security Award Letter
- SSA deposited
- Retirement/Disability Check
- Checking/Savings Account Statements (all pages even if blank)
- Stocks/Bond Statements
- Tax Bill/Appraisal (owned land/property – except principal residence)
- 401k/IRA (If over 65)
- Most recent Tax Return (if claiming dependents)

**Financial  
Review Period**

Review of one (1) month of patient's income and/or expenses, no more than 3 months old.

**Eligibility  
Period**

- The indigent waiver is valid for **one (1) year** from the 1<sup>st</sup> date of the month of approval.
- Eligibility period may be for less than 1 year if patient will qualify for insurance within the year period.
- A full review of a patient's annual income and net worth is required every twelve (12) months to extend a waiver for subsequent periods.
- Re-evaluation is required when staff is notified or receive information that a patient's financial status has changed, or information used to qualify a patient is incorrect or incomplete.

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**Document  
Retention of  
Patient Billing  
Information**

- Documentation of approved Indigent Waivers with all correspondence used for approving or renewing the waivers, including retroactive waivers is to be retained per the FMCNA Record Retention Schedule (Record Code AC2-10).
- Tax Clearance approval is required for destruction of these documents.
- Each FMCNA Business will determine who is responsible for maintaining these documents.

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*End of document*

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**Exhibit 4A.**  
**Patient Admission Policy**

## Fresenius Kidney Care Clinical Services

### Patient Admission

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**Purpose** To guide facility management on the admission process for all patients being admitted to an FKC dialysis facility.

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**Responsibility** Medical Director, Clinical Manager or Registered Nurse, Master's Social Worker, Registered Dietitian and Facility Secretary as defined in this policy, Patient Admission Services and Central Verification

---

**General Policy** This policy applies to In-Center, Home, Permanent Transfer, Transient and Seasonal Patients.

When medically appropriate and consistent with this policy, facilities shall admit and treat patients needing dialysis.

Each patient admitted will be followed by an attending physician on the facility's medical staff or physician who has been granted temporary privileges at the facility.

All services offered by FKC facilities are available to all patients provided:

- They are medically suitable based on the clinical assessment of the physician,
  - and the willingness of the responsible party to pay for such services.
- 

**Consent** The patient must sign the consent for dialysis (hemodialysis or peritoneal dialysis) prior to the first treatment at the facility.

If the patient is incompetent or incapable of making healthcare decisions, refer to the block titled "Patient Appears Unable to Consent for treatment" For additional information refer to the [Informed Consent Policy](#).

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## Fresenius Kidney Care Clinical Services

### Patient Admission

The patient (or if patient has been deemed incompetent by a physician, the patient's representative) shall designate a person to be notified in case of emergency.

#### Types of Admissions: Definitions

**New Patient:** Permanent admission of a patient who is new to dialysis who are primarily referred by physician or hospital.

**Transfer:** A patient who is scheduled to receive ongoing and continued treatment at a dialysis facility (permanent or seasonal). A patient may be referred by his/her physician, a hospital, another dialysis facility, or as a self-referral.

**Transient:** A patient who is scheduled for only 1 to 13 treatments.

#### Transient or Seasonal Admission Requirements

The accepting physician will medically clear the patient prior to admission. (See block on medical clearance). The attending physician or physician extenders will make all the medical, laboratory and pharmaceutical decisions for the patient while under the physician's care in accordance with the standard rules and procedures of the facility.

Dialyzers and/or supplies brought by a transient or seasonal patient will only be used in the rarest of circumstances. Use of a patient-provided item, such as a specialized dialyzer or medication, must be approved by the Medical Director and the P and T Committee **PRIOR** to the patient arriving for treatment at the facility.

- If approved for a specific dialyzer or medication, a seasonal/transient patient's home facility must ship the item to the transient facility following proper storage and shipment procedures.

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## Fresenius Kidney Care Clinical Services

### Patient Admission

**Admission Process** All admissions must be processed through Patient Admission Services (PAS). Patient Admission Services (PAS) will receive patient information and medical records from referral sources. The PAS will disseminate this information to the appropriate departments responsible for medically and financially clearing the patients. Upon receipt of the referral for admission, the facility will be notified of the pending admission by PAS to confirm placement.

Patient Admission Services will obtain medical records and collaborate with the verification office to financially clear the patient.

**Patient Transfer to another FKC Facility** The Clinical Manager or his/her designee must contact Patient Admission Services when the patient transfers to a different FKC facility. Patient Admission Services will initiate the transfer.

**Medical Clearance** A patient shall be medically cleared for treatment when dialysis treatment is deemed indicated and appropriate according to the clinical judgment of the patient's attending physician. In the case where the Medical Director determines the patient is too acutely ill or not appropriate for outpatient dialysis care, then the decision for admission to the facility shall be made by the Governing Body.

**Special Circumstances Admission Requests** Requests to admit a patient with an external device such as left ventricular assist device (LVAD), continuous medication infusion, or LifeVest Defibrillator or other non-routine request requires approval from the corporate Medical Office.

Staff must review the [Admission, Handling and Safe Movement of the Morbidly Obese Patient Policy](#) before admission to the facility to ensure the

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## Fresenius Kidney Care Clinical Services

### Patient Admission

facility can safely care for a morbidly obese patient. The Governing Body will make the determination to accept or deny the patient based on special considerations outlined in the policy.

#### Emergency Admission - Transfer

Patients may need to be transferred emergently in situations related to unplanned emergencies caused by severe weather, fire or other serious facility operating problems such as water treatment failure or other unexpected problems leading to facility closure. An emergency transfer is not expected to extend beyond 30 days and patients are expected to return to their “home” facility to continue their treatments when operations are able to resume. The emergency data entry process may be used for emergency transfers.

Non-emergent situations such as a planned closure or an individual treatment at another facility after a missed a treatment, or unplanned after-hours admissions must be handled according to the current process of admitting a patient.

Click the link for additional information on entering data in the clinical systems during any emergency: [Guidelines for Emergency Preparedness Policy](#).

#### Medical Record Requirements

Patient Admission Services will collect the required information needed to admit a patient

At a minimum, the required documents to admit a patient include:

- History and Physical or nephrology consult note or discharge summary or the most recent physician progress note
- Hepatitis B panel (HBsAg, anti-HBs, anti-HBc)
  - If unable to obtain full panel:

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## Fresenius Kidney Care Clinical Services

### Patient Admission

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- For patients new to dialysis: at a minimum a Hepatitis B surface antigen (HBsAg) result obtained within 30 days prior to the admission date
  - For transient or transfer patients: All patients must have a documented hepatitis B antigen (HBsAg) **or** antibody (HBsAb) result prior to admission to the facility. HBsAg results must have been reported within 30 days of admission. If the patient has hepatitis antibodies (HBsAb), the results must have been reported within the past 12 months. Any discrepancies or questions related to admitting a patient and/or a patient's hepatitis results should be reported by the Clinical Manager to their Corporate Clinical Quality Manager.
- Current medication list and allergies
  - Dialysis orders or the last treatment sheet
  - For transients/travelers only: A PPD Test or Chest X-ray within **one** year.

**NOTE: On occasion, admitting facilities request additional medical information over the minimum required documents listed above. Patient Admission Services will attempt to get this information. However, inability to provide this information by the referring facility will not affect the admission of the patient.**

---

#### **Patients with Prior Behavioral Issues**

A referred patient who has exhibited behavioral issues in the hospital, at another FKC or non-FKC facility or during the admission process and could be a threat to the health and safety of patients or staff may be denied admission to the dialysis facility.

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## Fresenius Kidney Care Clinical Services

### Patient Admission

The decision to admit a patient who has exhibited behavioral issues shall be made by the facility management in collaboration with the patient's attending physician and the Medical Director.

**Who is  
Authorized to  
Sign  
Admission  
Documents?**

Patients must have the mental capacity/competency to consent to treatment and sign admission forms for treatment to be given in the facility, except as described below. The facility staff cannot make determinations regarding mental capacity and competency and must presume competence unless a physician has declared the patient incompetent.

If a patient has been deemed by a physician to lack the mental capacity/competency to consent to treatment, a Legally Authorized Person may consent to the patient's treatment and may sign the admission forms. In the rare instance that the legally authorized person is unavailable to sign the consent in person, the documents may be mailed, emailed, or faxed to the Legally Authorized Person for signature. The patient cannot be admitted and treated until the clinic receives the signed documents. The original signed documents must be faxed or mailed back to the facility to maintain in the patient's medical record.

In the unusual instance when in person or fax options cannot be accomplished, the facility should reach out to their Division Legal Counsel or Compliance for additional guidance.

NOTE: State laws vary on who may consent to treatment on the patient's behalf if the patient lacks capacity or competency to consent. In some states, family members or persons permitted by state law may consent to the patient's treatment and sign the admission forms even if such persons do not hold a power of attorney for healthcare or healthcare proxy as the Law Department will determine.

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## Fresenius Kidney Care Clinical Services

### Patient Admission

For purposes of this Policy, a ‘Legally Authorized Person’ is as follows:

- a) The patient’s legal guardian or someone who holds a valid power of attorney for healthcare/healthcare proxy or who may sign on behalf of the patient under state law as determined by the Law Department.
- b) A parent or legal guardian if the patient is a minor.

NOTE: If there is any doubt the person is authorized to sign admission forms, contact the Law Department.

#### **Patient Appears Unable to Consent for Treatment**

If a patient comes for his or her first treatment and does not appear to have the mental capacity/competency to sign the admitting documents, the nurse:

- must notify the patient’s attending physician of the patient’s perceived incapacity to understand and his/her inability to consent, and
- should seek confirmation whether a medical determination of incompetency or lack of capacity has been made in the medical record consistent with state law.
- If the patient is deemed incompetent by the physician, the staff should attempt to contact any emergency contacts listed on the patient’s admission paperwork in an attempt to find a family member who can
  - Provide proof of guardianship/power of attorney for healthcare or healthcare proxy (which must be provided at the time of admission, prior to treatment being provided), or
  - Assist in providing valid consent to treatment, if permitted under state law, or who can obtain legal authority/guardianship to represent the patient.
- The patient cannot be dialyzed if:
  - The patient has been deemed by a physician to be incompetent or to lack mental capacity consistent with state law, and
  - The patient does not have an appropriate legal guardian or an agent with a valid healthcare power of attorney or healthcare proxy, and

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## Fresenius Kidney Care Clinical Services

### Patient Admission

The law department determines that state law does not permit family members to give consent.

#### **Required Documents That Must Be Signed Prior to First Dialysis Treatment**

The Clinical Manager or designee will conduct an admission interview with all new patients.

The following documents must be reviewed with and signed by the patient and/or the patient's Legally Authorized Person before or at the patient's first scheduled dialysis treatment:

- Admission Agreement
- Assignment of Benefits
- Consent for Dialysis
- Medicare Secondary Payor Questionnaire (MSPQ)
- Fresenius Rx Agent Designation form
- Consent to Receive, Use and Disclose Health Information for Treatment, Payment and Health Care Operations form
- Spectra form
- Notice of Privacy Practices/Acknowledgment of Notice of Privacy Practices

Note: Patients or their Legally Authorized Persons will not be asked to sign consent forms for services that are not being provided (ex. blood transfusion consent) until the actual service is needed. Blank consent forms should never be signed or used.

#### **Approved Forms of Identification**

Patient Admission Services will request the referring facility to provide 1 photo ID for the referral. Upon placement at the facility, staff will request 2 forms of identification. The two forms of ID must be provided within 6 treatments.

The two forms of identification can be:

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### Patient Admission

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- A driver's license, a state issued identification card, a passport, insurance cards or a birth certificate. (These documents will be copied and maintained in a separate folder for each patient. When the patient is discharged, they will be placed in the closed medical record.)
- If the patient does not bring in the required documents within 6 treatments, the Clinical Manager or Director of Operations must escalate to the Lead Social Worker who can review the situation and assist with obtaining the identification documents.

Failure to produce 2 forms of identification alone is not cause for discharge. Refer to the [Routine and Involuntary Patient Discharge Policy](#), [Routine and Involuntary Patient Discharge Policy Addendum](#) and the [Routine and Involuntary Patient Discharge Procedure](#) for guidance on discharging a patient.

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#### **FKC Notice of Privacy Practice**

A copy of the "FKC Notice of Privacy Practices (NPP)" must be given to each patient that is receiving direct care from an FKC provider prior to the patient's first treatment (see Privacy Notice Procedure COR-COMP-PS-0-001-001C1).

Patients have the right to review this Notice of Privacy Practices prior to signing the "Acknowledgement of Receipt of the NPP" form (See COR-COMP-PS-0-001-001D3). The "Acknowledgement of Receipt of the NPP" form should be signed by the patient or Legally Authorized Person, prior to the patient's first treatment from an FKC direct provider of care. This form serves as an acknowledgement of receipt of the FKC Notice of Privacy Practices.

NOTE: This form is **not** a condition for treatment. If the patient refuses to sign the acknowledgement form, the FKC staff should document the efforts that were made to obtain the patient's or Legally Authorized Person's

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## Fresenius Kidney Care Clinical Services

### Patient Admission

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signature and document that the FKC Notice of Privacy Practices was provided. This documentation should be made on the acknowledgement form and should be witnessed by another staff member. The acknowledgement form should be kept as part of the permanent active medical record.

A copy of this notice must also be posted in a clear and prominent location readily visible to patients in each FKC physical service delivery site. This notice will also be posted on the FKC web site. In addition, whenever the notice is revised, the FKC direct provider must make the notice available upon request.

---

#### **Additional Information Provided During Admission and Orientation Process**

All new admissions will also receive additional information if applicable per policy that includes:

- Benefit Plan Book
  - Catheter Access Plan
  - Consent Form
  - DNR Instruction and Form
  - Home Therapy Consultation Form
  - Important Numbers
  - Patient Grievance
  - Pt Rights & Responsibility Handout and Acknowledgement Form
- 

#### **Advance Directive/DNR Status**

All new admissions to the facility will be asked if they have an Advance Directive and/or a valid state specific Do Not Resuscitate Order prior to or at their first treatment and during their comprehensive interdisciplinary assessment.

For more information, refer to the [Do Not Resuscitate Policy](#).

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## Fresenius Kidney Care Clinical Services

### Patient Admission

**Information  
Regarding  
Modalities  
and Schedules**

The patient shall be made aware of and afforded access, where available, to all treatment modalities provided by the facility as appropriately certified and if applicable licensed by the state:

- In-center Hemodialysis
- Self-care Dialysis
- Nocturnal In-center Hemodialysis
- Home Hemodialysis (Nocturnal and Daytime)
- Continuous Ambulatory Peritoneal Dialysis
- Continuous Cycling Peritoneal Dialysis
- Referral for Renal Transplantation

Additionally, the patient shall be provided with resource information for dialysis modalities not offered by the facility, including information about alternative scheduling options for working patients.

**Related  
Policies &  
Procedures**

- Patient Rights and Responsibilities
- Patient Complaints and Grievances policy and procedure
- Advance Directive policy
- Full Resuscitative Measures Policy
- Do Not Resuscitate Order policy and procedure
- Routine and Involuntary Patient Discharge
- Visitor's Policy
- Eating and Drinking Policy
- Interruption of Treatment
- Weapons and Firearms Policy
- Records Management Policy, Filing, Storage, Preservation and Destruction of Records

**END OF DOCUMENT**

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	<b>REV 2</b>	<b>26-MAR-2014</b>	<b>17-JULY-2017</b>
	<b>REV 1</b>	<b>18-DEC-2013</b>	<b>26-MAR-2014</b>
<b>Patient Admission Policy</b>			<b>Page 11 of 11</b>
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**Exhibit 4B.**  
**Patient Rights and Responsibilities Policy**

## FMS Clinical Services

## Policy

### Patient Rights and Responsibilities

<b>Purpose</b>	<p>To comply with Federal Regulations that require dialysis facilities to:</p> <p>Educate staff regarding the rights of dialysis patients.</p> <p>Inform and educate all dialysis patients about their rights and responsibilities as a patient at the dialysis facility.</p> <p>Ensure that patients' rights are respected and protected by the facility.</p>
<b>Responsibility</b>	<p>The FMCNA Patient Rights and Responsibilities patient brochures may be distributed to patients by any FMS staff. Additional information or discussion must be provided by the Nurse or Social Worker.</p> <p>All facility staff are responsible for ensuring that patients' rights are respected and protected by the facility.</p>
<b>Conditions for Coverage: Patients' Rights</b>	<p>The Conditions for Coverage, §494.70 Condition: Patients' Rights require dialysis facilities to inform patients or their representatives of their rights (including their privacy rights) and responsibilities when they begin their treatment and must protect and provide for the exercise of those rights. Patients' rights as stated in the Conditions for Coverage:</p> <p>The patient has the right to –</p> <ol style="list-style-type: none"> <li>1. Respect, dignity, and recognition of his or her individuality and personal needs, and sensitivity to his or her psychological needs and ability to cope with ESRD;</li> <li>2. Receive all information in a way that he or she can understand;</li> <li>3. Privacy and confidentiality in all aspects of treatment;</li> <li>4. Privacy and confidentiality in personal medical records;</li> <li>5. Be informed about and participate if desired, in all aspects of his or her care, and be informed of the right to refuse treatment, to discontinue treatment, and to refuse to participate in experimental research;</li> <li>6. Be informed about his or her right to execute advance directives, and the facility's policies regarding advance directives;</li> <li>7. Be informed about all treatment modalities and settings, including but not limited to transplantation, home dialysis modalities (home</li> </ol>

DOCUMENT NUMBER	DOCUMENT REVISION	ISSUE DATE	EFFECTIVE DATE
FMS-CS-IC-I-103-005A	Revision	04-APR-2012	04-APR-2012
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## FMS Clinical Services

## Policy

### Patient Rights and Responsibilities

**Conditions for  
Coverage:  
Patients'  
Rights, cont'd**

- hemodialysis, intermittent peritoneal dialysis, continuous ambulatory peritoneal dialysis, continuous cycling peritoneal dialysis), and in-facility hemodialysis. The patient has the right to receive resource information for dialysis modalities not offered by the facility, including information about alternative scheduling options for working patients;
8. Be informed of facility policies regarding patient care, including, but not limited to isolation patients;
  9. Be informed of facility policies regarding the reuse of dialysis supplies, including hemodialyzers;
  10. Be informed by the physician, nurse practitioner, clinical nurse specialist, or physician's assistant treating the patient for ESRD of his or her own medical status as documented in the patient's medical record, unless the medical record contains a documented contraindication;
  11. Be informed of services available in the facility and charges for services not covered under Medicare;
  12. Receive the necessary services outlined in the patient plan of care;
  13. Be informed of the rules and expectations of the facility regarding patient conduct and responsibilities;
  14. Be informed of the facility's internal grievance process;
  15. Be informed of external grievance mechanisms and processes, including how to contact the ESRD Network and the State survey agency;
  16. Be informed of his or her right to file internal grievances or external grievances, without reprisal or denial of services; and
  17. Be informed that he or she may file internal grievances or external grievances personally, anonymously or through a representative of the patient's choosing.
  18. Be informed of the facility's policies for transfer, routine or involuntary discharge, and discontinuation of services to patients;
  19. Receive written notice 30 days in advance of an involuntary discharge, if discharge is justified and not due to an immediate threat to the health and safety of others.

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## FMS Clinical Services

## Policy

### Patient Rights and Responsibilities

**Policy** All patients and/or their representatives will be informed of their rights (including privacy rights) and responsibilities.

Patient rights and the ability to exercise these rights must be protected by the facility.

The FMCNA Patient Rights and Responsibilities brochure explains the rights patients can expect to have while receiving treatment at this facility. The brochure also provides guidance as to certain responsibilities that are expected of the patient.

Each patient will be informed of their rights and given a copy of the FMCNA Patient Rights and Responsibilities within the first six (6) treatments in the facility. More in-depth discussions with patients about their rights and responsibilities are expected. These discussions may occur over a longer period of time.

Facilities should ensure that this information is provided to patients in a manner they can understand. For example, providing the FMCNA Patient Rights and Responsibilities brochure in the patient's primary language or having it interpreted based on assessment of the patient's language and reading preferences, or enlisting the aid of communication aids or interpreters for patients who are blind or have low vision, or are deaf or hard of hearing.

Dialysis facilities must prominently display a copy of the patient's rights in a visible and accessible area in the facility and must include contact information for the State survey agency and ESRD Network.

The FMCNA Patient Rights and Responsibilities brochures are available in English and Spanish. They may be purchased from the FMS Marketing Online Ordering Center. Audio versions in English and Spanish may also be ordered through the FMS Marketing Online Ordering Center.

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DOCUMENT NUMBER	DOCUMENT REVISION	ISSUE DATE	EFFECTIVE DATE
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## FMS Clinical Services

## Policy

### Patient Rights and Responsibilities

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**Policy:  
Privacy Rights**

Patients have the right to privately discuss their condition and treatment. There should be ready access to a room in the facility where patient and/or family meetings may be held in private.

Patients have the right to privacy during activities that may require the exposure of private body parts while in the dialysis facility. Privacy screens or curtains may be used to provide privacy. Blankets may also be used as long as staff are able to observe the patient's vascular access, bloodline connections, and face at all times.

Patients or their representatives must be provided unbiased education about transplantation and all dialysis treatment options regardless of whether these options are available in the current facility.

---

**Failure to  
Protect  
Patients' Rights**

Evidence of failure to treat patients with respect and dignity, provide an opportunity for private communication, or prevent exposure of private body areas resulting in emotional discomfort for the patient, and evidence that cognizant patients/designees are not aware of their options for treatment or available grievance mechanisms could result in the facility receiving a Condition level citation.

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**END OF DOCUMENT**

DOCUMENT NUMBER	DOCUMENT REVISION	ISSUE DATE	EFFECTIVE DATE
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**Exhibit 4C.**  
**Patient Rights and Responsibilities List**



## **FMCNA Patient Rights**

### **YOU HAVE THE RIGHT TO:**

- **Information that is Easy to Understand**
- **Care that is Respectful**
- **Help Make Decisions about Your Care**
- **Privacy and Confidentiality**
- **Clear Information about Facility Policies**
- **Make a Complaint, and Receive a Response**

### **What rights do you have?**

The Fresenius Medical Care staff is committed to working with you and your family to meet your health care needs. Our goal is for you to have the same care and attention we would want for ourselves.

This list of rights explains some of the basics about how you can expect to be treated in our facility.

### **You have the right to:**

#### **Information that is easy to understand**

- Receive information about dialysis in a way that is easy to understand.
- Assistance in helping you choose healthy behaviors that will improve your health and well-being.
- Receive clear answers to your questions.
- Have an interpreter if you can't hear or understand your care team.

**Care that is respectful**

- Be protected from discrimination and or harassment based on race, color, national origin, sexual orientation, gender identity, disability, age, sex and religion.
- Be treated with dignity, consideration, respect and full recognition of your individuality and personal needs. This includes sensitivity to your psychological needs and ability to cope with ESRD.
- Say “no” and report staff that ask you to engage in personal or financial relationships, without fear of retaliation.

**Help make decisions about your care**

- Be informed about your care and have the opportunity to participate in all aspects of your care, if you wish.
- Involve family members in making decisions about your care, if you desire.
- Be informed about the treatment options available to you and the right to change your treatment option after discussion with your physician.
- Be informed about dialysis treatment options or schedules not provided by this facility. Ask your Clinic Manager or Social Worker about scheduling options for working patients.
- Decide if you want to be part of any available research studies.
- Accept, refuse or stop any treatment that is prescribed for you.
- Be informed about your medical status by the physician, nurse practitioner, clinical nurse specialist or physician’s assistant treating you, unless there is a documented reason for not giving this information.
- Receive all services as decided by you and the healthcare team in your plan of care.

- Know that Fresenius Medical Care does not reuse dialysis supplies, including hemodialyzers.
- Be told about and receive information about advance directives, and how the facility will carry out your wishes regarding your advance directives.

### **Privacy and confidentiality**

- Privacy and confidentiality in all aspects of treatment. This includes
  - the right to privately discuss your condition
  - the right to privacy during activities that may require the exposure of body parts while in the dialysis facility. Privacy screens, curtains, or blankets that do not cover your face or access, may be used to provide privacy.
- Privacy and confidentiality in your personal medical records. These rights and FMCNA's privacy practices are more fully explained in our Notice of Privacy practices. A copy of the Notice of Privacy Practices is given to patients upon admission, is posted in this facility, and is available upon request at any time.

### **Clear information about facility policies**

- Be told what services are available in the facility.
- Be given information about charges that may be billed to you if they are not covered by insurance or Medicare.
- Be informed of facility policies regarding patient care, including policies about visitors, eating and restroom use during treatment, isolation of patients with infectious disease, and conditions for transfer or discharge from the facility.
- Be informed that a two week notice is expected when requesting discharge from the facility to give staff an opportunity to:
  - Ensure continuity of care for transfer.

- Resolve any issues before a final decision to transfer from the facility is made
- If you do not agree to a two week notice, the staff will assist you to transfer at your requested time frame.
- You may not be discharged from the facility unless:
  - you or your insurer no longer reimburses the facility for the ordered services, your insurer materially reduces the amount of reimbursement originally agreed upon with the facility, or if the facility is unable to confirm with your insurer, before you are admitted, what the actual payment for services provided to you will be and, your insurer then reimburses facility at an insufficient rate relative to historical commercial insurer payment rates for the ordered services.
  - the facility ceases to operate.
  - transfer is necessary for your welfare or because the facility can no longer meet your medical needs, or
  - your behavior is disruptive and abusive such that it affects the safety and welfare of others.
- Be given a 30-day notice of discharge, unless there is an immediate threat to the health and safety of others and discharge must be made sooner.

### **Make a complaint, and receive a response**

- Be informed about how to make a complaint through the facility, the ESRD Network or State Survey Agency.
- Make a complaint, verbally or in writing.
- Make a complaint yourself, anonymously or through a representative of your choice, through the Grievance Procedure without fear or concern that services will be affected.

## **FMCNA PATIENT RESPONSIBILITIES**

### **You Have the Responsibility to:**

- **Speak Up to Help Us Protect Your Health and Safety**
- **Actively Participate in Your Care Plan**
- **Choose Healthy Behaviors**
- **Get Your Full Dialysis Treatment**
- **Be Considerate of Other Patients and Staff**
- **Provide Updated Information to Staff**
- 

### **What Responsibilities Do You Have?**

You are the most important person on your health care team. This is because a lot of what determines how well you feel and the quality of your life depends on the daily decisions that you make.

### **You have the responsibility to:**

#### **Speak Up to Help Us Protect Your Health & Safety**

- Tell the staff if you don't understand your treatment plan or any instructions.
- Tell the staff if something doesn't feel or look safe, or right.
- Involve your family or significant others in your care, when needed.
- Inform the staff if you have had health problems since your last treatment.
- Actively participate in your plan of care.

## **Choose Healthy Behaviors**

- Take charge of your healthcare, to the best of your ability.
- Learn as much as you can about your healthcare needs.
- Cooperate, to the best of your ability, with your diet, medication, and dialysis treatment plans.
- Take care of, protect, and learn about your dialysis access - it's your lifeline!
- For your safety, make sure your face and dialysis access are uncovered and visible to staff at all times during your treatment.
- **Call the Fresenius Medical Care Disaster Line (1-800-626-1297)** if a disaster occurs and you cannot reach your facility.

## **Get Your Full Dialysis Treatment**

- Tell the staff if your treatments are so uncomfortable that you will be unable to complete or attend your treatments. They will try to help.
- Arrive on time for your treatments or clinic visits.
- Let the staff know as early as possible if you are going to be late or miss a treatment or appointment and reschedule.
- Arrange transportation to and from treatment. Inform staff right away if your transportation needs change.
- Make sure you have a backup transportation plan in case you need it.
- For your safety, arrange to have someone with you when you come to dialysis, if you need help getting into or out of your vehicle or in and out of the facility. Staff are strongly discouraged from leaving the facility to assist an arriving or departing patient. Leaving the facility to assist a patient outside could result in a health or safety risk to the employee, the patient being assisted and/or other patients in the treatment area.



**Be Considerate of Other Patients and Staff**

- Respect the personal rights and property of other patients & staff.
- Maintain the confidentiality of any information you witness or hear while in the facility. This includes:
  - Not recording, writing down or discussing the personal health information or other confidential information of other patients.
  - Not using any form of photography, video or audio recordings of any kind anywhere within the facility.
- Follow the rules of the facility that have been developed to provide protection, safety, and quality care to all patients.
- Behave appropriately. This means not acting in a way that makes other people in the clinic uncomfortable or afraid for their safety, such as threatening, cursing, yelling, using sexually suggestive words, or inappropriate touching.
- Understand that patients and/or visitors may not solicit or distribute for any purpose on FKC premises (including FKC clinics and the waiting area of such clinics), unless approved, in advance, by the FKC Compliance Officer and/or FMCNA human resources.
- Understand that weapons of any kind are not allowed in the facility. This means not bringing any items that can be used as a weapon. Bringing weapons to the facility or making threats against others or the facility may be grounds for immediate dismissal from the facility.
- Understand that alcoholic beverages or illicit (street) drugs are not allowed in the facility. Patients who come to dialysis under the influence of these substances put themselves at a health risk and may require hospitalization or police involvement.
- Make sure your visitors follow the same rules as patients.

**Provide Updated Information to Staff**

- Notify the facility if you have a new address or contact information.
- Inform the facility right away if you obtain new insurance coverage or there are any changes in insurance.
- Inform the facility if you decide to receive dialysis at another facility or stop dialysis.

**Remember: By taking advantage of your rights and fulfilling your responsibilities, you may be able to improve your health and the quality of your life.**

**Exhibit 4D.**

**Patient Acknowledgement of Receipt of Rights and Responsibilities**

ACKNOWLEDGEMENT OF RECEIPT OF  
FMCNA PATIENT RIGHTS AND RESPONSIBILITIES

This is to certify that I, \_\_\_\_\_,  
have received and read, or had read to me, the FMCNA Patient Rights and  
Responsibilities.

I have had the opportunity to ask questions, and I understand my Rights and  
Responsibilities as a patient of FMCNA \_\_\_\_\_.

\_\_\_\_\_  
Patient's Name (Please print name)

\_\_\_\_\_  
Patient's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patient's Representative, if applicable (Please print name)

\_\_\_\_\_  
Patient's Representative, Signature (if applicable)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Staff Person Presenting Content to Patient (Please print name)

\_\_\_\_\_  
Signature of Staff Person Presenting Content to Patient

\_\_\_\_\_  
Date

CS-I-198

FMS-CS-4-009

**Exhibit 4E.**  
**Patient Nondiscrimination Policy**

## Fresenius Kidney Care Clinical Services

### Patient Nondiscrimination

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<b>Purpose</b>	Fresenius Medical Care North America (FMCNA), a recipient of Federal financial assistance, complies with federal and state regulations prohibiting discrimination against any person on the grounds of race, color, religion, sex, sexual orientation, gender identity, age, pregnancy, marital status, ethnic or national origin, citizenship status, disability, military status, genetic predisposition or carrier status, or any other legally protected characteristic.
<b>Responsibility</b>	All Fresenius Kidney Care (FKC) facility staff, including Clinical Manager, Charge Nurse or Team Leader, direct patient care staff (including physicians and physician extenders), and other indirect patient care staff and clinic staff ( <b>based on job description, licensure, certification, and Federal/State regulations</b> ).
<b>Background</b>	This policy is in accordance with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and regulations of the U.S. Department of Health and Human Services issued pursuant to these three statutes at Title 45 of Federal Regulation Parts 80, 84 and 91. This policy is also in accordance with Section 1557 of the Patient Protection and Affordable Care Act of 2010, 42 U.S.C. § 18118.
<b>Policy</b>	<p>It is the policy of FMCNA that it does not exclude, deny benefits to, or otherwise discriminate against any person on the grounds of race, color, religion, sex, sexual orientation, gender identity, age, pregnancy, marital status, ethnic or national origin, citizenship status, disability, military status, genetic predisposition or carrier status, or any other legally protected characteristic in admission to, participation in, or the receipt of the renal services and benefits under any of its programs and activities, and in staff and employee assignments.</p> <p>FMCNA will not deny or exclude patients with disabilities from dialysis treatment and services and it will make reasonable modification or reasonable accommodations available to disabled patients to ensure compliance with this policy.</p>

DOCUMENT NUMBER	DOCUMENT REVISION #	DOCUMENT REVISION DATE	EFFECTIVE DATE
FMS-CS-IC-I-112-007A	NEW	NEW	26-AUG-2020
<b>Patient Nondiscrimination Policy</b>			<b>Page 1 of 2</b>
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## Fresenius Kidney Care Clinical Services

### Patient Nondiscrimination

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Reasonable modification and reasonable accommodation means changes or adjustments to programs, policies, practices, or procedures to avoid discrimination on the basis of disability and to afford individuals with disabilities an equal opportunity to participate in, and benefit from, services provided under a covered program or activity, unless doing so would result in a fundamental alteration of the program, service, or activity or undue financial and administrative burdens.

---

#### Informing Patients

The Social Worker will inform the patient and/or the patient's designated representative, of the FKC Nondiscrimination Policy within the first six (6) treatments or thirty (30) days after admission to the facility.

Patients, or patient's designated representatives, who feel that the Nondiscrimination policy has not been followed with respect to a patient's disability may inform the FKC Section 504 Coordinator and use the FKC internal grievance process to raise disability-related concerns.

---

#### Section 504 Coordinator

The Section 504 Coordinator of FKC facilities is the area Manager of Social Work Services. The Manager of Social Work Services will use the Patient Grievance Process to address patient or patient representative concerns.

Each FKC facility will post a Notice of Program Accessibility which will include the contact information for the Section 504 Coordinator / Manager of Social Work Services.

---

#### Related Policies & Procedures

- Section 504 Notice of Program Accessibility
  - Patient Rights and Responsibilities Policy and Procedure
  - Patient Grievance Policy and Procedure
  - What to Do If You Have a Concern Important Numbers
  - General Policy Statement
- 

**END OF DOCUMENT**

DOCUMENT NUMBER	DOCUMENT REVISION #	DOCUMENT REVISION DATE	EFFECTIVE DATE
FMS-CS-IC-I-112-007A	NEW	NEW	26-AUG-2020
Patient Nondiscrimination Policy			Page 2 of 2
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**Exhibit 5A.**  
**Financial Statements - Historical**



**Fresenius Kidney Care - Cowlitz Dialysis Center**  
**Historical Statement of Revenues and Expenses, Sep 2019 - Dec 2020**

	Sep - Dec 2019	Full Year 2020
<b>Revenues</b>		
Net Revenue Before Bad Debt	\$ 2,510,507	\$ 10,208,404
Charity Care	\$ (22,092)	\$ (89,834)
Bad Debt	\$ (89,623)	\$ (409,678)
<b>Total Net Revenue</b>	<b>\$ 2,398,792</b>	<b>\$ 9,708,892</b>
<b>Expenses</b>		
Total Personnel	\$ (1,309,523)	\$ (3,414,058)
Total Med Supplies	\$ (278,246)	\$ (748,224)
Total Ancillary	\$ (405,565)	\$ (746,682)
Other Med	\$ (44,940)	\$ (170,727)
House Keeping & Utilities	\$ (84,446)	\$ (122,794)
Total Admin*	\$ (304,142)	\$ (1,044,596)
Rent Expense**	\$ (91,098)	\$ (275,116)
Depr/Amort + Interest Expense	\$ (53,533)	\$ (282,191)
<b>Total Expenses w/o Physician compensation</b>	<b>\$ (2,571,494)</b>	<b>\$ (6,804,388)</b>
<b>Profit From Operations (Excludes Physician compensation)</b>	<b>\$ (172,702)</b>	<b>\$ 2,904,504</b>
Physician Compensation (Medical Director's Fee)	\$ (20,800)	\$ (63,024)
<b>Net Income Before Taxes (includes Allocations)</b>	<b>\$ (193,502)</b>	<b>\$ 2,841,480</b>

\*Total Admin includes administrative expenses and management service fees

\*\*Note: the rent payment is full service gross, so separate property operating expenses/taxes is not applicable.

**Exhibit 5B.**  
**Financial Statements - Forecasts**

**Fresenius Kidney Care - Cowlitz Dialysis Center**  
**Statement of Revenues and Expenses**

	<u>July - Dec 2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
<b>Months of Operation</b>	6	12	12	12
<b>Patients and Treatments</b>				
I/C PAT	135	148	165	174
<u>Total Home PAT</u>	31	34	38	40
<b>Total PAT</b>	<b>166</b>	<b>182</b>	<b>203</b>	<b>214</b>
I/C TMT	9,503	20,835	23,229	24,496
<u>Total Home TMT</u>	2,294	5,032	5,624	5,920
<b>Total TMT</b>	<b>11,797</b>	<b>25,867</b>	<b>28,853</b>	<b>30,416</b>
<b>Revenue</b>				
In-Center Revenue	4,375,381	9,593,427	10,695,375	11,278,759
Home Revenue	1,056,248	2,316,932	2,589,512	2,725,802
Bad Debt	(217,979)	(477,980)	(533,141)	(562,023)
Charity Care	(47,798)	(104,811)	(116,907)	(123,240)
<b><u>Total Net Revenue</u></b>	<b><u>5,165,852</u></b>	<b><u>11,327,568</u></b>	<b><u>12,634,838</u></b>	<b><u>13,319,298</u></b>
<b>Expenses</b>				
I/C Personnel	1,409,271	2,889,740	3,165,446	3,311,408
<u>Home Personnel</u>	266,395	532,791	532,791	532,791
<b><u>Total Personnel</u></b>	<b><u>1,675,666</u></b>	<b><u>3,422,531</u></b>	<b><u>3,698,237</u></b>	<b><u>3,844,199</u></b>
I/C Med Supplies	320,693	703,149	783,916	826,675
<u>Home Med Supplies</u>	77,418	169,819	189,798	199,787
<b><u>Total Med Supplies</u></b>	<b><u>398,111</u></b>	<b><u>872,968</u></b>	<b><u>973,714</u></b>	<b><u>1,026,463</u></b>
Ancillary	397,290	871,169	971,707	1,024,347
Other Med	90,840	199,191	222,179	234,215
House Keeping & Utilities	65,335	143,266	159,800	168,457
Admin expenses (Excluding Management Service Fees)	284,480	623,803	695,793	733,486
Management Service Fee	292,184	656,713	750,814	811,275
Rent Expense + Other Property	192,208	391,641	399,045	406,635
Depr/Amort (Existing) + Interest	141,096	282,191	282,191	282,191
Depr/Amort (Project Tenant Improvements and Equipment)	333,376	666,752	666,752	666,752
<b><u>Total Other Expense</u></b>	<b><u>1,796,810</u></b>	<b><u>3,834,726</u></b>	<b><u>4,148,283</u></b>	<b><u>4,327,358</u></b>
<b><u>Total Expenses w/o Physician Compensation</u></b>	<b><u>3,870,587</u></b>	<b><u>8,130,226</u></b>	<b><u>8,820,234</u></b>	<b><u>9,198,019</u></b>
<b><u>Profit From Operations (Excludes Physician Comp)</u></b>	<b><u>1,295,264</u></b>	<b><u>3,197,342</u></b>	<b><u>3,814,605</u></b>	<b><u>4,121,278</u></b>
<u>Physician Compensation</u>	102,515	207,075	210,181	213,334
<b>Net Income</b>				
<b>Net Income Before Taxes (includes Allocations)</b>	<b>1,192,749</b>	<b>2,990,267</b>	<b>3,604,423</b>	<b>3,907,944</b>

<p style="text-align: center;"><b>FKC Cowlitz</b> <i>Pro Forma Assumptions</i></p>
--

**Patient Volumes**

Utilization projections, including the assumptions used to derive the forecasts, are presented in the screening text.
---

It is assumed the number of treatments per patient is 140.8/year for in-center and 148.0/year for home based on annualized full year Jan - Dec 2020 actuals ("2020 actuals", "actuals").
--

**Revenues**

In-center revenues are based on FKC Cowlitz 2020 actuals, given it is an existing facility. Payer mix statistics have also been obtained from FKC Cowlitz actuals. Revenues are calculated by payer and treatment. Bad debt and charity care are subtracted from revenues to yield net revenue figures.
---

**Charity Care**

Calculated at 0.88% of revenue based on the experience of Fresenius' facilities in Washington State.
--

**Bad Debt**

Calculated on a per treatment basis from FKC Cowlitz actuals.
---

**Expenses**

Unless otherwise noted, expenses have been calculated on a per treatment basis from FKC Cowlitz actuals.
--

Personnel expenses are based on identified patient to staff ratios and incorporates a 10% non-productive factor. Wage figures have been compiled from current rates as of application at the FKC Cowlitz facility.
--

Management Services Fees: management service fees have been carved out from other admin expenses. Pursuant to Section 3.1 of the Administrative Services Agreement, management monthly service fees are calculated at \$23.00 per dialysis treatment and escalated 2.5% every year beginning on January 1, 2021.
--

Rent Expense and Other Property is based on current estimates of base rent, property taxes, CAM.
--

Existing depreciation/amortization and interest expense are based on 2020 Cowlitz actuals (annualized), including accounting adjustments applicable under International Financial Reporting Standards (IFRS).
---

Project-related Depreciation is straight-line; assumes 10 years on leaseholds and 8 years on equipment.
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Physician Compensation: see section 3.1 in the existing MDA and 3.01.1 in the future MDA
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## Fresenius Kidney Care - Cowlitz Dialysis Center

Productive FTEs, by Type	July - Dec 2023	2024	2025	2026
<b>In-Center FTE's</b>				
Facility Administrator	1.00	1.00	1.00	1.00
Outpatient RN	7.30	7.40	8.25	8.70
Patient Care Technician	17.80	18.50	20.63	21.75
Equipment Technician	1.08	1.18	1.32	1.39
Social Worker	1.15	1.18	1.32	1.39
Dietitian	1.45	1.45	1.45	1.45
Secretary	1.90	1.90	1.90	1.90
<b>Subtotal</b>	<b>31.68</b>	<b>32.62</b>	<b>35.87</b>	<b>37.58</b>
<b>Home FTE's</b>				
Home Manager	0.38	0.38	0.38	0.38
Home RN	3.57	3.57	3.57	3.57
<b>Subtotal</b>	<b>3.95</b>	<b>3.95</b>	<b>3.95</b>	<b>3.95</b>
<b>Total</b>	<b>35.63</b>	<b>36.57</b>	<b>39.82</b>	<b>41.53</b>

Productive + Non-Productive FTEs, by Type	July - Dec 2023	2024	2025	2026
<b>In-Center FTEs</b>				
Facility Administrator	1.1	1.1	1.1	1.1
Outpatient RN	8.0	8.1	9.1	9.6
Patient Care Technician	19.6	20.4	22.7	23.9
Equipment Technician	1.2	1.3	1.5	1.5
Social Worker	1.3	1.3	1.5	1.5
Dietitian	1.6	1.6	1.6	1.6
Secretary	2.1	2.1	2.1	2.1
<b>Subtotal</b>	<b>34.8</b>	<b>35.9</b>	<b>39.5</b>	<b>41.3</b>
<b>Home Dialysis Program FTEs</b>				
Home Manager	0.4	0.4	0.4	0.4
Home RN	3.9	3.9	3.9	3.9
Home Other	0.0	0.0	0.0	0.0
<b>Subtotal</b>	<b>4.3</b>	<b>4.3</b>	<b>4.3</b>	<b>4.3</b>
<b>Total</b>	<b>39.2</b>	<b>40.2</b>	<b>43.8</b>	<b>45.7</b>

*Non-Productive = 10% of Productive time.*

FKC Cowlitz				
Total Wages and Salaries	July - Dec 2023	2024	2025	2026
<b>In-Center</b>				
Facility Administrator	\$ 69,841	\$ 139,682	\$ 139,682	\$ 139,682
Outpatient RN	\$ 358,350	\$ 726,518	\$ 809,969	\$ 854,149
Patient Care Technician	\$ 437,402	\$ 909,205	\$ 1,013,641	\$ 1,068,931
Equipment Technician	\$ 34,323	\$ 75,256	\$ 83,900	\$ 88,476
Social Worker	\$ 40,126	\$ 82,624	\$ 92,115	\$ 97,139
Dietitian	\$ 60,331	\$ 120,661	\$ 120,661	\$ 120,661
Secretary	\$ 52,710	\$ 105,420	\$ 105,420	\$ 105,420
<b>Subtotal</b>	<b>\$ 1,053,082</b>	<b>\$ 2,159,366</b>	<b>\$ 2,365,388</b>	<b>\$ 2,474,459</b>
<b>Home Program</b>				
Home Manager	\$ 27,370	\$ 54,740	\$ 54,740	\$ 54,740
Home RN	\$ 171,695	\$ 343,389	\$ 343,389	\$ 343,389
Home Other	\$ -	\$ -	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 199,065</b>	<b>\$ 398,129</b>	<b>\$ 398,129</b>	<b>\$ 398,129</b>
<b>Total, All FTEs</b>	<b>\$ 1,252,146</b>	<b>\$ 2,557,496</b>	<b>\$ 2,763,518</b>	<b>\$ 2,872,588</b>

## Fresenius Kidney Care - Cowlitz Dialysis Center

FKC Cowlitz				
Total Benefits	July - Dec 2023	2024	2025	2026
<b>In-Center</b>				
Facility Administrator	\$ 23,623	\$ 47,246	\$ 47,246	\$ 47,246
Outpatient RN	\$ 121,207	\$ 245,734	\$ 273,960	\$ 288,903
Patient Care Technician	\$ 147,945	\$ 307,525	\$ 342,849	\$ 361,550
Equipment Technician	\$ 11,609	\$ 25,454	\$ 28,378	\$ 29,926
Social Worker	\$ 13,572	\$ 27,946	\$ 31,157	\$ 32,856
Dietitian	\$ 20,406	\$ 40,812	\$ 40,812	\$ 40,812
Secretary	\$ 17,828	\$ 35,657	\$ 35,657	\$ 35,657
<b>Subtotal</b>	<b>\$ 356,189</b>	<b>\$ 730,374</b>	<b>\$ 800,058</b>	<b>\$ 836,949</b>
<b>Home Program</b>				
Home Manager	\$ 9,257	\$ 18,515	\$ 18,515	\$ 18,515
Home RN	\$ 58,073	\$ 116,146	\$ 116,146	\$ 116,146
Home Other	\$ -	\$ -	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 67,331</b>	<b>\$ 134,661</b>	<b>\$ 134,661</b>	<b>\$ 134,661</b>
<b>Total, All FTEs</b>	<b>\$ 423,520</b>	<b>\$ 865,035</b>	<b>\$ 934,719</b>	<b>\$ 971,611</b>

FKC Cowlitz				
Total Wages, Salaries Benefits	July - Dec 2023	2024	2025	2026
Facility Administrator	\$ 93,464	\$ 186,928	\$ 186,928	\$ 186,928
Outpatient RN	\$ 479,557	\$ 972,252	\$ 1,083,929	\$ 1,143,053
Patient Care Technician	\$ 585,346	\$ 1,216,731	\$ 1,356,490	\$ 1,430,481
Equipment Technician	\$ 45,932	\$ 100,710	\$ 112,278	\$ 118,402
Social Worker	\$ 53,698	\$ 110,571	\$ 123,271	\$ 129,995
Dietitian	\$ 80,736	\$ 161,473	\$ 161,473	\$ 161,473
Secretary	\$ 70,538	\$ 141,076	\$ 141,076	\$ 141,076
<b>Total</b>	<b>\$ 1,409,271</b>	<b>\$ 2,889,740</b>	<b>\$ 3,165,446</b>	<b>\$ 3,311,408</b>
<b>Home RN</b>				
Home Manager	\$ 36,627	\$ 73,255	\$ 73,255	\$ 73,255
Home RN	\$ 229,768	\$ 459,536	\$ 459,536	\$ 459,536
Home Other	\$ -	\$ -	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 266,395</b>	<b>\$ 532,791</b>	<b>\$ 532,791</b>	<b>\$ 532,791</b>
<b>Total, All FTEs</b>	<b>\$ 1,675,666</b>	<b>\$ 3,422,531</b>	<b>\$ 3,698,237</b>	<b>\$ 3,844,199</b>

**Exhibit 5C.**  
**Financial Statements - Combined**

**Fresenius Kidney Care - Cowlitz Dialysis Center**  
**Statement of Revenues and Expenses, 2019 - 2026**  
**COMBINED (WITH PROJECT)**

	Sep - Dec 2019	Full Year 2020	2021	2022	Jan - Jun 2023	Jul to Dec 2023	Full Year 2023	2024	2025	2026
<b>Revenues</b>										
Net Revenue Before Bad Debt and Charity Care	\$ 2,510,507	\$ 10,208,404	\$ 10,208,404	\$ 10,208,404	\$ 5,104,202	\$ 5,431,629	\$ 10,535,831	\$ 11,910,359	\$ 13,284,887	\$ 14,004,561
Charity Care	\$ (22,092)	\$ (89,834)	\$ (89,834)	\$ (89,834)	\$ (44,917)	\$ (47,798)	\$ (92,715)	\$ (104,811)	\$ (116,907)	\$ (123,240)
Bad Debt	\$ (89,623)	\$ (409,678)	\$ (409,678)	\$ (409,678)	\$ (204,839)	\$ (217,979)	\$ (422,818)	\$ (477,980)	\$ (533,141)	\$ (562,023)
<b>Total Net Revenue</b>	<b>\$ 2,398,792</b>	<b>\$ 9,708,892</b>	<b>\$ 9,708,892</b>	<b>\$ 9,708,892</b>	<b>\$ 4,854,446</b>	<b>\$ 5,165,852</b>	<b>\$ 10,020,298</b>	<b>\$ 11,327,568</b>	<b>\$ 12,634,838</b>	<b>\$ 13,319,298</b>
<b>Expenses</b>										
Total Personnel	\$ (1,309,523)	\$ (3,414,058)	\$ (3,414,058)	\$ (3,414,058)	\$ (1,707,029)	\$ (1,675,666)	\$ (3,382,695)	\$ (3,422,531)	\$ (3,698,237)	\$ (3,844,199)
Total Med Supplies	\$ (278,246)	\$ (748,224)	\$ (748,224)	\$ (748,224)	\$ (374,112)	\$ (398,111)	\$ (772,222)	\$ (872,968)	\$ (973,714)	\$ (1,026,463)
Ancillary	\$ (405,565)	\$ (746,682)	\$ (746,682)	\$ (746,682)	\$ (373,341)	\$ (397,290)	\$ (770,631)	\$ (871,169)	\$ (971,707)	\$ (1,024,347)
Other Med	\$ (44,940)	\$ (170,727)	\$ (170,727)	\$ (170,727)	\$ (85,364)	\$ (90,840)	\$ (176,203)	\$ (199,191)	\$ (222,179)	\$ (234,215)
House Keeping & Utilities	\$ (84,446)	\$ (122,794)	\$ (122,794)	\$ (122,794)	\$ (61,397)	\$ (65,335)	\$ (126,732)	\$ (143,266)	\$ (159,800)	\$ (168,457)
Total Admin Expenses	\$ (304,142)	\$ (1,044,596)	\$ (1,044,596)	\$ (1,044,596)	\$ (522,298)	\$ (576,665)	\$ (1,098,963)	\$ (1,280,516)	\$ (1,446,607)	\$ (1,544,761)
Rent Expense + Other Property Expense	\$ (91,098)	\$ (275,116)	\$ (275,116)	\$ (275,116)	\$ (137,558)	\$ (192,208)	\$ (329,766)	\$ (391,641)	\$ (399,045)	\$ (406,635)
Depr/Amort + Interest Expense	\$ (53,533)	\$ (282,191)	\$ (282,191)	\$ (282,191)	\$ (141,096)	\$ (141,096)	\$ (282,191)	\$ (282,191)	\$ (282,191)	\$ (282,191)
Depr/Amort (Project Tenant Improvements and Equipment)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (333,376)	\$ (333,376)	\$ (666,752)	\$ (666,752)	\$ (666,752)
<b>Total Expenses w/o Physician compensation</b>	<b>\$ (2,571,494)</b>	<b>\$ (6,804,388)</b>	<b>\$ (6,804,388)</b>	<b>\$ (6,804,388)</b>	<b>\$ (3,402,194)</b>	<b>\$ (3,870,587)</b>	<b>\$ (7,272,781)</b>	<b>\$ (8,130,226)</b>	<b>\$ (8,820,234)</b>	<b>\$ (9,198,019)</b>
<b>Profit From Operations (Excludes Physician compensation)</b>	<b>\$ (172,702)</b>	<b>\$ 2,904,504</b>	<b>\$ 2,904,504</b>	<b>\$ 2,904,504</b>	<b>\$ 1,452,252</b>	<b>\$ 1,295,264</b>	<b>\$ 2,747,517</b>	<b>\$ 3,197,342</b>	<b>\$ 3,814,605</b>	<b>\$ 4,121,278</b>
Physician Compensation (Medical Director's Fee)	\$ (20,800)	\$ (63,024)	\$ (108,267)	\$ (201,000)	\$ (101,500)	\$ (102,515)	\$ (204,015)	\$ (207,075)	\$ (210,181)	\$ (213,334)
<b>Net Income Before Taxes (includes Allocations)</b>	<b>\$ (193,502)</b>	<b>\$ 2,841,480</b>	<b>\$ 2,796,238</b>	<b>\$ 2,703,504</b>	<b>\$ 1,350,752</b>	<b>\$ 1,192,749</b>	<b>\$ 2,543,502</b>	<b>\$ 2,990,267</b>	<b>\$ 3,604,423</b>	<b>\$ 3,907,944</b>

\*Total Admin includes administratives expenses and management service fees

**Intervening Periods (2021, 2022, and Jan-Jun. 2023)**

Held constant at full year 2020 actuals, adjusted by effective number of months. Exceptions include:

(1) Physician Compensation: based on terms in section 3.1 in the existing MDA and 3.01.1 in the future MDA



**Exhibit 6A.**  
**Medical Director Agreement - Existing**

## Medical Director Agreement

### PeaceHealth Medical Group

This Medical Director Agreement (“**Agreement**”) dated as of the last date of signature by a party hereto (“**Effective Date**”), is between Fresenius Kidney Care Longview, LLC, a Delaware limited liability company (“**Company**”), PeaceHealth Medical Group, an unincorporated operating division of PeaceHealth, a Washington nonprofit corporation (“**Consultant**”), and for the limited purposes stated herein, Member Physicians who become parties hereto from time to time. This Agreement memorializes the terms on which Consultant has agreed to provide Medical Director Services to certain Dialysis Operations of Company.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound hereby, the parties hereto agree as follows:

Capitalized terms used herein and not otherwise defined shall have the meanings set forth on **Exhibit A**.

1. ENGAGEMENT. Company hereby engages Consultant to provide Medical Director Services to the Dialysis Operations, and Consultant agrees to provide such Medical Director Services on the terms and conditions set forth herein.
2. TERM. The term of this Agreement shall begin on the Effective Date, and shall continue for two (2) years from the Commencement Date, unless sooner terminated as provided herein.
3. COMPENSATION.

3.1 Fee. During the term of, and subject to, this Agreement and commencing as of the closing date of Company’s acquisition of the Dialysis Operations (the “**Commencement Date**”), Company shall pay Consultant based on the rates (“**Fee**”) as set forth below. Any rates described as an annual rate shall be prorated for partial years and shall be payable in equal monthly installments. All Fees shall be payable in arrears on or before the last day of each month.

<b>Facility/Program Information</b>		
<u>Facility/Program ID</u>	<u>Facility/Program Name</u>	<u>Annual Compensation</u>
TBD	PeaceHealth Dialysis Services	\$62,400.00

#### 3.2 Adjustments.

3.2.1 Upon any Partial Termination, the Fee shall be reduced by the Fee amount specifically allocated to the Dialysis Operation to which the Partial Termination applies, or if no such specific allocation is provided herein, by an amount that reflects the reduction in workload of Consultant due to the Partial Termination as agreed by the parties. Upon any Temporary

Suspension, the Fee may be reduced as agreed by the parties to reflect the reduction in workload and subject to a maximum reduction equal to the Fee amount specifically allocated to the Dialysis Operation to which the Temporary Suspension applies. If, as of the first Fee payment due date after a Partial Termination or Temporary Suspension, the parties are required hereunder to reach agreement on the Fee reduction but have not agreed, Company may reduce the Fee by an amount determined by it and such amount shall be held as cash reserves until such time as the parties agree. Company may make adjustments to the payments due to Consultant hereunder at any time to true up any adjustments in the Fee permitted hereunder.

3.2.2 In addition, the obligation to pay the Fee or a portion thereof related to the applicable Dialysis Operation may be temporarily suspended and not paid or accrued for any period of time during which a substitute Medical Director is required to be designated and approved hereunder but is not actually designated or approved and providing services.

3.3 General. The parties agree that the Fee payable hereunder shall be in consideration for all services to be provided hereunder and all covenants herein including, but not limited to, the restrictive covenants set forth in **Section 6**. The parties represent that, as of the date this Agreement is signed, the Fee is fair market value for services rendered based upon arm's length bargaining and is consistent with the value of similar services. Furthermore, the parties represent that the Fee is not and has not been determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under any other public healthcare program. Upon receipt by Company from Consultant of W-9 (available at [www.irs.gov](http://www.irs.gov)) and wire transfer instructions (form available in Medical Director Handbook), Company shall pay the Fee by wire transfer pursuant to such instructions. To the extent otherwise unpaid and overdue, upon providing notice to Consultant of any use not reasonably related to the performance of Medical Director Services hereunder, Company may deduct from the Fee the fair market value of Company space, facilities, supplies, equipment, staff time or any other item or service actually utilized by Consultant or any of its affiliated physicians for any purpose not reasonably related to the performance of Medical Director Services hereunder. Consultant represents and warrants to Company that its affiliated physicians, if any, are not compensated by Consultant based on the volume or value of their referrals to any Dialysis Operation. Consultant also represents and warrants to Company that Consultant has not been formed for the sole purpose of entering into this Agreement.

#### 4. OBLIGATIONS OF CONSULTANT.

##### 4.1 Initial Designation and Qualifications of Medical Directors

4.1.1 *Designation*. Consultant shall designate a physician at each Dialysis Operation who shall perform the Medical Director Services on behalf of Consultant at such Dialysis Operation and who shall be deemed the Medical Director for such Dialysis Operation; provided, however if Consultant party to this Agreement is an individual, such individual shall be the Medical Director. Consultant acknowledges and agrees that if a Facility has different designated Medical Directors for the in-center and home dialysis programs operated at or administered by same Facility, the Medical Director of the home dialysis program shall report to the Medical Director of the in-center dialysis program from which the home dialysis program is administered and that the Medical Director of the in-center program shall be accountable for all

Medical Director Services rendered for such Facility and shall be deemed the Medical Director of such Facility for regulatory purposes. At all times, each physician designated as a Medical Director, and each physician providing coverage for a Medical Director in accordance herewith, (a) shall at all times meet the requirements of this **Section 4** when providing services hereunder, (b) shall be designated in writing in advance and (c) shall be subject to Company's prior written approval. Company hereby approves the initial Medical Director designations set forth on **Exhibit B**. Consultant agrees that no single physician shall serve as Medical Director at more than two (2) Facilities at any given time unless an exception is approved in advance, in writing, by the Chief Medical Officer (or his/her designee) of Fresenius Kidney Care.

4.1.2 *Coverage.* If unavailable, the Medical Director shall arrange for coverage by a physician who meets the requirements hereunder and shall provide the Director of Operations/Area Manager and the Clinical or Facility Manager with prior notice as to the physician providing such coverage and the duration of such coverage. A Medical Director shall not be required to devote the entire working day to duties hereunder (with the exception of on-call responsibilities), but will continue the practice of medicine independently of Company.

4.1.3 *Qualifications.* Each Medical Director and any physician providing coverage for a Medical Director shall at all times meet of the following requirements unless waived in writing by Company:

- a. Remain licensed as a physician in the state in which the Dialysis Operation is located.
- b. Remain board certified in nephrology, internal medicine, pediatrics or pediatric nephrology (or to the extent that board certification procedures are suspended as a general matter, remain involved in a board recertification process), have completed a board-approved training program in nephrology and have at least twelve (12) months of experience providing care to patients receiving dialysis.
- c. Remain a member in good standing of the Medical Staff of the Facilities at which physician is providing Medical Director Services.
- d. Remain a member in good standing of the Medical Staff of, and maintain privileges (at a minimum, courtesy/guest privileges) at, the hospital at which Company operates any Inpatient Services Programs.
- e. Maintain a current registration with the Drug Enforcement Administration and a current state controlled substances registration (or equivalent), as applicable.
- f. Maintain malpractice insurance required hereby.
- g. Not be excluded, suspended, sanctioned or otherwise restricted from participating in any public healthcare program.

h. Satisfy Legal Requirements regarding the qualifications of a medical director and remain otherwise qualified to act as a medical director of a Dialysis Operation that is certified to participate in public healthcare programs.

i. Be a party to this Agreement as a Member Physician pursuant to a written instrument substantially in the form attached hereto as **Exhibit D** (the “**Joinder Requirement**”).

j. Comply with the Company’s medical director training requirements and any additional requirements applicable to physicians as may be required for the Dialysis Operation to maintain required state licensure, certification or its equivalent as described in Section 4.3.

k. Maintain any additional requirements as a physician as may be required for any Inpatient Services Programs so that the program operates consistently with the accreditation and other standards of The Joint Commission or other accrediting body.

#### 4.2 Substitute Medical Director.

4.2.1 If a Medical Director (a) is indicted for any felony or any violation of a federal or state health care law; (b) fails to meet any of the requirements set forth in this **Section 4**; or (c) ceases to have Member Physician status, Consultant shall immediately notify Company and, whether or not such notice is provided, Company may immediately terminate such physician’s designation as Medical Director by written notice. Consultant shall, as of the date of such termination, designate a new Medical Director who meets the requirements set forth in this Agreement.

4.2.2 If a Medical Director is unavailable to serve as Medical Director for a period greater than one (1) month, or such shorter time as Company in its reasonable discretion determines may affect the quality of care provided at a Dialysis Operation, then Company may terminate such physician’s designation as Medical Director upon five (5) business days’ prior notice to Consultant, and Consultant, within that same five (5) business day period, shall designate a new Medical Director who meets the requirements set forth in this Agreement. The provisions of this paragraph do not modify or relieve Medical Director of obligations under Section 4.3.2, and Medical Director is obligated to provide coverage in accordance with this Agreement during periods of absence.

4.2.3 With Company’s prior written approval, Consultant may designate a temporary Medical Director (“**Temporary Medical Director**”) for a Dialysis Operation to serve in the role on such terms as agreed by Company. A Temporary Medical Director shall be considered a Medical Director and a Member Physician for all purposes under this Agreement, except as otherwise expressly set forth herein. Each Temporary Medical Director shall at all times meet the requirements set forth in this **Section 4** when providing Medical Director Services and all services provided by a Temporary Medical Director shall be in accordance with this Agreement.

#### 4.3 Medical Director Services.

Medical Director shall provide the Medical Director Services for the Dialysis Operations for which he or she is appointed Medical Director in accordance with this Agreement. Consultant

and Medical Directors shall devote best efforts, skill and sufficient time to carry out the requirements of this Agreement and to promote continuous improvement and high quality professional care within the Dialysis Operations. As a guideline, the financial cost report that each facility must file annually with CMS considers the medical director position to reflect a .25 FTE. The parties anticipate that the Medical Director Services at the Facility under this Agreement will be approximately equal to .25 FTE, but will fluctuate from time to time based on various factors. Medical Director Services include those duties and responsibilities set forth in and in conformity with the provisions of (a) this Agreement, (b) Legal Requirements, (c) Policies and (d) Governing Body resolutions. In addition, a Medical Director shall:

4.3.1 Coordinate the provision of Medical Director Services with FMCNA's Medical Office and shall communicate regularly with its applicable Chief Medical Officer and the members of Medical Advisory Boards. The coordination of services and communication may include, without limitation, participation in conference calls, medical director training sessions and meetings subject to expense reimbursement by FMCNA in accordance with the Policies.

4.3.2 As needed or scheduled, be available during all hours of operation of the Dialysis Operations for visits to and consultation regarding the Dialysis Operations and be on-call and working such additional time at or away from the Dialysis Operations as necessary to fulfill Medical Director's responsibilities under this Agreement, it being understood that a Medical Director needs to be available by phone and in person, as needed, at all times. Consultant shall provide to Company an updated e-mail address, mobile phone number and other relevant information so that, at all times, Company has accurate contact information for each Medical Director. Upon Company's request, Consultant shall ensure that each Medical Director checks e-mail regularly.

4.3.3 Complete initial compliance and privacy training (if not already completed prior to the execution of this Agreement), within the timeframe established in the Company's compliance program and complete supplemental compliance training during each subsequent year of the term of this Agreement. If any Medical Director fails to complete the compliance training, Company may retain the Fee until such time as every Medical Director providing services hereunder completes the required training. Once every Medical Director has completed the required training, Company shall pay Consultant the retained Fee with the next payment of Consultant's regular installment of the Fee.

4.3.4 Cooperate and, in a timely manner, provide information regarding Dialysis Operations and the Medical Director Services as Company may request: (a) in connection with administration of the Dialysis Operations, (b) in connection with implementation of this Agreement and confirmation of the compliance by Consultant and Member Physicians with their obligations hereunder, and/or (c) for Company's use in submissions to Authorities, including without limitation cost reports to CMS. Consultant and Medical Directors represent and warrant that all such information and/or disclosures shall be truthful and accurate to the best of their knowledge.

4.3.5 Neither Consultant nor any Medical Director nor any Member Physician shall participate in, directly or indirectly, or permit others to conduct, any clinical research study ("**Study**") at a Dialysis Operation without first obtaining the prior express written approval of

Company. If Company approves such Study, which approval shall be at Company's sole and absolute discretion, Consultant, Medical Directors and/or Member Physicians shall conduct such approved Study in accordance with all Legal Requirements, Policies, the Study protocol (which shall also be subject to Company's prior review and approval), and Good Clinical Practice (in accordance with the Guidance for Industry E6 Good Clinical Practice: Consolidated Guidance by the U.S. Department of Health and Human Services, Food and Drug Administration, April 1996 (ICH).

4.3.6 Intentionally omitted.

4.3.7 Consultant hereby represents and warrants to Company that **Exhibit C** hereto sets forth a complete and accurate list of the full names and, as applicable, the National Provider Identifiers ("NPI"), of all of physicians assigned by Consultant to provide Medical Director Services pursuant to this Agreement, and the immediate family members thereof who are a source of patient referrals to Company or FMCNA, a purchaser of items or services from FMCNA that are reimbursable by a federal or state healthcare program, or a seller or lessor to Company or FMCNA of items, including real property, or services for which Company or FMCNA makes claims for reimbursement under any federal or state healthcare program. Consultant agrees to notify Company, in writing, of additions or deletions to **Exhibit C** within thirty (30) days of such change.

5. OBLIGATIONS OF COMPANY. Except as specifically delegated by this Agreement to Consultant, Company shall retain all management prerogatives and responsibilities as owner of the Dialysis Operations. Without limiting the foregoing, Company agrees (a) to operate the Dialysis Operations in compliance with Legal Requirements, (b) to provide all necessary equipment, personnel, supplies and services (other than medical services) required for the operation of the Dialysis Operations, (c) with Medical Director's assistance as required hereunder, to establish, and implement Policies concerning the administration of the Dialysis Operations, and (d) to provide Consultant with the use of one office at each Facility for the sole purpose of providing Medical Director Services.

6. COVENANTS PROTECTING BUSINESS INTERESTS OF COMPANY.

6.1 Covenant Not to Compete. In consideration of the compensation payable hereunder and in recognition of Company's proprietary interest in its Business, Medical Directors and Member Physicians covenant and agree that they shall not, during the Restricted Period, directly or indirectly through Affiliates or otherwise, alone or in association with any person or entity:

a. engage, directly or indirectly, as a principal, owner, co-owner, agent, independent contractor, consultant, advisor, manager, medical manager, landlord, director, officer or employee of or participate in the Control of or otherwise assist or obtain any Financial Benefit from; or

b. take any action in preparation or anticipation of doing any of the foregoing with regard to, any operation, person or entity (other than with Company or any of its Affiliates) that engages or proposes to engage, in the Business in the Restricted Territory. Notwithstanding the foregoing, this **Section 6.1** (i) shall not limit Consultant, Medical Directors or Member

Physicians from engaging in the practice of medicine and charging fees for administering such professional medical services to patients, (ii) shall not require Consultant, Medical Directors or Member Physicians to admit individuals to, or refer any other business to, any Dialysis Operation, Company or its Affiliates, (iii) shall not require Consultant, Medical Directors or Member Physicians to prescribe, utilize or purchase any items or services from any Dialysis Operation or Company or its Affiliates, and (iv) shall not restrict Consultant, Medical Directors or Member Physicians from admitting individuals to any other facility, program, or entity.

Consultant, Medical Directors and Member Physicians hereby represent, covenant and agree that they do not, and following the Commencement Date of this Agreement shall not, employ, contract, retain, engage, partner or joint venture with any person or entity that receives a Financial Benefit from any person or entity (other than Company and its Affiliates) which engages in the Business anywhere in the Restricted Territory, and that no such person or entity holds, or during the Restricted Period shall hold, a direct or indirect ownership interest in Consultant.

6.2 Covenant Regarding Confidential Information. Consultant and each Member Physician acknowledge that in the course of performing the duties contemplated by this Agreement, Consultant and each Member Physician will become privy to and/or have access to Confidential Information. Throughout the term of this Agreement and at any time thereafter, Consultant and each Member Physician shall not, and their employees and agents shall not, (a) disclose to any person, firm, corporation or entity any Confidential Information of Company or its Affiliates without the prior written consent of Company, except as may be required by law or legal process or (b) use any Confidential Information except in furtherance of the performance of their obligations owed to Company hereunder. If Consultant or any Member Physician is required by law to disclose any Confidential Information such person shall provide sufficient notice to Company to enable Company to seek a protective order or other appropriate legal or equitable remedy to prevent such disclosure. The provisions of this paragraph shall not prohibit any disclosure of information to the extent (i) such information is or becomes publicly available or obtainable from independent, nonconfidential sources and not in breach of any party's obligations hereunder or any third person's obligations owed to Company or its Affiliate, (ii) such information is required to be disclosed by law or by Authorities having jurisdiction over the disclosing party, (iii) such information was known by a disclosing party prior to any disclosure by Company hereunder and without any breach of an obligation owed to any person, or (iv) disclosure is necessary for a disclosing party to enforce any or all of its rights under this Agreement.

6.3 Intentionally omitted.

6.4 Intentionally omitted.

6.5 Joinder Requirement for Member Physicians. Consultant shall cause each physician who acts as a Medical Director and each Member Physician upon the execution of this Agreement or on the date that such physician becomes a Member Physician, whichever is later, to execute this Agreement as a Member Physician or to execute a Joinder Agreement substantially in the form attached hereto as **Exhibit D** (the "**Joinder Requirement**"). Notwithstanding the foregoing restriction, Consultant shall not be precluded from engaging the services of a locum



tenens physician or other similar physician on a periodic and infrequent basis so long as such physician does not provide services for or on behalf of Consultant under this Agreement; provided, that, with Company's prior consent which shall not be unreasonably withheld, Consultant may engage a locum tenens physician to provide the Medical Director Services upon obtaining hospital credentialing and privileging prior to assigning any duties hereunder. The parties hereby acknowledge Company does not in any way encourage or support Consultant's placing limitations or restrictions (in employment agreements or otherwise) on providers or entities to whom Consultant's employed or affiliated physicians may refer patients or other business.

6.6 Former Member Physicians. Any Member Physician who ceases to be a Member Physician during the Restricted Period shall be deemed a "**Former Member Physician.**" Each Member Physician agrees that, if he or she becomes a Former Member Physician, the provisions of **Section 6** shall still apply to such physician as if he or she were still a Member Physician. Notwithstanding the foregoing, the parties agree that, if a Member Physician becomes a Former Member Physician, then so long as no more than one Member Physician has become a Former Member Physician within the previous year, **Sections 6.1** and **6.4** of the Agreement shall only apply to such physician until the earlier of (a) expiration of the Restricted Period under the Agreement, or (b) twelve (12) months after the date on which such physician becomes a Former Member Physician. Company and each Member Physician agree that if such physician violates the covenants contained in this **Section 6** while he or she is a Former Member Physician, the Restricted Period applicable to the Former Member Physician shall be extended automatically for an additional period equal to the period from the date on which such violation commenced (x) until the date on which the Former Member Physician ceases such violation, or (y) through and including the date of the final determination of a court that Former Member Physician did violate such restrictions. Such extension of the term of the Restricted Period shall be in addition to, and not in lieu of, any other remedies available to Company.

6.7 Intentionally omitted.

6.8 Intentionally omitted.

6.9 Intentionally omitted.

6.10 Remedies; Survival. Consultant and each Member Physician have carefully considered the nature and extent of the restrictive covenants as described in this **Section 6** (collectively, "**Restrictive Covenants**"). Consultant and each Member Physician hereby acknowledge and agree that the Restrictive Covenants (a) are reasonable with respect to time, scope and territory, (b) are reasonable and necessary for the protection of the legitimate business interests of Company and its Affiliates and (c) are designed to eliminate competition which otherwise would be unfair to Company and its Affiliates, (d) will not prevent Consultant or each Member Physician from practicing medicine or nephrology in the community where they currently practice, (e) do not confer a benefit upon Company and its Affiliates disproportionate to the detriment to Consultant or Member Physician and (f) are not designed or intended in any manner to influence or impact the referral of healthcare business to Company or its Affiliates. Consultant and each Member Physician acknowledge and agree that (x) irreparable injury will result to Company and its Affiliates if Consultant or Member Physician breaches any of the terms of the Restrictive Covenants, and (y) upon any actual or threatened breach of any Restrictive Covenant,

Company and its Affiliates will have no adequate remedy at law and they shall be entitled to injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages, including without limitation, immediate temporary injunctive relief. Nothing contained herein shall be construed as prohibiting Company and its Affiliates from pursuing other remedies available to them for such breach or threatened breach, including, but not limited to, the recovery of monetary damages. If a court of competent jurisdiction determines that any portion of the Restrictive Covenants are unreasonable, then restrictions contained in the Restrictive Covenants shall be reduced and any other modifications shall be made by the court to the extent necessary for this **Section 6** to be enforced by the court. The provisions of this **Section 6** shall survive the expiration or termination of this Agreement.

6.11 Code of Conduct. Consultant and each Member Physician acknowledge having received a copy of FMCNA's Code of Conduct and understand that the Code of Conduct as amended is applicable to Consultant, each Member Physician, Medical Directors and the provision of Medical Director Services hereunder. Each Medical Director and each Member Physician shall complete promptly any reasonable certification regarding the Code of Conduct as requested by Company or Company.

6.12 Anti-Corruption Representations. As stated in the Fresenius Medical Care Code of Ethics and Business Conduct, Company upholds the values of quality, honesty and integrity, innovation and improvement, respect and dignity, as well as lawful conduct, especially with regard to anti-bribery and anti-corruption. FMCNA upholds these values in its own operations, as well as in its relationships with business partners. Company's continued success and reputation depend on a common commitment to act accordingly. Together with Company, Consultant and Member Physicians are committed to uphold these fundamental values by adherence to applicable laws and regulations. In furtherance of the foregoing, Consultant also represents, warrants, and covenants that in connection with the performance of Consultant's obligations under this Agreement:

a. Consultant has complied with and will comply with all applicable laws and applicable industry codes of practice, including, but not limited to, all applicable laws related to anti-corruption.

b. No payment or gift of money, goods, services, or anything of value has been made, offered or promised or will be made, offered or promised, directly by Consultant or indirectly through any third parties, to any individual for favorable treatment in obtaining, retaining, or directing business for, or to obtain any special concession on behalf of, Consultant or Company or its Affiliate(s) (collectively or individually, depending on the context, "**Fresenius Medical Care**"). This includes, but is not limited to, a prohibition on any facilitation payments to any government official to expedite a routine government action, whereas the term "government official" ("**Government Official**") shall be read broadly and includes not only (i) individuals acting on behalf of governments on a national, regional and local level (such as elected officials, customs officials, tax officials, etc.), but also: (ii) individuals acting on behalf of government-owned or government-controlled enterprises (such as doctors and staff of public hospitals and universities, etc.), and (iii) individuals acting for political parties or as or on behalf of candidates for public office.

c. Neither Consultant nor any person or entity acting on Consultant's behalf has (to the best of Consultant's knowledge after conducting a reasonable inquiry) accepted, received or agreed to accept or receive or will accept, receive or agree to accept or receive, directly or indirectly, any payment or gift of money, goods, services, or anything of value from any individual for favorable treatment in obtaining, retaining, or directing business for, or to obtain any special concession on behalf of, Consultant or Fresenius Medical Care.

d. Consultant represents that Consultant is not and no person acting on Consultant's behalf is a Government Official and agrees that if, at any time during the term of this Agreement, Consultant or any person acting on Consultant's behalf becomes a Government Official, Consultant: (a) will not use that position to influence the award of business or regulatory approvals or any special concession to or for the benefit of Fresenius Medical Care, (b) will notify Company in writing within three (3) business days, and (c) will recuse him/herself from any government decision relating to Fresenius Medical Care or its operations.

e. Consultant represents that, in connection with any simultaneous engagement on behalf of any third party, Consultant provided any necessary notifications and secured any necessary approvals from such third party regarding the services Consultant will perform for Company, and to the extent available has documented these to Company or otherwise has attached them hereto.

f. Consultant represents that Consultant is not in a position of conflict of interest or incompatibility of his/her engagement (or in a position that could result in a conflict of interest or incompatibility of his/her engagement) with Fresenius Medical Care. Consultant agrees that if, at any time during the term of this Agreement, a conflict of interest or incompatibility presents itself, Consultant will notify Company in writing within three (3) business days and agrees to promptly recuse himself/herself from the situation, so as not to create even the appearance of impropriety.

g. Consultant represents that Consultant undertakes, at all times, to refrain from any action or inaction that may constitute, directly or indirectly, a patient referral or other business opportunity towards Fresenius Medical Care, with the expectation of obtaining anything of value in return.

h. Consultant agrees to abide by and comply with all applicable guidelines (e.g. Fresenius Medical Care's Code of Conduct) as amended from time to time, and all other binding rules or provisions during the term of this Agreement to business ethics and principles, as such have been or will be brought to his knowledge by Company. In particular, Consultant represents that Consultant has received the following internet link to Fresenius Medical Care Business Ethics & Principles for Business Parties ("**Anti-Corruption Principles**") (see <http://www.fmc-ag.com/5292.htm>) and agrees to abide by them. The Anti-Corruption Principles may be amended from time to time, in Fresenius Medical Care's sole discretion, and will be posted to its website.

i. Consultant agrees that if Consultant becomes aware, or has reason to suspect, that any person or entity acting on Consultant and/or Fresenius Medical Care's behalf has directly or indirectly, (a) provided, or offered to provide, anything of value to any individual, or

(b) accepted, received or agreed to accept or receive, anything of value from any individual, in the hope or expectation of receiving favorable treatment in obtaining, retaining, or directing business for, or to obtain any special concessions on behalf of Fresenius Medical Care, Consultant will immediately report such knowledge or suspicion to the Fresenius Medical Care Compliance Department.

j. Consultant agrees to cooperate in any compliance investigation or audit that may be conducted by Fresenius Medical Care, its counsel, or its internal or external auditors related to this Agreement. Upon notice of an intended compliance investigation or audit, Consultant will, in a reasonable time, unless prohibited by law, make available to Fresenius Medical Care or a third party retained by Fresenius Medical Care (i) persons within the control of Consultant who Fresenius Medical Care or the third party wants to interview, and (ii) documents and data relating to the issue(s) under review related to the engagement with Company.

## 7. EVENTS OF DEFAULT and REMEDIES.

7.1 Consultant Events of Default. Any one or more of the following shall constitute an “**Event of Default**” by Consultant hereunder:

a. A material breach hereunder by Consultant or any Member Physician which, as to any breach which is capable of cure and which is not specifically described in other paragraphs of this **Section 7.1**, is not cured within thirty (30) days of receipt of notice from Company describing such breach.

b. Indictment of Consultant, any Medical Director or any Member Physician for any felony or any violation of a federal or state health care law.

c. Exclusion or suspension of Consultant, any Medical Director or any Member Physician from participating in any public health care program.

d. A physician ceases to serve as Medical Director for any reason, and Consultant fails within a reasonable time (as determined in Company’s sole discretion) to find a physician reasonably satisfactory to Company to serve as the new Medical Director for the relevant Dialysis Operation.

e. Consultant (or its Affiliated Medical Practice, if Consultant is not a medical practice) experiences a Change of Control without the prior written consent of Company, which consent Company may give in its sole discretion.

f. Dialysis Operation is determined by the Company to pose imminent threat to property, person or the extent of reimbursement for which such Dialysis Operation may be eligible.

g. Intentionally omitted.

h. Consultant fails to remove and replace a Medical Director immediately from providing services hereunder if:

- i. the Medical Director fails to meet the requirements of **Section 4**;
- ii. the Medical Director engages in misconduct of a personal or professional nature which, in Company's reasonable opinion: (a) interferes with the Medical Director's ability to fulfill the obligations hereunder; (b) interferes with the normal conduct of the operations of a Dialysis Operation in accordance with the Policies; or (c) endangers patient care;
- iii. the Medical Director suffers or has a disability that renders the Medical Director, in the reasonable opinion of Company, unable to perform duties satisfactorily as contemplated herein with reasonable accommodation. Consultant shall notify Company at the onset of any such disability of the Medical Director; or
- iv. Company is dissatisfied with the Medical Director's performance hereunder, in which case Consultant shall have twenty (20) days after written notice from Company to Consultant to remove and replace such Medical Director.

7.2 Remedies upon Consultant Event of Default. Upon the occurrence of an Event of Default by Consultant hereunder, Company may exercise (in addition to any and all other legal and equitable remedies) one or more of the following remedies:

- a. Require Medical Directors to complete additional training and to participate in mentoring by others,
- b. Require Consultant to replace one or more Medical Directors, and/or
- c. Terminate this Agreement effective upon written notice to Consultant or at such later date as Company may specify.

7.3 General Termination. This Agreement shall terminate upon mutual agreement of Consultant and Company. In addition, this Agreement shall terminate: (a) at the expiration of the period provided in **Section 2** or any Addenda, or (b) upon Company's being adjudged a bankrupt.

7.4 Partial Termination. Company may terminate this Agreement (in addition to its pursuit of any and all other legal and equitable remedies) as to one or more, but not all, Dialysis Operations (a "**Partial Termination**") with respect to which (a) an Event of Default has occurred, (b) upon thirty (30) days prior notice at Company's election upon its decision to sell a Dialysis Operation, or (c) upon closure of a Dialysis Operation.

7.5 Temporary Suspension. Company may suspend the requirement and payment for Medical Services with respect to any Dialysis Operation that is temporarily shut down (a "**Temporary Suspension**"). Company shall give notice to Consultant at least ten (10) days prior to any Temporary Suspension and shall provide Consultant, upon request, with updates regarding the period of Temporary Suspension. Company shall notify Consultant at least thirty (30) days prior to the end of any Temporary Suspension.

7.6 Termination by Consultant. Consultant may terminate this Agreement (a) during a material breach of this Agreement by Company which is not cured by Company within thirty (30) days of receipt of notice from Consultant describing such breach, (b) upon conviction of a felony

by Company, (c) upon exclusion or suspension of Company from participating in public healthcare programs, or (d) after the first anniversary of this Agreement, without cause, upon the later of 180 days' notice or Company locating a replacement medical director using commercially reasonable efforts.

## 8. INSURANCE AND LEGAL COMPLIANCE.

### 8.1 Insurance.

a. Consultant shall maintain, for itself, each Member Physician and any physician providing coverage for any Medical Director, malpractice liability insurance coverage of not less than \$1,000,000 combined single limit per occurrence and \$3,000,000 annual aggregate covering the provision of services other than the Medical Director Services hereunder throughout the term of this Agreement, and if such coverage is on a claims-made basis, for a period of not less than two (2) years following termination of this Agreement. Consultant shall provide Company with a certificate of insurance upon request.

b. Company shall maintain, for Member Physicians and any physician providing coverage for any Medical Director in accordance with this Agreement, professional liability insurance or self-insurance purchased or maintained by Company in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and \$3,000,000 annual aggregate, covering bodily injury and property damage claims (including the cost of defense) arising out of errors and omissions caused or alleged to be caused by Consultant, Member Physicians or any physician providing coverage for any Medical Director in accordance with and within the scope of this Agreement, but not for errors or omissions caused or alleged to be caused by Consultant, Member Physicians or any physician providing coverage for any Medical Director providing services as treating physicians. The insurance or self-insurance required to be maintained by Company hereunder shall be subject to and limited by the terms and conditions of insurance policies, primary, excess or otherwise, maintained by Company. Company shall provide Consultant with a certificate of insurance annually upon request.

8.2 Compliance. This Agreement shall be construed in a manner consistent with any and all applicable federal and state laws, including, without limitation, Medicare, Medicaid, the Health Insurance Portability and Accountability Act of 1996 and other federal and state statutes and regulations and the principles and interpretations related thereto. The parties intend to comply with the applicable provisions of 42 U.S.C. 1395nn(a)(1) and 42 U.S.C. 1320a-7b(b), as such provisions may be amended from time to time. The parties intend that this Agreement meet the requirements of (i) the personal services and management contract safe harbor to the federal anti-kickback statute as set forth in 42 C.F.R. Part 1001.952(d); and (ii) the personal services arrangement exception to the legislation as set forth in 42 U.S.C. 1395nn(e)(3) and the corresponding regulations.

### 8.3 Limited Renegotiation.

8.3.1 Notwithstanding anything to the contrary in this Agreement, if the terms of this Agreement (a) become unlawful or unenforceable, (b) materially and adversely affect a party's or its Affiliate's licensure, accreditation, certification, or ability to refer, accept any referral, bill,

present a bill or claim, or receive payment from any payor or (c) subjects a party to a substantial risk of prosecution or civil monetary penalty, then (i) the unaffected provisions of this Agreement shall continue in full force and effect and (ii) either party, upon written notice (“**Renegotiation Notice**”) to the other party may initiate renegotiation of the affected terms of this Agreement to restore, if possible, the intent and purpose of the affected provisions in the Agreement and to modify the Agreement as necessary so that such Agreement does not cause such adverse result.

8.3.2 If the parties are unable in good faith to come to a mutually satisfactory resolution regarding the affected terms of the Agreement and have failed to amend the Agreement (or enter into a new Agreement) within ninety (90) days from the date the Renegotiation Notice was received, then, unless the parties mutually agree otherwise in writing, the parties shall utilize binding arbitration in accordance with this **Section 8** to modify the Agreement as necessary so that such Agreement does not cause an adverse event.

8.3.3 The above referenced arbitration shall be triggered by one party’s providing the other party written notice of the arbitration required under this **Section 8**. Upon a party’s receipt of such written notice, both parties shall promptly appoint an arbitrator from a list of arbitrators recognized by the American Health Lawyers Association (AHLA) Alternative Dispute Resolution Services. In accordance with the rules of the AHLA Alternative Dispute Resolution Service then in effect, such appointed arbitrators will appoint a third arbitrator from the list and the three arbitrators shall hear the parties and make the determination as to necessary modifications to the Agreement to remedy the adverse event. If AHLA or the AHLA Alternative Dispute Resolution Service is no longer in effect, then such arbitrators shall be chosen from a list provided by the American Arbitration Association in the same manner as set forth above, and such arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association then in effect. The parties shall irrevocably grant the arbitrators the authority to determine the modifications necessary to the Agreement to remedy the adverse result. Arbitration shall be binding for settlement of the modifications necessary to the Agreement as stated in the foregoing sentence. The parties agree to execute any agreement immediately to memorialize such modifications to the Agreement. The parties shall share the costs of such arbitrators equally between them. Each party shall bear its own expenses of preparation for arbitration.

## 9. GENERAL.

9.1 Independent Contractor. The parties agree Consultant and Medical Directors have not been, and will not be chosen as an inducement or reward for any past, current or future Company business transaction, opportunity, or government approval or concession, and that the selection process has not been, and will not be based on the volume or value of referrals provided by, or anticipated from, Consultant, any Medical Director or any affiliated person or entity. Consultant is acting and performing services hereunder as an independent contractor, and each Medical Director is acting and performing the Medical Director Services on behalf of and as an employee or independent contractor of Consultant. No Medical Director shall be considered an employee for purposes of any Company employment policy or employment benefit plan, and will not be entitled to any benefits under any such policy or benefit plan. Except as expressly set forth herein or as may be required by applicable law, Company shall neither have nor exercise any control or direction over the methods by which Consultant shall perform the duties hereunder, and

Company shall not control how Medical Director Services are accomplished hereunder, as long as such duties are performed as required by this Agreement. Consultant shall be solely responsible for, and shall indemnify and hold Company harmless for payment of, all taxes due on all amounts paid to Consultant hereunder and for all employment taxes for all employees of Consultant. The parties shall cooperate if any taxing Authority asserts that Consultant or any Medical Director is not an independent contractor under this Agreement.

9.2 Assignment. This Agreement shall be binding on the successors and permitted assigns of the parties. Consultant and Member Physicians shall not assign or subcontract this Agreement or assign or subcontract any of their rights hereunder without Company's prior written consent, which may not be unreasonably withheld. Company may assign this Agreement to any of Company's Affiliates or to any successor in interest to the assets and operations of Company without the consent of any other party hereto. This Agreement shall be enforceable by or against any permitted assigns hereunder. Any attempted assignment of this Agreement in violation of the provisions of this **Section 9.2** is void.

9.3 Merger, Modification and Waiver. This Agreement contains the entire agreement of the parties with respect to its subject matter and as of the date this Agreement is fully executed, supersedes all previous and contemporaneous agreements and understandings, expressed or implied, oral or written, between the parties with respect to the subject matter hereof. The failure of the parties to insist on strict performance of the provisions of this Agreement shall not be construed as a waiver of such provision or of any other default of the same or similar nature. No waiver, modification or change of any of its provisions shall be valid unless in writing and signed by the parties. One party's waiver of any default by the other party of any provision of this Agreement is not a waiver of any other default and shall not affect the right of that party to require performance of the defaulted provision at any future time. All representations herein survive the execution and delivery of this Agreement.

9.4 Severability. If any term of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be given effect to the fullest extent permitted by law; provided however, if the severed provision materially deprives a party of the benefits of this Agreement, including without limitation the benefits of **Section 6**, then such party may terminate this Agreement by notice to the other party.

9.5 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

9.6 Books and Records. If required by Section 952 of the Omnibus Reconciliation Act of 1980 (Section 1861(v)(I)(I) of the Social Security Act), as amended, and the regulations promulgated thereunder, the books and records of Consultant necessary to certify the nature and extent of costs associated with Consultant's performance of services under this Agreement shall be preserved by Consultant for such period of time as provided by law so as to be available for and subject to inspection by appropriate agencies of the United States. In addition, if and to the extent that Consultant uses the services of a related organization to provide services hereunder, Consultant will require such related organization to preserve and make available its books and records to the same extent Consultant is so required. If this Agreement is not subject to the provisions of Section 952 or regulations promulgated thereunder, this **Section 9.6** shall be null and



void. The provisions of this **Section 9.6** shall survive the expiration or termination of this Agreement.

9.7 Notices. All notices pursuant to this Agreement shall be in writing and shall be deemed duly given and properly served: (a) when delivered personally (with written confirmation of receipt), (b) two (2) business days after being mailed to the addressee by registered or certified mail, postage prepaid, return receipt requested, or (c) when received by the addressee if sent by a recognized express delivery service, in each case, to a party at the address as set forth below or at such other address as may be furnished by such party in accordance with these notice requirements:

Notice to Company:

Fresenius Kidney Care Longview, LLC  
c/o Fresenius Medical Care North America  
920 Winter Street  
Waltham, Massachusetts 02451-1457  
Attention: Law Department

Notice to Consultant: **PERSONAL & CONFIDENTIAL**

PeaceHealth  
1115 SE 164<sup>th</sup> Avenue, Department 316  
Vancouver, Washington 98683  
Attention: Mike Dwyer

9.8 Third Party Beneficiary. Company's present and future Affiliates are intended third party beneficiaries of this Agreement and shall independently have the right to enforce this Agreement.

9.9 Indemnification.

a. Consultant shall indemnify and hold harmless Company and its Affiliates from any and all liability, claims, damages, and expenses (including but not limited to reasonable attorneys' fees) which it may incur as a result of the negligence or willful misconduct of Consultant, a Medical Director and/or a Member Physician, or any of their Affiliates, agents or employees, or the breach by Consultant, a Medical Director or a Member Physician of a representation or covenant in this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement.

b. Company shall indemnify, defend and hold harmless Consultant, Medical Directors and Member Physicians from any and all liability, claims, damages, and expenses (including but not limited to reasonable attorneys' fees) which it may incur as a result of the negligence or willful misconduct of Company, or its Affiliates or employees, or the breach by Company of a representation or covenant in this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement.

9.10 No Conflicts. Consultant and each Member Physician represent and warrant to Company that the execution, delivery and performance of this Agreement by Consultant and each Member Physician does not conflict with or result in a breach (or any event which with notice or lapse of time or both, would result in a breach) of any other obligation of Consultant or any Member Physician.

9.11 Joint Effort; Headings. The preparation of this Agreement has been the joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than the other. The headings of sections in this Agreement are for convenience only and shall not affect or limit the interpretation of its provisions.

9.12 Attachments; Priority of Documents. All Addenda and attachments (including but not limited to Exhibits) to this Agreement are incorporated herein by reference and made a part of this Agreement. To the extent that any provision of any Addendum conflicts with or is contrary to other provisions in this Agreement, then the provisions of any Addendum first shall govern and then the provisions of this Agreement shall govern.

9.13 Authorized Signature. This Agreement shall not be deemed accepted by Company unless and until signed by an authorized officer or manager of Company. No other act or writing by an agent of Company shall cause this Agreement to be a binding contract on Company.

9.14 Force Majeure. No party shall be in default for any delay or failure to perform any of its obligations under this Agreement resulting directly or indirectly from any acts of God, civil or military authority, terrorism, war, civil disobedience, accidents, fires, explosions, failure of transportation, machinery or supplies, vandalism, work interruptions by its employees or independent contractors or any similar cause beyond its reasonable control. Notwithstanding the foregoing, each party shall, at all times, use commercially reasonable efforts to perform its obligations under this Agreement.

9.15 Counterparts; Electronic Execution. This Agreement may be executed in any number of counterparts with the same effect as if all the parties had signed the same document. Such executions may be transmitted by facsimile, e-signature, email or other electronic transmission and are to be deemed for all purposes to have been executed and delivered by that party to the other party.

9.16 Addenda. The following Addenda are included herein:

#### **Fee Escalator Addendum**

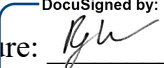
As of the first anniversary of the Commencement Date, the Fee shall be increased by 3%.

*Signatures Appear on Following Page*

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the dates written below.

COMPANY:

**Fresenius Kidney Care Longview, LLC**

DocuSigned by:  
Signature: 

Name: Ryan M. Valle

Title: Manager

Date: September 1, 2019

CONSULTANT:

**PeaceHealth**

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

NPI: \_\_\_\_\_

EIN: \_\_\_\_\_

Member Physicians		
<u>Name</u>	<u>NPI</u>	<u>Signature</u>
Sandeep Vetteth, M.D.	1619132495	
Mahesh Dangal, M.D.	1710171129	
Majd Isreb, M.D.		
Jagannath Saikumar, M.D.		

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the dates written below.

COMPANY:

**Fresenius Kidney Care Longview, LLC**

Signature: \_\_\_\_\_

Name: Ryan M. Valle

Title: Manager

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

CONSULTANT:

**PeaceHealth**

Signature: 

Name: Mike Dwyer

Title: Executive Vice President, Strategy & Community Health

Date: September 1, 2019

NPI: \_\_\_\_\_

EIN: \_\_\_\_\_

Member Physicians		
<u>Name</u>	<u>NPI</u>	<u>Signature</u>
Sandeep Vetteth, M.D.	1619132495	
Mahesh Dangal, M.D.	1710171129	
Majd Isreb, M.D.	1669426243	
Jagannath Saikumar, M.D.	1295999498	

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the dates written below.

COMPANY:

CONSULTANT:

**Fresenius Kidney Care Longview, LLC**

**PeaceHealth**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

NPI: \_\_\_\_\_

EIN: \_\_\_\_\_

Member Physicians		
<u>Name</u>	<u>NPI</u>	<u>Signature</u>
Sandeep Vetteth, M.D.	1619132495	DocuSigned by: Sandeep Vetteth, MD
Mahesh Dangal, M.D.	1710171129	DocuSigned by: Mahesh Dangal, M.D.
Majd Isreb, M.D.	1669426243	DocuSigned by: Majd A. Isreb, M.D.
Jagannath Saikumar, M.D.	1295999498	DocuSigned by: Jagannath Saikumar, M.D.

## **Exhibit A**

### **Definitions**

**“Affiliated Medical Practice”** means any medical practice which, as of the Effective Date, shares some degree of common ownership or Control with Consultant.

**“Affiliate,”** as to Company, means Company or a person or entity that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, Company, and as to Consultant, means any owner, manager, director, officer or employee of Consultant, any independent contractor providing physician services to Consultant, and any other person or entity that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with Consultant.

**“Authority”** means any government, licensing or accreditation body or agency.

**“Business”** means the provision of, and/or the purchase, sale, establishment, development, management or operation of any facility, program, entity or business which engages in the provision of, any of the following:

- a. outpatient dialysis treatments or services utilized in connection with any outpatient dialysis treatments (including, but not limited to, in-center, home, nocturnal, staff assisted, and self-care dialysis treatments, training and support and related services);
- b. INTENTIONALLY DELETED.
- c. renal-related equipment and supplies;
- d. renal-related laboratory services;
- e. renal-related pharmacy services, including without limitation the provision of erythropoiesis stimulating agents, iron derivatives, Vitamin D analogues and other pharmaceuticals routinely provided by Company to ESRD patients;
- f. apheresis services;
- g. vascular access and peritoneal catheter related services; or
- h. any other items, services or treatments for persons diagnosed as having end stage renal disease or chronic kidney disease and/or chronic renal insufficiency (e.g., pre-ESRD patients) or for persons receiving dialysis services in a hospital or receiving services through any renal disease management programs.

**“Change of Control”** means (a) individuals who own Consultant (or its Affiliated Medical Practice) as of the date of this Agreement cease to own at least 51% of the equity interests of such entity or cease to Control such entity, (b) at least 51% of the individuals who are Member Physicians as of the date of this Agreement commence the practice of medicine, on a full or part-time basis, for any entity or individual other than Consultant or its Affiliated Medical Practice, (c)

at least 51% of the individuals who are Medical Directors as of the date of this Agreement cease to be Medical Directors hereunder, or (d) Consultant or its Affiliated Medical Practice enters into any contract or arrangement for the management or administration of any material aspect of its operations, other than administration of its billing and collections activities.

“**Control**” and, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”, means the ability to exercise fifty percent or more of the voting shares, securities or other interests of an entity or organization, or to elect the directors or other managers of an entity or organization, or to otherwise exercise control over the business and affairs of an entity or organization.

“**CMS**” means the Centers for Medicare and Medicaid Services or its successor.

“**Confidential Information**” means this Agreement and any current or future information and/or trade secret of Company or its Affiliates related to the Business, or of any entity with which Company or its Affiliates contracts to provide or receive items or services related to the Business, including, but not limited to, any formula, pattern, compilation, program, product, device, method, system, inventory control system, technique, construction technique, process, financial information, statistical information, business strategy, costing data, staff, patient and payor information, Policy, form, manual, contractual arrangement, idea, creation, development, improvement or design.

“**Dialysis Operations**” include the following to the extent included within the scope of this Agreement by its terms: the Facility(ies) and/or the Inpatient Services Program(s).

“**Facility(ies)**” means the outpatient dialysis treatment center(s) (inclusive of any stand-alone home program) listed on **Exhibit B**, from time to time, together with any relocations of any such center(s), which references any and all outpatient services provided at or administered out of such center(s) now, or in the future. Examples of such outpatient services may include, but are not limited to, in-center dialysis services, home hemodialysis programs, peritoneal dialysis programs, and nocturnal programs.

“**Financial Benefit**,” includes, without limitation, medical director fees, referral fees, consulting fees, dividends, lease payments, management fees or any other remuneration from any dialysis facility, home dialysis program, nocturnal dialysis program or inpatient dialysis program or entity or operation engaged in the Business, other than usual and customary fees for professional medical services rendered to patients.

“**FMCNA**” means Fresenius Medical Care Holdings, Inc., a New York corporation operating under the d/b/a Fresenius Medical Care North America.

“**Inpatient Services Program(s)**” means the programs for the provision of inpatient dialysis and/or apheresis services, and other contracted-for services, if any, listed on **Exhibit B**.

“**Legal Requirements**” includes all laws, rules, interpretive guidelines and regulations governing Dialysis Operations, including without limitation (a) the Conditions for Coverage for End-Stage Renal Disease Facilities, 42 C.F.R. § 494.1 et seq., and the Interpretive Guidelines thereto

promulgated by CMS (“**Conditions for Coverage**”), (b) the Medicare Improvements for Patients and Providers Act and the implementing regulations of the Medicare End-Stage Renal Disease Payment System, 42 C.F.R. Part 413, Subpart H, (c) Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and the regulations thereunder, (d) state laws governing patient data privacy, security and breaches and (e) state licensing requirements.

“**Medical Director Services**” means those services of Consultant as described in this Agreement.

“**Member Physician**” means each physician listed in Exhibit C of the Agreement or any physician who serves as a Medical Director providing Medical Director Services at the Facility as of the date of this Agreement or at any time during the Restricted Period.

“**Policies**” means and includes the following to the extent applicable to each Dialysis Operation and as in effect from time to time: all policies, procedures, programs, guidelines, rules, regulations, bylaws and similar materials of any name or description of Company, the Dialysis Operation, hospitals (to the extent applicable), accrediting bodies and payors, including without limitation Medical Staff Bylaws, Governing Body Bylaws and Medical Director Handbook.

“**Provider Network**” means and includes any accountable care organization, physician hospital organization, independent practice association, integrated care organization, end-stage renal disease seamless care organization, shared savings program and any similar organization or program in which providers are part of a network that is committed contractually to provide clinical care to a defined group of patients.

“**Restricted Period**” means (subject to the limitations for Former Member Physicians under **Section 6.6**) the term of this Agreement (which shall include any extension of such term through course of conduct or otherwise) plus twelve (12) months thereafter. The parties agree that, upon any violation by Consultant or a Member Physician of the covenants contained in **Section 6**, the Restricted Period shall be extended automatically for an additional period equal to that number of days during the period from the date on which such violation commenced until the date on which Consultant or Member Physician ceases such violation. Such extension of the term of the Restricted Period shall be in addition to, and not in lieu of, any other remedies available to Company.

“**Restricted Territory**” shall mean the geographic area within a twenty (20) mile radius in any direction (as measured in a straight line) of any Dialysis Operation.



**Exhibit B**

**Dialysis Operations and Medical Director Designations**

<b>Facilities (including in-center, home, nocturnal)</b>					
<u>Facility Name</u>	<u>Facility Address</u>	<u>Facility City</u>	<u>Facility State</u>	<u>Facility Number</u>	<u>Medical Director</u>
PeaceHealth Dialysis Services	600 Broadway, Longview, WA 98632	Longview	WA	TBD	Sandeep Vetteth, M.D.

**Exhibit C**

**NPIs and Referral Source Relationships**

<b>Consultant's Legal Name</b>	<b>NPI Number</b>	<b>Owners</b>
PeaceHealth Medical Group		N/A
<b>Physician Name</b>	<b>NPI Number</b>	<b>Family Members who are potential referral sources to FMCNA</b>
Sandeep Vetteth, M.D.	1619132495	
Mahesh Dangal, M.D.	1710171129	
<b>Majd Isreb, M.D.</b>		
<b>Jagannath Saikumar, M.D.</b>		

**List of Member Physicians**

Sandeep Vetteth, M.D.

Mahesh Dangal, M.D.

Majd Isreb, M.D.

Jagannath Saikumar, M.D.

## **Exhibit D**

### **Form of Joinder Agreement**

This Joinder Agreement (the “**Joinder Agreement**”) is entered into as of \_\_\_\_\_, by and among Fresenius Kidney Care Longview, LLC and an affiliate of Fresenius Medical Care Holdings, Inc., a New York corporation d/b/a Fresenius Medical Care North America (“**FMCNA**”), PeaceHealth (“**Consultant**”), and \_\_\_\_\_, in his/her individual capacity (“**Physician**”).

WHEREAS, Company and Consultant are parties to that Medical Director Agreement, as amended, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference (the “**Medical Director Agreement**”), pursuant to which Consultant provides medical director services to the Dialysis Operations as identified in the Medical Director Agreement (Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Medical Director Agreement); and

WHEREAS, Physician is hereby deemed a “Member Physician” as defined in the Medical Director Agreement; and

WHEREAS, Physician will become privy to and/or have access to certain proprietary and confidential information concerning Company, including, but not limited to, various trade secrets and competitive information; and

WHEREAS, Consultant and Physician understand, acknowledge and agree that any specific Medical Director Services under the Medical Director Agreement to be performed by Physician on Consultant’s behalf shall be agreed by Physician and Consultant; and

WHEREAS, the parties acknowledge that, in accordance with the Medical Director Agreement, Company is compensating Consultant and Member Physicians for the provision of Medical Director Services through payments made to Consultant, although the specific compensation arrangement for the provision of any Medical Director Services by Physician on Consultant’s behalf are solely between Consultant and Physician, which Consultant and Physician represent and warrant shall be in full compliance with law;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be bound hereby, the parties agree as follows:

1. Acknowledging Medical Director Obligations in the Medical Director Agreement.
  - A. Physician hereby acknowledges the nature of the Medical Director Services to be provided to the Dialysis Operations in the Medical Director Agreement. Physician agrees that any medical director duties to be performed by Physician, as Physician and Consultant may agree, shall be performed in compliance with this Joinder Agreement and the Medical Director Agreement.

- B. Each reference to Member Physician, as utilized in Medical Director Agreement shall, for purposes of this Joinder Agreement, include Physician and shall bind Physician to the extent applicable.
- C. The parties understand and agree that Consultant is ultimately responsible for ensuring that all Medical Director Services are performed in compliance with the Medical Director Agreement.

2. Covenants Protecting Business Interests of Company.

- A. Physician hereby acknowledges and agrees to be bound by the Covenants Protecting Business Interests of Company set forth in Section 6 of the Medical Director Agreement, which includes, but is not limited to, a covenant not to disclose confidential information, covenant not to solicit employees and covenant not to compete.
- B. This Section 2 and the covenants of Section 6 of the Medical Director Agreement shall survive termination or expiration of this Joinder Agreement.
- C. If Physician ceases to qualify as a Member Physician, then the Physician shall be subject to the covenants not to compete and not to solicit employees for the period set forth in the Medical Director Agreement as applicable to a Former Member Physician.
- D. Notwithstanding anything to the contrary in the foregoing, the covenant not to disclose confidential information as set forth in Section 6 of the Medical Director Agreement survives expiration or termination of this Joinder Agreement and the Medical Director Agreement.

3. Compliance Training.

Pursuant to Company's Compliance Program and this Joinder Agreement, Physician, if providing Medical Director Services, agrees to complete initial compliance and privacy training (if not already completed prior to the execution of this Agreement) within the timeframe established in the Company's compliance program and complete supplemental compliance training during each year of the term of this Agreement.

Physician acknowledges having received a copy of Company's Code of Conduct and understands that the Code of Conduct, and any revisions to it, is applicable to the position of Medical Director of the Dialysis Operations and the provision of services hereunder. Physician hereby agrees to complete promptly any reasonable certification regarding the Code of Conduct as reasonably requested by Company or FMCNA.

4. Exclusive Use of Facility Resources. Physician acknowledges that the Facilities and the supplies, equipment and employees of the Dialysis Operations shall be utilized exclusively (a) for the provision of dialysis services to patients of the Facilities, and (b) for the provision of services under this Joinder Agreement and the Medical Director Agreement. No portion of any physical clinic space, assets, supplies, equipment, employees or other resources of the Dialysis Operations shall at any time be utilized by Physician for his/her private medical practice or for any other

purpose not expressly set forth in this Joinder Agreement or the Medical Director Agreement except pursuant to a written agreement with Company on fair market value terms.

5. Term. The term of this Joinder Agreement shall be the term as set forth in the Medical Director Agreement. The parties acknowledge and agree that the terms and conditions of the Medical Director Agreement intended to survive termination or expiration of the Medical Director Agreement shall so apply to this Joinder Agreement, except as set forth in Section 2 hereof.

6. Miscellaneous. *Assignability*. Physician shall not assign this Joinder Agreement or assign any of his or her rights hereunder without Company's prior written consent, which may be withheld in Company's sole discretion. *Entire Agreement*. Except with respect to the Medical Director Agreement and the Third Party Beneficiary provision herein, this Joinder Agreement contains the entire agreement of the parties with respect to its subject matter and as of the date this Joinder Agreement is fully executed, supersedes all previous and contemporaneous agreements and understandings, inducements or conditions, expressed or implied, oral or written, between the parties with respect to the subject matter hereof. *Waiver of Breach*. The failure of the parties to insist on strict performance of the provisions of this Joinder Agreement shall not be construed as a waiver of such provision or of any other default of the same or similar nature. No waiver, modification or change of any of the provisions hereof shall be valid unless in writing and signed by the parties against whom such claimed waiver, modification or change is sought to be enforced. One party's waiver of any default by the other party of any provision of this Joinder Agreement is not a waiver of any other default and shall not affect the right of that party to require performance of the defaulted provision at any future time. *Severability; Headings*. If any term or provision of this Joinder Agreement or its application to any person or circumstance shall to any extent be declared invalid or unenforceable, the remainder of this Joinder Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected and each term and provision of this Joinder Agreement shall be valid and enforceable to the fullest extent permitted by law. The headings of sections in this Joinder Agreement are for convenience only and shall not affect or limit the interpretation of its provisions. *Applicable Law*. This Agreement shall be governed by and construed and enforced in accordance with the laws applicable to the Medical Director Agreement. *Third Party Beneficiary*. Company's present and future parent corporations, including but not limited to National Medical Care, Inc. and Fresenius Medical Care Holdings, Inc., are intended third party beneficiaries of this Joinder Agreement and shall independently have the right to enforce each of the provisions of this Joinder Agreement, including, but not limited to, the restrictive covenants contained in Section 2 of this Joinder Agreement and in the Medical Director Agreement. *Authorized Signature*. This Joinder Agreement shall not be deemed accepted by Company unless and until an authorized officer of Company has signed this Joinder Agreement. No other act or writing by an agent, officer or manager of Company shall cause this Joinder Agreement to be a valid, effective or binding contract on Company. This Joinder Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Such execution may be transmitted by facsimile, e-signature, email or other electronic transmission and are to be deemed for all purposes to have been executed and delivered by that party to the other party. *Notices*. All notices pursuant to this Joinder Agreement shall be in writing and shall be deemed duly given and properly served when: (a) delivered personally (with written confirmation of receipt), (b) received by the addressee if sent by registered or certified

mail, postage prepaid, return receipt requested, or (c) received by the addressee if sent by a recognized express delivery service, in each case, to the parties at the addresses as set forth below or at such other addresses as may be furnished to the other parties in writing:

Notice to Company

Fresenius Kidney Care Longview, LLC  
c/o Fresenius Medical Care North America  
920 Winter Street  
Waltham, MA 02451  
Attention: Law Department

Notice to the Physician    *Personal and Confidential*

\_\_\_\_\_

Notice to Consultant    *Personal and Confidential*

as provided in Medical Director Agreement

IN WITNESS WHEREOF, the parties have duly executed this Joinder Agreement on the dates written below.

COMPANY:

**Fresenius Kidney Care Longview, LLC**

PHYSICIAN:

\_\_\_\_\_, **Individually**

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

Signature: \_\_\_\_\_

NPI: \_\_\_\_\_

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

CONSULTANT:

**PeaceHealth**

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

NPI: \_\_\_\_\_

EIN: \_\_\_\_\_

**EXHIBIT A**

See Medical Director Agreement attached hereto



**Exhibit 6B.**  
**Medical Director Agreement - Future**

**MEDICAL DIRECTOR AGREEMENT**  
**Cascade Renal Group, PLLC**

This Medical Director Agreement ("**Agreement**"), effective as of September 1, 2021 ("**Effective Date**"), is between Fresenius Kidney Care Longview, LLC, a Delaware Limited Liability Corporation (LLC), ("**Company**"), Cascade Renal Group, PLLC, a resident of or business entity organized in Washington ("**Consultant**"), and, for the limited purposes stated herein, Member Physicians who become parties hereto from time to time. This Agreement memorializes the terms on which Consultant has agreed to provide Medical Director Services to certain dialysis operations of Company.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound hereby, the parties hereto agree as follows:

Capitalized terms used herein and not otherwise defined shall have the meanings set forth on **Exhibit A**.

1. **ENGAGEMENT.** Company hereby engages Consultant to provide Medical Director Services to the Dialysis Operations, and Consultant agrees to provide such Medical Director Services on the terms and conditions set forth herein.
2. **TERM.** The term of this Agreement shall begin on the Effective Date and shall continue through August 31, 2031 unless sooner terminated as provided herein.
3. **COMPENSATION.**

3.01 **Fee.**

3.01.1 **Annual Compensation.** During the term of, and subject to, this Agreement and commencing as of the Effective Date (also herein referred to as the "**Commencement Date**"), Company shall pay Consultant based on an annual rate ("**Fee**") as set forth in Table 1 below, prorated for partial years and payable in arrears on or before the last day of each month in equal monthly installments:

**Table 1**

Facility/Program Information		
Facility ID	Facility Name	Compensation
100915	COWLITZ COUNTY	\$200,000.00

3.01.2 **Fee Escalator.** As of September 1, 2022 and each anniversary of September 1, 2022 during the term of the Agreement, the Fee shall increase at an annual rate of 1.50%.

### 3.02 Adjustments

3.02.1 Upon any Partial Termination, the Fee shall be reduced by the Fee amount specifically allocated to the Dialysis Operation to which the Partial Termination applies, or if no such specific allocation is provided herein, by an amount that reflects the reduction in workload of Consultant due to the Partial Termination as agreed by the parties. Upon any Temporary Suspension, the Fee may be reduced as agreed by the parties to reflect the reduction in workload and subject to a maximum reduction equal to the Fee amount specifically allocated to the Dialysis Operation to which the Temporary Suspension applies. If, as of the first Fee payment due date after a Partial Termination or Temporary Suspension, the parties are required hereunder to reach agreement on the Fee reduction but have not agreed, Company may reduce the Fee by an amount determined by it and such amount shall be held as cash reserves until such time as the parties agree. Company may make adjustments to the payments due to Consultant hereunder at any time to true up any adjustments in the Fee permitted hereunder.

3.02.2 In addition, the obligation to pay the Fee or a portion thereof related to the applicable Dialysis Operation may be temporarily suspended and not paid or accrued for any period of time during which a substitute Medical Director is required to be designated and approved hereunder but is not actually designated or approved and providing services.

3.03 General. The parties agree that the Fee payable hereunder shall be in consideration for all services to be provided hereunder and all covenants herein including, but not limited to, the restrictive covenants set forth in Section 6. The parties represent that, as of the date this Agreement is signed, the Fee is fair market value for services rendered based upon arm's length bargaining and is consistent with the value of similar services. Furthermore, the parties represent that the Fee is not and has not been determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under any other public healthcare program. Upon receipt by Company from Consultant of W-9 (available at [www.irs.gov](http://www.irs.gov)) and wire transfer instructions (form available in Medical Director Handbook), Company shall pay the Fee by wire transfer pursuant to such instructions. To the extent otherwise unpaid and overdue, Company may deduct from the Fee the fair market value of Company space, facilities, supplies, equipment, staff time or any other item or service actually utilized by Consultant or any of its affiliated physicians for any purpose not reasonably related to the performance of Medical Director Services hereunder. Consultant represents and warrants to Company that its affiliated physicians, if any, are not compensated by Consultant based on the volume or value of their referrals to any Dialysis Operation. Consultant also represents and warrants to Company that Consultant has not been formed for the sole purpose of entering into this Agreement.

## 4. OBLIGATIONS OF CONSULTANT.

### 4.01 Initial Designation and Qualifications of Medical Directors

4.01.1 *Designation*. Consultant shall designate a physician at each Dialysis Operation who shall perform the Medical Director Services on behalf of Consultant at such Dialysis Operation and who shall be deemed the Medical Director for such Dialysis Operation; provided,

however if Consultant party to this Agreement is an individual, such individual shall be the Medical Director. Consultant acknowledges and agrees that if a Facility has different designated Medical Directors for the in-center and home dialysis programs operated at or administered by same Facility, the Medical Director of the home dialysis program shall report to the Medical Director of the in-center dialysis program from which the home dialysis program is administered and that the Medical Director of the in-center program shall be accountable for all Medical Director Services rendered for such Facility and shall be deemed the Medical Director of such Facility for regulatory purposes. At all times, each physician designated as a Medical Director, and each physician providing coverage for a Medical Director in accordance herewith, (a) shall meet the requirements of this **Section 4** when providing services hereunder, (b) shall be designated in writing in advance and (c) shall be subject to Company's prior written approval. Company hereby approves the initial Medical Director designations set forth on **Exhibit B**. Consultant agrees that no single physician shall serve as Medical Director at more than two (2) Facilities at any given time unless an exception is approved in advance, in writing, by the Chief Medical Officer (or his designee) of Fresenius Medical Services.

**4.01.2 Coverage.** If unavailable, the Medical Director shall arrange for coverage by a physician who meets the requirements hereunder and shall provide the Director of Operations/Area Manager and the Clinical or Facility Manager with prior notice as to the physician providing such coverage and the duration of such coverage. A Medical Director shall not be required to devote the entire working day to duties hereunder (with the exception of on-call responsibilities), but will continue the practice of medicine independently of Company.

**4.01.3 Qualifications.** Each Medical Director and any physician providing coverage for a Medical Director shall at all times meet of the following requirements unless waived in writing by Company:

- a. Remain licensed as a physician in the state in which the Dialysis Operation is located.
- b. Remain board certified in nephrology, internal medicine, pediatrics or pediatric nephrology (or to the extent that board certification procedures are suspended as a general matter, remain involved in a board recertification process), have completed a board-approved training program in nephrology and have at least twelve (12) months of experience providing care to patients receiving dialysis.
- c. Remain a member in good standing of the Medical Staff of the Facilities at which physician is providing Medical Director Services.
- d. Remain a member in good standing of the Medical Staff of, and maintain privileges (at a minimum, courtesy/guest privileges) at, the hospital at which Company operates any Inpatient Services Programs.
- e. Maintain a current registration with the Drug Enforcement Administration and a current state controlled substances registration (or equivalent), as applicable.
- f. Maintain malpractice insurance required hereby.

g. Not be excluded, suspended, sanctioned or otherwise restricted from participating in any public healthcare program.

h. Satisfy Legal Requirements regarding the qualifications of a medical director and remain otherwise qualified to act as a medical director of a Dialysis Operation that is certified to participate in public healthcare programs.

i. Be a party to this Agreement as a Member Physician by executing this agreement or pursuant to a written instrument substantially in the form attached hereto as **Exhibit D** (the "**Joinder Requirement**").

j. Comply with the Company's medical director training requirements and any additional requirements applicable to physicians as may be required for the Dialysis Operation to maintain required state licensure, certification or its equivalent.

k. Maintain any additional requirements as a physician as may be required for any Inpatient Services Programs so that the program operates consistently with the accreditation and other standards of The Joint Commission or other accrediting body.

#### 4.02 Substitute Medical Director.

4.02.1 If a Medical Director (a) is indicted for any felony or any violation of a federal or state health care law; (b) fails to meet any of the requirements set forth in this **Section 4**; or (c) ceases to have Member Physician status, Consultant shall immediately notify Company and, whether or not such notice is provided, Company may immediately terminate such physician's designation as Medical Director by written notice. Consultant shall, as of the date of such termination, designate a new Medical Director who meets the requirements set forth in this Agreement.

4.02.2 If a Medical Director is unavailable to serve as Medical Director for a period greater than one (1) month, or such shorter time as Company in its reasonable discretion determines may affect the quality of care provided at a Dialysis Operation, then Company may terminate such physician's designation as Medical Director upon five (5) business days' prior notice to Consultant, and Consultant, within that same five (5) business day period, shall designate a new Medical Director who meets the requirements set forth in this Agreement. The provisions of this paragraph do not modify or relieve Medical Director of obligations under Section 4.03.2, and Medical Director is obligated to provide coverage in accordance with this Agreement during periods of absence.

4.02.3 With Company's prior written approval, Consultant may designate a temporary Medical Director ("**Temporary Medical Director**") for a Dialysis Operation to serve in the role on such terms as agreed by Company. A Temporary Medical Director shall be considered a Medical Director and a Member Physician for all purposes under this Agreement, except as otherwise expressly set forth herein. Each Temporary Medical Director shall at all times meet the

requirements set forth in this **Section 4** when providing Medical Director Services and all services provided by a Temporary Medical Director shall be in accordance with this Agreement.

#### **4.03 Medical Director Services.**

Medical Director shall provide the Medical Director Services for the Dialysis Operations for which he or she is appointed Medical Director in accordance with this Agreement. Consultant and Medical Directors shall devote best efforts, skill and sufficient time to carry out the requirements of this Agreement and to promote continuous improvement and high quality professional care within the Dialysis Operations. Medical Director Services include those duties and responsibilities set forth in and in conformity with the provisions of (a) this Agreement, (b) Legal Requirements, (c) Policies and (d) Governing Body resolutions. In addition, a Medical Director shall:

4.03.1 Coordinate the provision of Medical Director Services with FMCNA's Medical Office and shall communicate regularly with its applicable Chief Medical Officer and the members of Medical Advisory Boards. The coordination of services and communication may include, without limitation, participation in conference calls, medical director training sessions and meetings subject to expense reimbursement by FMCNA in accordance with the Policies.

4.03.2 Be available during all hours of operation of the Dialysis Operations for visits to and consultation regarding the Dialysis Operations and be on-call and working such additional time at or away from the Dialysis Operations as necessary to fulfill Medical Director's responsibilities under this Agreement, it being understood that a Medical Director needs to be available by phone and in person, as needed, at all times. Consultant shall provide to Company an updated e-mail address, mobile phone number and other relevant information so that, at all times, Company has accurate contact information for each Medical Director. Consultant shall ensure that each Medical Director checks e-mail regularly.

4.03.3 Complete initial compliance and privacy training (if not already completed prior to the execution of this Agreement), within the timeframe established in the Company's compliance program and complete supplemental compliance training during each subsequent year of the term of this Agreement. If any Medical Director fails to complete the compliance training, Company may retain the Fee until such time as every Medical Director providing services hereunder completes the required training. Once every Medical Director has completed the required training, Company shall pay Consultant the retained Fee with the next payment of Consultant's regular installment of the Fee.

4.03.4 Cooperate and, in a timely manner, provide information regarding Dialysis Operations and the Medical Director Services as Company may request: (a) in connection with administration of the Dialysis Operations, (b) in connection with implementation of this Agreement and confirmation of the compliance by Consultant and Member Physicians with their obligations hereunder, and/or (c) for Company's use in submissions to Authorities, including without limitation cost reports to CMS. Consultant and Medical Directors represent and warrant that all such information and/or disclosures shall be truthful and accurate to the best of their knowledge. If Consultant or any Medical Director fails to provide in a timely manner all

information required under this paragraph, Company may retain the Fee due Consultant hereunder until such time as the information is provided. Once the information is provided, Company shall pay Consultant the retained portion of the Fee with the next payment of Consultant's regular installment of the Fee.

4.03.5 Neither Consultant nor any Medical Director nor any Member Physician shall participate in, directly or indirectly, or permit others to conduct, any clinical research study ("Study") at a Dialysis Operation without first obtaining the prior express written approval of Company. Any Study conducted with respect to any Inpatient Services Program must also be approved by the applicable hospital and conducted consistent with such hospital's policies. If Company approves such Study, which approval shall be at Company's sole and absolute discretion, Consultant, Medical Directors and/or Member Physicians shall conduct such approved Study in accordance with all Legal Requirements, Policies, the Study protocol (which shall also be subject to Company's prior review and approval), and Good Clinical Practice (in accordance with the Guidance for Industry E6 Good Clinical Practice: Consolidated Guidance by the U.S. Department of Health and Human Services, Food and Drug Administration, April 1996 (ICH).

4.03.6 If an Authority finds deficiencies at a Dialysis Operation caused by a Medical Director's failure to satisfy the requirements of a Medical Director pursuant to any Legal Requirement, and such Authority requires the appointment of a physician monitor to assist the Dialysis Operation in achieving compliance with applicable law, Consultant shall pay for the cost of such monitor until the Authority has determined that all such deficiencies are cured.

4.03.7 Consultant hereby represents and warrants to Company that **Exhibit C** hereto sets forth a complete and accurate list of the full names and, as applicable, the National Provider Identifiers ("NPI"), of all of (i) Consultant's and any affiliated medical practice's physician owners, and the immediate family members thereof (i.e., husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild) who are a source of patient referrals to Company or FMCNA, a purchaser of items or services from FMCNA that are reimbursable by a federal or state healthcare program, or a seller or lessor to Company or FMCNA of items, including real property, or services for which Company or FMCNA makes claims for reimbursement under any federal or state healthcare program; and (ii) physicians assigned by Consultant to provide Medical Director Services pursuant to this Agreement, and the immediate family members thereof who are a source of patient referrals to Company or FMCNA, a purchaser of items or services from FMCNA that are reimbursable by a federal or state healthcare program, or a seller or lessor to Company or FMCNA of items, including real property, or services for which Company or FMCNA makes claims for reimbursement under any federal or state healthcare program. Consultant agrees to notify Company, in writing, of additions or deletions to **Exhibit C** within thirty (30) days of such change.

5. **OBLIGATIONS OF COMPANY.** Except as specifically delegated by this Agreement to Consultant, Company shall retain all management prerogatives and responsibilities as owner of the Dialysis Operations. Without limiting the foregoing, Company agrees (a) to operate the Dialysis Operations in compliance with Legal Requirements, (b) to provide all necessary



equipment, personnel, supplies and services (other than medical services) required for the operation of the Dialysis Operations, (c) with Medical Director's assistance as required hereunder, to establish, and implement Policies concerning the administration of the Dialysis Operations, and (d) to provide Consultant with the use of one office at each Facility for the sole purpose of providing Medical Director Services.

6. COVENANTS PROTECTING BUSINESS INTERESTS OF COMPANY.

6.01 Covenant Not to Compete. In consideration of the compensation payable hereunder and in recognition of Company's proprietary interest in its Business, Consultant, Medical Directors and Member Physicians covenant and agree that they shall not, during the Restricted Period, directly or indirectly through Affiliates or otherwise, alone or in association with any person or entity:

a. Engage, directly or indirectly, as a principal, owner, co-owner, agent, independent contractor, consultant, advisor, manager, medical manager, landlord, director, officer or employee of or participate in the Control of or otherwise assist or obtain any Financial Benefit from; or

b. Take any action in preparation or anticipation of doing any of the foregoing with regard to, any operation, person or entity (other than with Company or any of its Affiliates) that engages or proposes to engage, in the Business in the Restricted Territory. Notwithstanding the foregoing, this Section 6.01 (i) shall not limit Consultant, Medical Directors or Member Physicians from engaging in the practice of medicine and charging fees for administering such professional medical services to patients, (ii) shall not require Consultant, Medical Directors or Member Physicians to admit individuals to, or refer any other business to, any Dialysis Operation, Company or its Affiliates, (iii) shall not require Consultant, Medical Directors or Member Physicians to prescribe, utilize or purchase any items or services from any Dialysis Operation or Company or its Affiliates, and (iv) shall not restrict Consultant, Medical Directors or Member Physicians from admitting individuals to any other facility, program, or entity.

Consultant, Medical Directors and Member Physicians hereby represent, covenant and agree that they do not, and following the Commencement Date of this Agreement shall not, employ, contract, retain, engage, partner or joint venture with any person or entity that receives a Financial Benefit from any person or entity (other than Company and its Affiliates) which engages in the Business anywhere in the Restricted Territory, and that no such person or entity holds, or during the Restricted Period shall hold, a direct or indirect ownership interest in Consultant.

6.02 Covenant Regarding Confidential Information. Consultant and each Member Physician acknowledge that in the course of performing the duties contemplated by this Agreement, Consultant and each Member Physician will become privy to and/or have access to Confidential Information. Throughout the term of this Agreement and at any time thereafter, Consultant and each Member Physician shall not, and their employees and agents shall not, (a) disclose to any person, firm, corporation or entity any Confidential Information of Company or its Affiliates without the prior written consent of Company, except as may be required by law or legal process or (b) use any Confidential Information except in furtherance of the performance of their



obligations owed to Company hereunder. If Consultant or any Member Physician is required by law to disclose any Confidential Information such person shall provide sufficient notice to Company to enable Company to seek a protective order or other appropriate legal or equitable remedy to prevent such disclosure. The provisions of this paragraph shall not prohibit any disclosure of information to the extent (i) such information is or becomes publicly available or obtainable from independent, nonconfidential sources and not in breach of any party's obligations hereunder or any third person's obligations owed to Company or its Affiliate, (ii) such information is required to be disclosed by law or by Authorities having jurisdiction over the disclosing party, (iii) such information was known by a disclosing party prior to any disclosure by Company hereunder and without any breach of an obligation owed to any person, or (iv) disclosure is necessary for a disclosing party to enforce any or all of its rights under this Agreement.

**6.03 Improvements to Company's Services and Products.** Consultant and each Medical Director and Member Physician hereby assign to Company or its designated Affiliate all rights, title and interest to any improvements or inventions related to Company's procedures, documents, products or services that it/he/she authors, discovers, designs, or perfects in the course of their work under this Agreement and hereby agree to execute such other documentation as Company or its designated Affiliate may reasonably require to confirm such assignment.

**6.04 Nonsolicitation Covenant.** During the Restricted Period, Consultant and each Medical Director and Member Physician agree not to, directly or indirectly, by or for themselves, as agent of another, or through others as their agent, (a) interfere with Company's relationship with any patient, employee, independent contractor, referral or reimbursement source, patient, supplier, insurer or other payor (a "Constituent"), (b) induce any Constituent to terminate, reduce or otherwise modify its relationship with Company or its Affiliates or (c) solicit any Constituent for any such purpose; provided however, to the extent any Member Physician practices medicine, nothing herein shall restrict the clinical medical advice provided by any Member Physician to patients, nothing herein shall restrict any Member Physician from meeting ethical obligations owed to patients with regard to continuation of care, and each Member Physician is expressly permitted to fulfill such ethical obligations. Each Member Physician acknowledges that patients treated by Company are patients of Company and that Company has a legitimate and enforceable interest in retaining the goodwill of its business through the retention of its patients to the extent that their clinical needs can be fully met through Company resources.

**6.05 Joinder Requirement for Member Physicians.** Consultant shall cause each Member Physician upon the execution of this Agreement or on the date that such physician becomes a Member Physician, whichever is later, to execute this Agreement as a Member Physician or to execute a Joinder Agreement substantially in the form attached hereto as **Exhibit D (the "Joinder Requirement")**. Notwithstanding the foregoing restriction, Consultant shall not be precluded from engaging the services of a locum tenens physician or other similar physician on a periodic and infrequent basis so long as such physician does not provide services for or on behalf of Consultant under this Agreement. The parties hereby acknowledge Company does not in any way encourage or support Consultant's placing limitations or restrictions (in employment agreements or otherwise) on providers or entities to whom Consultant's employed or affiliated physicians may refer patients or other business.

6.06 Former Member Physicians. Any Member Physician who ceases to be a Member Physician during the Restricted Period shall be deemed a "Former Member Physician." Each Member Physician agrees that, if he or she becomes a Former Member Physician, the provisions of Section 6 shall still apply to such physician as if he or she were still a Member Physician. Notwithstanding the foregoing, the parties agree that, if a Member Physician becomes a Former Member Physician, then so long as no more than one Member Physician has become a Former Member Physician within the previous year, Sections 6.01 and 6.04 of the Agreement shall only apply to such physician until the earlier of (a) expiration of the Restricted Period under the Agreement, or (b) two (2) years after the date on which such physician becomes a Former Member Physician. Company and each Member Physician agree that if such physician violates the covenants contained in this Section 6 while he or she is a Former Member Physician, the Restricted Period applicable to the Former Member Physician shall be extended automatically for an additional period equal to the period from the date on which such violation commenced (x) until the date on which the Former Member Physician ceases such violation, or (y) through and including the date of the final determination of a court that Former Member Physician did violate such restrictions. Such extension of the term of the Restricted Period shall be in addition to, and not in lieu of, any other remedies available to Company.

6.07 Notice Obligations. If, during the term of this Agreement, Consultant (which term for purposes of this Section 6.07 includes Consultant's Affiliated Medical Practice if Consultant has an Affiliated Medical Practice) or any of its owners desires to (a) effect a Change of Control or (b) be a participating provider or otherwise contract as a clinical provider to provide physician services within or to a Provider Network that services a patient population that is likely to include patients within the Restricted Territory, Consultant shall give Company written notice prior to engaging in any third party negotiations regarding such arrangement.

6.08 Nondisparagement. During the Restricted Period, Consultant and each Member Physician agree to take no action which is intended, or would reasonably be expected, to harm Company or its Affiliates or their reputations or which would reasonably be expected to lead to unwanted or unfavorable publicity to Company or its Affiliates; provided, however, that nothing herein shall restrict any communications between physicians and their patients regarding their clinical care.

6.09 Remedies; Survival. Consultant and each Member Physician have carefully considered the nature and extent of the restrictive covenants as described in this Section 6 (collectively, "Restrictive Covenants"). Consultant and each Member Physician hereby acknowledge and agree that the Restrictive Covenants (a) are reasonable with respect to time, scope and territory, (b) are reasonable and necessary for the protection of the legitimate business interests of Company and its Affiliates and (c) are designed to eliminate competition which otherwise would be unfair to Company and its Affiliates, (d) will not prevent Consultant or each Member Physician from practicing medicine or nephrology in the community where they currently practice, (e) do not confer a benefit upon Company and its Affiliates disproportionate to the detriment to Consultant or Member Physician and (f) are not designed or intended in any manner to influence or impact the referral of healthcare business to Company or its Affiliates. Consultant and each Member Physician acknowledge and agree that (x) irreparable injury will result to Company and its Affiliates if Consultant or Member Physician breaches any of the terms of the

Restrictive Covenants, and (y) upon any actual or threatened breach of any Restrictive Covenant, Company and its Affiliates will have no adequate remedy at law and they shall be entitled to injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages, including without limitation, immediate temporary injunctive relief. Nothing contained herein shall be construed as prohibiting Company and its Affiliates from pursuing other remedies available to them for such breach or threatened breach, including, but not limited to, the recovery of monetary damages. If a court of competent jurisdiction determines that any portion of the Restrictive Covenants are unreasonable, then restrictions contained in the Restrictive Covenants shall be reduced and any other modifications shall be made by the court to the extent necessary for this **Section 6** to be enforced by the court. The provisions of this **Section 6** shall survive the expiration or termination of this Agreement.

6.10 Code of Conduct. Consultant and each Member Physician acknowledge having received a copy of FMCNA's Code of Conduct and understand that the Code of Conduct as amended is applicable to Consultant, each Member Physician, Medical Directors and the provision of Medical Director Services hereunder. Each Medical Director and each Member Physician shall complete promptly any reasonable certification regarding the Code of Conduct as requested by Company or FMCNA.

6.11 Anti-Corruption Representations. Consultant also represents, warrants, and covenants that in connection with the performance of Consultant's obligations under this Agreement:

a. Consultant has complied with and will comply with all applicable laws and applicable industry codes of practice, including, but not limited to, all applicable laws related to anti-corruption.

b. No payment or gift of money, goods, services, or anything of value has been made, offered or promised or will be made, offered or promised, directly by Consultant or indirectly through any third parties, to any individual for favorable treatment in obtaining, retaining, or directing business for, or to obtain any special concession on behalf of, Consultant or Company or its Affiliate(s) (collectively or individually, depending on the context, "**Fresenius Medical Care**"). This includes, but is not limited to, a prohibition on any facilitation payments to any government official to expedite a routine government action, whereas the term "government official" ("**Government Official**") shall be read broadly and includes not only (i) individuals acting on behalf of governments on a national, regional and local level (such as elected officials, customs officials, tax officials, etc.), but also: (ii) individuals acting on behalf of government-owned or government-controlled enterprises (such as doctors and staff of public hospitals and universities, etc.), and (iii) individuals acting for political parties or as or on behalf of candidates for public office.

c. Neither Consultant nor any person or entity acting on Consultant's behalf has (to the best of Consultant's knowledge after conducting a reasonable inquiry) accepted, received or agreed to accept or receive or will accept, receive or agree to accept or receive, directly or indirectly, any payment or gift of money, goods, services, or anything of value from any individual

for favorable treatment in obtaining, retaining, or directing business for, or to obtain any special concession on behalf of, Consultant or Fresenius Medical Care.

d. Consultant represents that Consultant is not and no person acting on Consultant's behalf is a Government Official and agrees that if, at any time during the term of this Agreement, Consultant or any person acting on Consultant's behalf becomes a Government Official, Consultant: (a) will not use that position to influence the award of business or regulatory approvals or any special concession to or for the benefit of Fresenius Medical Care, (b) will notify Company in writing within three (3) business days, and (c) will recuse him/herself from any government decision relating to Fresenius Medical Care or its operations.

e. Consultant represents that, in connection with any simultaneous engagement on behalf of any third party, Consultant provided any necessary notifications and secured any necessary approvals from such third party regarding the services Consultant will perform for Company, and to the extent available has documented these to Company or otherwise has attached them hereto.

f. Consultant represents that Consultant is not in a position of conflict of interest or incompatibility of his/her engagement (or in a position that could result in a conflict of interest or incompatibility of his/her engagement) with Fresenius Medical Care. Consultant agrees that if, at any time during the term of this Agreement, a conflict of interest or incompatibility presents itself, Consultant will notify Company in writing within three (3) business days and agrees to promptly recuse himself/herself from the situation, so as not to create even the appearance of impropriety.

g. Consultant represents that Consultant undertakes, at all times, to refrain from any action or inaction that may constitute, directly or indirectly, a patient referral or other business opportunity towards Fresenius Medical Care, with the expectation of obtaining anything of value in return.

h. Consultant agrees to abide by and comply with all applicable guidelines (e.g. Fresenius Medical Care's Code of Conduct) as amended from time to time, and all other binding rules or provisions during the term of this Agreement to business ethics and principles, as such have been or will be brought to his knowledge by Company. In particular, Consultant represents that Consultant has received the following internet link to Fresenius Medical Care Business Ethics & Principles for Business Parties ("**Anti-Corruption Principles**") (see <http://www.fmc-ag.com/5292.htm>) and agrees to abide by them. The Anti-Corruption Principles may be amended from time to time, in Fresenius Medical Care's sole discretion, and will be posted to its website.

i. Consultant agrees that if Consultant becomes aware, or has reason to suspect, that any person or entity acting on Consultant and/or Fresenius Medical Care's behalf has directly or indirectly, (a) provided, or offered to provide, anything of value to any individual, or (b) accepted, received or agreed to accept or receive, anything of value from any individual, in the hope or expectation of receiving favorable treatment in obtaining, retaining, or directing business for, or to obtain any special concessions on behalf of Fresenius Medical Care, Consultant will immediately report such knowledge or suspicion to the Fresenius Medical Care Compliance Department.



j. Consultant agrees to cooperate in any compliance investigation or audit that may be conducted by Fresenius Medical Care, its counsel, or its internal or external auditors related to this Agreement. Upon notice of an intended compliance investigation or audit, Consultant will, in a reasonable time, unless prohibited by law, make available to Fresenius Medical Care or a third party retained by Fresenius Medical Care (i) persons within the control of Consultant who Fresenius Medical Care or the third party wants to interview, and (ii) documents and data relating to the issue(s) under review related to the engagement with Company.

6.12 Shared Values. As stated in the Fresenius Medical Care Code of Ethics and Business Conduct, Company upholds the values of quality, honesty and integrity, innovation and improvement, respect and dignity, as well as lawful conduct, especially with regard to anti-bribery and anti-corruption. FMCNA upholds these values in its own operations, as well as in its relationships with business partners. Company's continued success and reputation depends on a common commitment to act accordingly. All parties hereto are committed to uphold these fundamental values by adherence to applicable laws and regulations.

## 7. EVENTS OF DEFAULT and REMEDIES.

7.01 Consultant Events of Default. Any one or more of the following shall constitute an "Event of Default" by Consultant hereunder:

a. A material breach hereunder by Consultant or any Member Physician which, as to any breach which is capable of cure and which is not specifically described in other paragraphs of this Section 7.01, is not cured within thirty (30) days of receipt of notice from Company describing such breach.

b. Indictment of Consultant, any Medical Director or any Member Physician for any felony or any violation of a federal or state health care law.

c. Exclusion or suspension of Consultant, any Medical Director or any Member Physician from participating in any public health care program.

d. A physician ceases to serve as Medical Director for any reason, and Consultant fails within a reasonable time (as determined in Company's sole discretion) to find a physician reasonably satisfactory to Company to serve as the new Medical Director for the relevant Dialysis Operation.

e. Consultant (or its Affiliated Medical Practice, if Consultant is not a medical practice) experiences a Change of Control without the prior written consent of Company, which consent Company may give in its sole discretion.

f. Consultant (or its Affiliated Medical Practice, if Consultant is not a medical practice) experiences a material change in its operations, ownership, physician staffing or organizational structure or fails to plan appropriately for succession planning which change



Company determines is reasonably likely to impair Consultant's ability to staff the Medical Director positions appropriately or otherwise perform its obligations hereunder.

g. One or more of the following occurs based, in whole or in part, on the acts or omissions of Consultant hereunder: A Dialysis Operation's performance under quality standards established by FMCNA, the industry or a payor is so poor that there is a reduction in available reimbursement or the performance outcomes are in the lowest quartile of measurement; or a Dialysis Operation is determined by the Company to pose imminent threat to property, person or the extent of reimbursement for which such Dialysis Operation may be eligible.

h. Consultant fails to remove and replace a Medical Director immediately from providing services hereunder if:

i. the Medical Director fails to meet the requirements of **Section 4**;

ii. the Medical Director engages in misconduct of a personal or professional nature which, in Company's reasonable opinion: (a) interferes with the Medical Director's ability to fulfill the obligations hereunder; (b) interferes with the normal conduct of the operations of a Dialysis Operation in accordance with the Policies; or (c) endangers patient care;

iii. the Medical Director suffers or has a disability that renders the Medical Director, in the reasonable opinion of Company, unable to perform duties satisfactorily as contemplated herein with reasonable accommodation. Consultant shall notify Company at the onset of any such disability of the Medical Director; or

iv. Company is dissatisfied with the Medical Director's performance hereunder, in which case Consultant shall have ten (10) days after written notice from Company to Consultant to remove and replace such Medical Director.

**7.02 Remedies upon Consultant Event of Default.** Upon the occurrence of an Event of Default by Consultant hereunder, Company may exercise (in addition to any and all other legal and equitable remedies) one or more of the following remedies:

- a. For each Event of Default that exists beyond a thirty (30) day period, Company may reduce the Fee hereunder by ten percent (10%) as of the 31<sup>st</sup> day and until such Event of Default ceases to exist,
- b. For each Event of Default that exists beyond a ninety (90) day period, Company may reduce the Fee hereunder by thirty percent (30%) as of the 91<sup>st</sup> day and until such Event of Default ceases to exist,
- c. For each Event of Default that exists beyond a 180-day period, Company may reduce the Fee hereunder by fifty percent (50%) as of the 181<sup>st</sup> day and until such Event of Default ceases to exist,

- d. Require Medical Directors to complete additional training and to participate in mentoring by others,
- e. Require Consultant to replace one or more Medical Directors, and/or
- f. Terminate this Agreement effective upon written notice to Consultant or at such later date as Company may specify.

7.03 General Termination. This Agreement shall terminate upon mutual agreement of Consultant and Company. In addition, this Agreement shall terminate: (a) at the expiration of the period provided in Section 2 or any Addenda, (b) upon Company's being adjudged a bankrupt, (c) upon closure of all Dialysis Operations, or (d) upon thirty (30) days prior notice at Company's election upon its decision to sell all Dialysis Operations.

7.04 Partial Termination. Company may terminate this Agreement (in addition to its pursuit of any and all other legal and equitable remedies) as to one or more, but not all, Dialysis Operations (a "**Partial Termination**") with respect to which (a) an Event of Default has occurred, (b) upon thirty (30) days prior notice at Company's election upon its decision to sell a Dialysis Operation, or (c) upon closure of a Dialysis Operation.

7.05 Temporary Suspension. Company may suspend the requirement and payment for Medical Services with respect to any Dialysis Operation that is temporarily shut down (a "**Temporary Suspension**"). Company shall give notice to Consultant at least ten (10) days prior to any Temporary Suspension and shall provide Consultant, upon request, with updates regarding the period of Temporary Suspension. Company shall notify Consultant at least thirty (30) days prior to the end of any Temporary Suspension.

7.06 Termination by Consultant. Consultant may terminate this Agreement (a) during a material breach of this Agreement by Company which is not cured by Company within thirty (30) days of receipt of notice from Consultant describing such breach, (b) upon conviction of a felony by Company, or (c) upon exclusion or suspension of Company from participating in public healthcare programs

## 8. INSURANCE AND LEGAL COMPLIANCE.

### 8.01 Insurance.

- a. Consultant shall maintain, for itself, each Member Physician and any physician providing coverage for any Medical Director, malpractice liability insurance coverage of not less than \$1,000,000 combined single limit per occurrence and \$3,000,000 annual aggregate covering the provision of services other than the Medical Director Services hereunder throughout the term of this Agreement, and if such coverage is on a claims-made basis, for a period of not less than three (3) years following termination of this Agreement. Consultant shall provide Company with a certificate of insurance upon request.

- b. Company shall maintain, for Member Physicians and any physician providing coverage for any Medical Director in accordance with this Agreement, professional liability insurance or self-insurance purchased or maintained by Company in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and \$3,000,000 annual aggregate, covering bodily injury and property damage claims (including the cost of defense) arising out of errors and omissions caused or alleged to be caused by Consultant, Member Physicians or any physician providing coverage for any Medical Director in accordance with and within the scope of this Agreement, but not for errors or omissions caused or alleged to be caused by Consultant, Member Physicians or any physician providing coverage for any Medical Director providing services as treating physicians. The insurance or self-insurance required to be maintained by Company hereunder shall be subject to and limited by the terms and conditions of insurance policies, primary, excess or otherwise, maintained by Company. Company shall provide Consultant with a certificate of insurance annually upon request.

8.02 Compliance. This Agreement shall be construed in a manner consistent with any and all applicable federal and state laws, including, without limitation, Medicare, Medicaid, the Health Insurance Portability and Accountability Act of 1996 and other federal and state statutes and regulations and the principles and interpretations related thereto. The parties intend to comply with the applicable provisions of 42 U.S.C. 1395nn(a)(1) and 42 U.S.C. 1320a-7b(b), as such provisions may be amended from time to time. The parties intend that this Agreement meet the requirements of (i) the personal services and management contract safe harbor to the federal anti-kickback statute as set forth in 42 C.F.R. Part 1001.952(d); and (ii) the personal services arrangement exception to the legislation as set forth in 42 U.S.C. 1395nn(e)(3) and the corresponding regulations.

8.03 Limited Renegotiation.

8.03.1 Notwithstanding anything to the contrary in this Agreement, if the terms of this Agreement (a) become unlawful or unenforceable, (b) materially and adversely affect a party's or its Affiliate's licensure, accreditation, certification, or ability to refer, accept any referral, bill, present a bill or claim, or receive payment from any payor or (c) subjects a party to a substantial risk of prosecution or civil monetary penalty, then (i) the unaffected provisions of this Agreement shall continue in full force and effect and (ii) either party, upon written notice ("**Renegotiation Notice**") to the other party may initiate renegotiation of the affected terms of this Agreement to restore, if possible, the intent and purpose of the affected provisions in the Agreement and to modify the Agreement as necessary so that such Agreement does not cause such adverse result.

8.03.2 If the parties are unable in good faith to come to a mutually satisfactory resolution regarding the affected terms of the Agreement and have failed to amend the Agreement (or enter into a new Agreement) within ninety (90) days from the date the Renegotiation Notice was received, then, unless the parties mutually agree otherwise in writing, the parties shall utilize binding arbitration in accordance with this Section to modify the Agreement as necessary so that such Agreement does not cause an adverse event.



8.03.3 The above referenced arbitration shall be triggered by one party's providing the other party written notice of the arbitration required under this Section. Upon a party's receipt of such written notice, both parties shall promptly appoint an arbitrator from a list of arbitrators recognized by the American Health Lawyers Association (AHLA) Alternative Dispute Resolution Services. In accordance with the rules of the AHLA Alternative Dispute Resolution Service then in effect, such appointed arbitrators will appoint a third arbitrator from the list and the three arbitrators shall hear the parties and make the determination as to necessary modifications to the Agreement to remedy the adverse event. If AHLA or the AHLA Alternative Dispute Resolution Service is no longer in effect, then such arbitrators shall be chosen from a list provided by the American Arbitration Association in the same manner as set forth above, and such arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association then in effect. The parties shall irrevocably grant the arbitrators the authority to determine the modifications necessary to the Agreement to remedy the adverse result. Arbitration shall be binding for settlement of the modifications necessary to the Agreement as stated in the foregoing sentence. The parties agree to execute any agreement immediately to memorialize such modifications to the Agreement. The parties shall share the costs of such arbitrators equally between them. Each party shall bear its own expenses of preparation for arbitration.

## 9. GENERAL.

9.01 Independent Contractor. The parties agree Consultant and Medical Directors have not been, and will not be chosen as an inducement or reward for any past, current or future Company business transaction, opportunity, or government approval or concession, and that the selection process has not been, and will not be based on the volume or value of referrals provided by, or anticipated from, Consultant, any Medical Director or any affiliated person or entity. Consultant is acting and performing services hereunder as an independent contractor, and each Medical Director is acting and performing the Medical Director Services on behalf of and as an employee or independent contractor of Consultant. No Medical Director shall be considered an employee for purposes of any Company employment policy or employment benefit plan, and will not be entitled to any benefits under any such policy or benefit plan. Except as expressly set forth herein or as may be required by applicable law, Company shall neither have nor exercise any control or direction over the methods by which Consultant shall perform the duties hereunder, and Company shall not control how Medical Director Services are accomplished hereunder, as long as such duties are performed as required by this Agreement. Consultant shall be solely responsible for, and shall indemnify and hold Company harmless for payment of, all taxes due on all amounts paid to Consultant hereunder and for all employment taxes for all employees of Consultant. The parties shall cooperate if any taxing Authority asserts that Consultant or any Medical Director is not an independent contractor under this Agreement.

9.02 Assignment. This Agreement shall be binding on the successors and permitted assigns of the parties. Consultant and Member Physicians shall not assign or subcontract this Agreement or assign or subcontract any of their rights hereunder without Company's prior written consent, which may be withheld in Company's sole discretion. Company may assign this Agreement to any of Company's Affiliates or to any successor in interest to the assets and operations of Company without the consent of any other party hereto. This Agreement shall be

enforceable by or against any permitted assigns hereunder. Any attempted assignment of this Agreement in violation of the provisions of this section is void.

9.03 Merger, Modification and Waiver. This Agreement contains the entire agreement of the parties with respect to its subject matter and as of the date this Agreement is fully executed, supersedes all previous and contemporaneous agreements and understandings, expressed or implied, oral or written, between the parties with respect to the subject matter hereof. The failure of the parties to insist on strict performance of the provisions of this Agreement shall not be construed as a waiver of such provision or of any other default of the same or similar nature. No waiver, modification or change of any of its provisions shall be valid unless in writing and signed by the parties. One party's waiver of any default by the other party of any provision of this Agreement is not a waiver of any other default and shall not affect the right of that party to require performance of the defaulted provision at any future time. All representations herein survive the execution and delivery of this Agreement

9.04 Severability. If any term of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be given effect to the fullest extent permitted by law; provided however, if the severed provision materially deprives a party of the benefits of this Agreement, including without limitation the benefits of Section 6, then such party may terminate this Agreement by notice to the other party.

9.05 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state/commonwealth of Washington.

9.06 Books and Records. If required by Section 952 of the Omnibus Reconciliation Act of 1980 (Section 1861(v)(1)(I) of the Social Security Act), as amended, and the regulations promulgated thereunder, the books and records of Consultant necessary to certify the nature and extent of costs associated with Consultant's performance of services under this Agreement shall be preserved by Consultant for such period of time as provided by law so as to be available for and subject to inspection by appropriate agencies of the United States. In addition, if and to the extent that Consultant uses the services of a related organization to provide services hereunder, Consultant will require such related organization to preserve and make available its books and records to the same extent Consultant is so required. If this Agreement is not subject to the provisions of Section 952 or regulations promulgated thereunder, this section of the Agreement shall be null and void. The provisions of this Section shall survive the expiration or termination of this Agreement.

9.07 Notices. All notices pursuant to this Agreement shall be in writing and shall be deemed duly given and properly served: (a) when delivered personally (with written confirmation of receipt), (b) two (2) business days after being mailed to the addressee by registered or certified mail, postage prepaid, return receipt requested, or (c) when received by the addressee if sent by a recognized express delivery service, in each case, to a party at the address as set forth below or at such other address as may be furnished by such party in accordance with these notice requirements:

Notice to Company:

Fresenius Kidney Care Longview, LLC  
c/o Fresenius Medical Care North America  
920 Winter Street  
Waltham, MA 02451  
Attention: Law Department

Notice to Consultant: **PERSONAL & CONFIDENTIAL**

Cascade Renal Group, PLLC  
4400 NE 77<sup>th</sup> Avenue, Suite 275  
Vancouver, Washington 98662

9.08 **Third Party Beneficiary.** Company's present and future Affiliates are intended third party beneficiaries of this Agreement and shall independently have the right to enforce this Agreement.

9.09 **Indemnification.**

9.09.1 Consultant shall indemnify and hold harmless Company and its Affiliates from any and all liability, claims, damages, and expenses (including but not limited to reasonable attorneys' fees) which it may incur as a result of the negligence or willful misconduct of Consultant, a Medical Director and/or a Member Physician, or any of their Affiliates, agents or employees, or the breach by Consultant, a Medical Director or a Member Physician of a representation or covenant in this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement.

9.09.2 Company shall indemnify, defend and hold harmless Consultant, Medical Directors and Member Physicians from any and all liability, claims, damages, and expenses (including but not limited to reasonable attorneys' fees) which it may incur as a result of the negligence or willful misconduct of Company, or its Affiliates or employees, or the breach by Company of a representation or covenant in this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement.

9.10 **No Conflicts.** Consultant and each Member Physician represent and warrant to Company that the execution, delivery and performance of this Agreement by Consultant and each Member Physician does not conflict with or result in a breach (or any event which with notice or lapse of time or both, would result in a breach) of any other obligation of Consultant or any Member Physician.

9.11 **Joint Effort; Headings.** The preparation of this Agreement has been the joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than the other. The headings of sections in this Agreement are for convenience only and shall not affect or limit the interpretation of its provisions.

9.12 **Attachments; Priority of Documents.** All attachments (including but not limited Exhibits) to this Agreement are incorporated herein by reference and made a part of this

Agreement. To the extent that any provision of any attachment hereto conflicts or is contrary to this Agreement, then the provisions of any Addendum first shall govern and then the provisions of this Agreement shall govern.

9.13 Authorized Signature. This Agreement shall not be deemed accepted by Company unless and until signed by an authorized officer of Company. No other act or writing by an agent of Company shall cause this Agreement to be a binding contract on Company.

9.14 Force Majeure. No party shall be in default for any delay or failure to perform any of its obligations under this Agreement resulting directly or indirectly from any acts of God, civil or military authority, terrorism, war, civil disobedience, accidents, fires, explosions, failure of transportation, machinery or supplies, vandalism, work interruptions by its employees or independent contractors or any similar cause beyond its reasonable control. Notwithstanding the foregoing, each party shall, at all times, use commercially reasonable efforts to perform its obligations under this Agreement.

9.15 Counterparts; Electronic Execution. This Agreement may be executed in any number of counterparts with the same effect as if all the parties had signed the same document. Such executions may be transmitted by facsimile, e-signature, email or other electronic transmission and are to be deemed for all purposes to have been executed and delivered by that party to the other party.


*Signatures Appear on Following Page*

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the dates written below.

Fresenius Kidney Care Longview, LLC

By its members:


Renal Care Group Northwest, Inc.

Signature:   
Name: Dorothy Rizzo  
Title: Assistant Treasurer  
Date: 3/13/2020

Health Ventures

Signature:  
Name:  
Title:  
Date:

Cascade Renal Group, PLLC


Signature:   
Name: MAJD ISREB, MD  
Title: Manager  
Date: 2/12/2020  
NPI Number:  
EIN:

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the dates written below.


Fresenius Kidney Care Longview, LLC

By its members:


Renal Care Group Northwest, Inc.

Signature:   
Name: Dorothy Rizzo  
Title: Assistant Treasurer  
Date: 3/13/2020

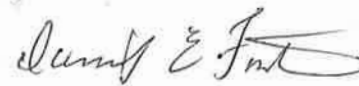
Health Ventures



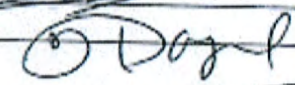
Signature:   
Name: Sean J. Gregory  
Title: Chief Executive, Columbia  
Date: April 1, 2020

Cascade Renal Group, PLLC

Signature: 

Name: M. J. D. ISLER, MD  
Title: Manager  
Date: 2/12/2020  
NPI Number:  
EIN:

  
Daniel Fontoura  
Chief Financial Officer  
April 1, 2020

Member Physicians		
Name	NPI	Signature
Sandeep Vetteth, M.D.	1619132495	
Majb Isreb, M.D.		
Mahesh Dangal, M.D.	1710171129	

## **Exhibit A**

### **Definitions**

**"Affiliate,"** as to Company, means Company or a person or entity that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, Company, and as to Consultant, means any owner, manager, director, officer or employee of Consultant, any independent contractor providing physician services to Consultant, and any other person or entity that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with Consultant.

**"Affiliated Medical Practice"** means any medical practice which, as of the Effective Date, shares some degree of common ownership or Control with Consultant

**"Authority"** means any government, licensing or accreditation body or agency.

**"Business"** means the provision of, and/or the purchase, sale, establishment, development, management or operation of any facility, program, entity or business which engages in the provision of, any of the following:

- a. outpatient dialysis treatments or services utilized in connection with any outpatient dialysis treatments (including, but not limited to, in-center, home, nocturnal, staff assisted, and self-care dialysis treatments, training and support and related services);
- b. renal-related equipment and supplies;
- c. renal-related laboratory services;
- d. renal-related pharmacy services, including without limitation the provision of erythropoiesis stimulating agents, iron derivatives, Vitamin D analogues and other pharmaceuticals routinely provided by Company to ESRD patients;

**"Change of Control"** means (a) individuals who own Consultant (or its Affiliated Medical Practice) as of the date of this Agreement cease to own at least 51% of the equity interests of such entity or cease to Control such entity, (b) at least 51% of the individuals who are Member Physicians as of the date of this Agreement commence the practice of medicine, on a full or part-time basis, for any entity or individual other than Consultant or its Affiliated Medical Practice, (c) at least 51% of the individuals who are Medical Directors as of the date of this Agreement cease to be Medical Directors hereunder, or (d) Consultant or its Affiliated Medical Practice enters into any contract or arrangement for the management or administration of any material aspect of its operations, other than administration of its billing and collections activities.

**"Control"** and, with correlative meanings, the terms "controlling", "controlled by" and "under common control with", means the ability to exercise fifty percent or more of the voting shares, securities or other interests of an entity or organization, or to elect the directors or other managers



of an entity or organization, or to otherwise exercise control over the business and affairs of an entity or organization.

**"CMS"** means the Centers for Medicare and Medicaid Services or its successor.

**"Confidential Information"** means this Agreement and any current or future information and/or trade secret of Company or its Affiliates related to the Business, or of any entity with which Company or its Affiliates contracts to provide or receive items or services related to the Business, including, but not limited to, any formula, pattern, compilation, program, product, device, method, system, inventory control system, technique, construction technique, process, financial information, statistical information, business strategy, costing data, staff, patient and payor information, Policy, form, manual, contractual arrangement, idea, creation, development, improvement or design.

**"Dialysis Operations"** include the following to the extent included within the scope of this Agreement by its terms: the Facility(ies) and/or the Inpatient Services Program(s).

**"Facility(ies)"** means the outpatient dialysis treatment center(s) (inclusive of any stand-alone home program) listed on **Exhibit B**, from time to time, together with any relocations of any such center(s), which references any and all outpatient services provided at or administered out of such center(s) now, or in the future. Examples of such outpatient services may include, but are not limited to, in-center dialysis services, home hemodialysis programs, peritoneal dialysis programs, and nocturnal programs.

**"Financial Benefit,"** includes, without limitation, medical director fees, referral fees, consulting fees, dividends, lease payments, management fees or any other remuneration from any dialysis facility, home dialysis program, nocturnal dialysis program or inpatient dialysis program or entity or operation engaged in the Business, other than usual and customary fees for professional medical services rendered to patients.

**"FMCNA"** means Fresenius Medical Care Holdings, Inc., a New York corporation operating under the d/b/a Fresenius Medical Care North America.

**"Inpatient Services Program(s)"** means the programs for the provision of inpatient dialysis and/or apheresis services, and other contracted-for services, if any, listed on **Exhibit B**.

**"Legal Requirements"** includes all laws, rules, interpretive guidelines and regulations governing Dialysis Operations, including without limitation (a) the Conditions for Coverage for End-Stage Renal Disease Facilities, 42 C.F.R. § 494.1 *et seq.*, and the Interpretive Guidelines thereto promulgated by CMS (**"Conditions for Coverage"**), (b) the Medicare Improvements for Patients and Providers Act and the implementing regulations of the Medicare End-Stage Renal Disease Payment System, 42 C.F.R. Part 413, Subpart II, (c) Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and the regulations thereunder, (d) state laws governing patient data privacy, security and breaches and (e) state licensing requirements.

**"Medical Director Services"** means those services of Consultant as described in this Agreement.

**"Member Physician"** means each physician who, as of the date of this Agreement or at any time during the Restricted Period, owns an interest in Consultant or Consultant's Affiliated Medical Practice, or practices medicine with Consultant or Consultant's Affiliated Medical Practice either as an employee or as an independent contractor (but excluding any independent contractor who provides clinical services through an arrangement with a third party locums tenens company or who provides no more than ten hours of clinical services in any calendar quarter), and includes in all events, each physician serving as a Medical Director hereunder.

**"Policies"** means and includes the following to the extent applicable to each Dialysis Operation and as in effect from time to time: all policies, procedures, programs, guidelines, rules, regulations, bylaws and similar materials of any name or description of Company, the Dialysis Operation, hospitals (to the extent applicable), accrediting bodies and payors, including without limitation Medical Staff Bylaws, Governing Body Bylaws and Medical Director Handbook.

**"Provider Network"** means and includes any accountable care organization, physician hospital organization, independent practice association, integrated care organization, end-stage renal disease seamless care organization, shared savings program and any similar organization or program in which providers are part of a network that is committed contractually to provide clinical care to a defined group of patients.

**"Restricted Period"** means (subject to the limitations for Former Member Physicians under **Section 6.06**) the term of this Agreement (which shall include any extension of such term through course of conduct or otherwise). The parties agree that, upon any violation by Consultant or a Member Physician of the covenants contained in **Section 6**, the Restricted Period shall be extended automatically for an additional period equal to that number of days during the period from the date on which such violation commenced until the date on which Consultant or Member Physician ceases such violation. Such extension of the term of the Restricted Period shall be in addition to, and not in lieu of, any other remedies available to Company.

**"Restricted Territory"** shall mean the geographic area within a 25 mile radius in any direction (as measured in a straight line) of any Facility and/or Inpatient Services Program.

**Exhibit B**

**Dialysis Operations and Medical Director Designations**

Facilities (including in-center, home, nocturnal)			
Facility Name	Address	Facility Number	Medical Director
COWLITZ COUNTY	600 BROADWAY ST, LONGVIEW, WA 98632	100915	<del>Dr. Majd Isreb</del> Dr. JAGANNATH SAIKUMAR

[ ~~Sy~~  
Sandeep Vetteth ]

[ (M) Dangel  
Mahesh Dangel ]

[ ~~Majd Isreb~~  
Majd Isreb ]



**Exhibit C**

**NPIs and Referral Source Relationships**

Consultant's Legal Name	NPI Number	Owners
Physician Name	NPI Number	Family Members who are potential referral sources to FMCNA
		N/A

## Exhibit D

### **Form of Joinder Agreement**

This Joinder Agreement (the "**Joinder Agreement**") is entered into as of \_\_\_\_\_, by and among Fresenius Kidney Care Longview, LLC and an affiliate of Fresenius Medical Care Holdings, Inc., a New York corporation d/b/a Fresenius Medical Care North America ("**FMCNA**"), Cascade Renal Group, PLLC ("**Consultant**"), and \_\_\_\_\_, in his/her individual capacity ("**Physician**").

WHEREAS, Company and Consultant are parties to that Medical Director Agreement, as amended, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference (the "**Medical Director Agreement**"), pursuant to which Consultant provides medical director services to the Dialysis Operations as identified in the Medical Director Agreement (Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Medical Director Agreement); and

WHEREAS, Physician is hereby deemed a "Member Physician" as defined in the Medical Director Agreement; and

WHEREAS, Physician will become privy to and/or have access to certain proprietary and confidential information concerning Company, including, but not limited to, various trade secrets and competitive information; and

WHEREAS, Consultant and Physician understand, acknowledge and agree that any specific Medical Director Services under the Medical Director Agreement to be performed by Physician on Consultant's behalf shall be agreed by Physician and Consultant; and

WHEREAS, the parties acknowledge that, in accordance with the Medical Director Agreement, Company is compensating Consultant and Member Physicians for the provision of Medical Director Services through payments made to Consultant, although the specific compensation arrangement for the provision of any Medical Director Services by Physician on Consultant's behalf are solely between Consultant and Physician, which Consultant and Physician represent and warrant shall be in full compliance with law;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be bound hereby, the parties agree as follows:

1. Acknowledging Medical Director Obligations in the Medical Director Agreement.

A. Physician hereby acknowledges the nature of the Medical Director Services to be provided to the Dialysis Operations in the Medical Director Agreement. Physician agrees that any medical director duties to be performed by Physician, as Physician and Consultant may agree, shall be performed in compliance with this Joinder Agreement and the Medical Director Agreement.

B. Each reference to Member Physician, as utilized in Medical Director Agreement shall, for purposes of this Joinder Agreement, include Physician and shall bind Physician to the extent applicable.

C. The parties understand and agree that Consultant is ultimately responsible for ensuring that all Medical Director Services are performed in compliance with the Medical Director Agreement.

2. Covenants Protecting Business Interests of Company.

A. Physician hereby acknowledges and agrees to be bound by the Covenants Protecting Business Interests of Company set forth in Section 6 of the Medical Director Agreement, which includes, but is not limited to, a covenant not to disclose confidential information, covenant not to solicit employees and covenant not to compete.

B. This Section 2 and the covenants of Section 6 of the Medical Director Agreement shall survive termination or expiration of this Joinder Agreement.

C. If Physician ceases to qualify as a Member Physician, then the Physician shall be subject to the covenants not to compete and not to solicit employees for the period set forth in the Medical Director Agreement as applicable to a Former Member Physician.

D. Notwithstanding anything to the contrary in the foregoing, the covenant not to disclose confidential information as set forth in Section 6 of the Medical Director Agreement survives expiration or termination of this Joinder Agreement and the Medical Director Agreement.

3. Compliance Training.

A. Pursuant to Company's Compliance Program and this Joinder Agreement, Physician, if providing Medical Director Services, agrees to complete initial compliance and privacy training (if not already completed prior to the execution of this Agreement) within the timeframe established in the Company's compliance program and complete supplemental compliance training during each year of the term of this Agreement.

B. Physician acknowledges having received a copy of Company's Code of Conduct and understands that the Code of Conduct, and any revisions to it, is applicable to the position of Medical Director of the Dialysis Operations and the provision of services hereunder. Physician hereby agrees to complete promptly any reasonable certification regarding the Code of Conduct as reasonably requested by Company or FMCNA.

4. Exclusive Use of Facility Resources. Physician acknowledges that the Facilities and the supplies, equipment and employees of the Dialysis Operations shall be utilized exclusively (a) for the provision of dialysis services to patients of the Facilities, and (b) for the provision of services under this Joinder Agreement and the Medical Director Agreement. No portion of any physical clinic space, assets, supplies, equipment, employees or other resources of the Dialysis Operations shall at any time be utilized by Physician for his/her private medical practice or for any other



purpose not expressly set forth in this Joinder Agreement or the Medical Director Agreement except pursuant to a written agreement with Company on fair market value terms.

5. Term. The term of this Joinder Agreement shall be the term as set forth in the Medical Director Agreement. The parties acknowledge and agree that the terms and conditions of the Medical Director Agreement intended to survive termination or expiration of the Medical Director Agreement shall so apply to this Joinder Agreement, except as set forth in Section 2 hereof.

6. Miscellaneous. *Assignability.* Physician shall not assign this Joinder Agreement or assign any of his or her rights hereunder without Company's prior written consent, which may be withheld in Company's sole discretion. *Entire Agreement.* Except with respect to the Medical Director Agreement and the Third Party Beneficiary provision herein, this Joinder Agreement contains the entire agreement of the parties with respect to its subject matter and as of the date this Joinder Agreement is fully executed, supersedes all previous and contemporaneous agreements and understandings, inducements or conditions, expressed or implied, oral or written, between the parties with respect to the subject matter hereof. *Waiver of Breach.* The failure of the parties to insist on strict performance of the provisions of this Joinder Agreement shall not be construed as a waiver of such provision or of any other default of the same or similar nature. No waiver, modification or change of any of the provisions hereof shall be valid unless in writing and signed by the parties against whom such claimed waiver, modification or change is sought to be enforced. One party's waiver of any default by the other party of any provision of this Joinder Agreement is not a waiver of any other default and shall not affect the right of that party to require performance of the defaulted provision at any future time. *Severability; Headings.* If any term or provision of this Joinder Agreement or its application to any person or circumstance shall to any extent be declared invalid or unenforceable, the remainder of this Joinder Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected and each term and provision of this Joinder Agreement shall be valid and enforceable to the fullest extent permitted by law. The headings of sections in this Joinder Agreement are for convenience only and shall not affect or limit the interpretation of its provisions. *Applicable Law.* This Agreement shall be governed by and construed and enforced in accordance with the laws applicable to the Medical Director Agreement. *Third Party Beneficiary.* Company's present and future parent corporations, including but not limited to National Medical Care, Inc. and Fresenius Medical Care Holdings, Inc., are intended third party beneficiaries of this Joinder Agreement and shall independently have the right to enforce each of the provisions of this Joinder Agreement, including, but not limited to, the restrictive covenants contained in Section 2 of this Joinder Agreement and in the Medical Director Agreement. *Authorized Signature.* This Joinder Agreement shall not be deemed accepted by Company unless and until an authorized officer of Company has signed this Joinder Agreement. No other act or writing by an agent, officer or manager of Company shall cause this Joinder Agreement to be a valid, effective or binding contract on Company. This Joinder Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Such execution may be transmitted by facsimile, e-signature, email or other electronic transmission and are to be deemed for all purposes to have been executed and delivered by that party to the other party. *Notices.* All notices pursuant to this Joinder Agreement shall be in writing and shall be deemed duly given and properly served when: (a) delivered personally (with written confirmation of receipt), (b) received by the addressee if sent by registered or certified

mail, postage prepaid, return receipt requested, or (c) received by the addressee if sent by a recognized express delivery service, in each case, to the parties at the addresses as set forth below or at such other addresses as may be furnished to the other parties in writing:

Notice to Company

Fresenius Kidney Care Longview, LLC  
c/o Fresenius Medical Care North America  
920 Winter Street  
Waltham, MA 02451  
Attention: Law Department

Notice to the Physician *Personal and Confidential*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice to Consultant *Personal and Confidential*

as provided in Medical Director Agreement



IN WITNESS WHEREOF, the parties have duly executed this Joinder Agreement as of the dates written below.

**EXHIBIT ONLY – not for signatures.**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, Individually  
NPI Number \_\_\_\_\_  
Date: \_\_\_\_\_

Cascade Renal Group, PLLC

Name: MAAD KREB, MD  
Title: Manager  
Date: 2-17-2020

**EXHIBIT A**

See Medical Director Agreement attached hereto

**Exhibit 7A.**  
**Joint Venture Agreement**

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FRESENIUS KIDNEY CARE LONGVIEW, LLC  
LIMITED LIABILITY COMPANY AGREEMENT

--

September 1, 2019

**FRESENIUS KIDNEY CARE LONGVIEW, LLC  
LIMITED LIABILITY COMPANY AGREEMENT**

September 1, 2019

**PURCHASERS OF UNITS IN FRESENIUS KIDNEY CARE LONGVIEW, LLC WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE UNITS HAVE NOT BEEN REGISTERED UNDER ANY STATE SECURITIES LAW (EACH, A “STATE ACT”) OR UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “FEDERAL ACT”), AND NEITHER THE UNITS NOR ANY PART THEREOF MAY BE SOLD, EXCHANGED OR OTHERWISE TRANSFERRED, EXCEPT (i) IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF ARTICLE 5 OF THIS AGREEMENT, WHICH RESTRICT THE TRANSFER OF UNITS AND (ii) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER EACH APPLICABLE STATE ACT AND THE FEDERAL ACT, OR IN A TRANSACTION WHICH IS EXEMPT FROM REGISTRATION UNDER EACH APPLICABLE STATE ACT AND THE FEDERAL ACT.**

**THE INTERESTS, IF CONSTITUTING SECURITIES UNDER APPLICABLE LAW, HAVE BEEN ISSUED OR SOLD IN RELIANCE ON APPLICABLE EXEMPTIONS UNDER SECURITIES LAWS AND MAY NOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION UNDER SUCH ACT.**

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## **FRESENIUS KIDNEY CARE LONGVIEW, LLC LIMITED LIABILITY COMPANY AGREEMENT**

**THIS LIMITED LIABILITY COMPANY AGREEMENT** (as amended from time to time in accordance herewith, the “**Agreement**”) of **FRESENIUS KIDNEY CARE LONGVIEW, LLC**, a Delaware limited liability company (the “**Company**”), effective the 1st day of September, 2019, is made and entered into by the Persons set forth in the “Members” section of **Exhibit A** and each Person who, after the date hereof, is admitted as a Member in accordance with this Agreement.

### **BACKGROUND STATEMENT**

The Company was formed on July 27, 2018 upon the filing of the Certificate in the office of the Delaware Secretary of State. The Certificate was executed by Elizabeth D. Scully (the “**Organizer**”), acting in the capacity of “authorized person” under section 18-201 of the Delaware Act.

Immediately prior to the execution and delivery of this Agreement, Fresenius Entity was the sole Member of the Company. Concurrently with the execution and delivery of this Agreement and pursuant to the Contribution Agreement, PeaceHealth, which is an Affiliate of Partner Entity, is contributing the Contributed Assets to the Company in exchange for (i) 400 Units, constituting an aggregate ownership of 40% of the membership interests of the Company, and (ii) a special distribution pursuant to **Section 4.2.7** of this Agreement, and PeaceHealth is contributing its 400 Units to Partner Entity.

The Members desire to enter into this Agreement to govern the affairs of the Company.

### **STATEMENT OF AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

#### **1. THE COMPANY**

**1.1 Formation.** The Company constitutes a limited liability company formed pursuant to and governed by the Delaware Act and other applicable laws of the State of Delaware. The Members hereby acknowledge their authorization and approval of the Organizer taking action to form the Company under the Delaware Act and hereby ratify such action. The Managers shall, when required, file such amendments to or restatements of the Certificate, and such other documents and instruments, in such public offices in the State of Delaware or elsewhere as the Managers deem advisable to give effect to the provisions of this Agreement and the Certificate, to respect the formation of and the conduct of business by the Company, and to preserve the character of the Company as a limited liability company.

**1.2 Name; Place of Business; Registered Office and Agent.** The business of the Company is conducted under its legal name or such other name as the Managers shall hereafter designate. If the legal name or d/b/a name of the Company includes any word or words

attributable to a Member, then if such Member ceases to be a Member for any reason, the Company shall immediately cease using such word or words and shall immediately change its legal name to omit the use of such word or words. Without limiting the generality of the foregoing, if “Fresenius” or “Fresenius Medical Care” is used in the Company’s legal or d/b/a name, then if Fresenius Entity ceases to be a Member for any reason, the Company shall immediately cease using such word or words and shall immediately change its legal name to omit the use of such word or words. The initial principal office and place of business of the Company is c/o Fresenius Medical Care North America, 920 Winter Street, Waltham, Massachusetts 02451. The initial registered agent for service of process at the registered office of the Company is The Corporation Trust Company. The initial registered office of the Company is located at c/o Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

### **1.3 Purpose.**

(a) The purpose of the Company is to acquire the outpatient and home dialysis facility located at 600 Broadway, Longview, Washington 98632 (the “**Longview Facility**”) and then own and operate renal dialysis programs (with outpatient hemodialysis, self-care dialysis and home dialysis training and support services) at the locations indicated on **Schedule 1.3** and, as further described below, at additional locations within the Exclusive Territory. Each facility at each such location is referred to herein as a “**Facility**.”

(b) The Company is authorized to engage in all activities necessary, customary, convenient or incident to such purpose; provided however, the Company shall not bill for items and services ordered by a referral source in violation of any federal or state law.

(c) The goal of the Company is to provide access to cost efficient, quality dialysis services at the locations specified herein, and consistent with this purpose, the Company will seek continued quality and process improvements to improve dialysis services and reduce health care costs.

(d) The Members and the Company acknowledge that Partner Entity is a charitable organization under Section 501(c)(3) of the Code and that the Company will further Partner Entity’s mission and charitable purposes in that:

(i) The Company will promote access to patient care services without regard to the patient’s race, color, national origin, sex, age, or disability in accordance with FMCNA’s anti-discrimination policies;

(ii) The Company will provide charitable care in accordance with FMCNA’s guidelines relating to charitable care (the “**Charitable Care Policies**”);

(iii) With respect to any patients of the Longview Facility as of the date of this Agreement, the Company shall provide charitable care in accordance with Partner Entity’s guidelines relating to charitable care if such patients would not otherwise be covered under the Charitable Care Policies; and



(iv) Fresenius Entity shall provide Partner Entity notice of any amendments to FMCNA's anti-discrimination policies or the Charitable Care Policies within a reasonably prompt time after such amendments.

#### **1.4 Dissolution.**

1.4.1 Events Causing Dissolution. The Company shall be dissolved and its affairs wound up upon the earliest of the following to occur:

- (a) at any time when there are no Members;
- (b) the agreement of a Super-Majority in Interest of the Members to dissolve the Company;
- (c) when liquidation is required pursuant to **Section 5.6.3** or **Section 7.2.2**; or
- (d) when required by law.

1.4.2 Liquidation of Property and Application of Proceeds. Upon the dissolution of the Company, the Managers will wind up the Company's affairs in accordance with the Delaware Act, and will be authorized to take any and all actions contemplated by the Delaware Act as permissible, including, without limitation:

- (a) prosecuting and defending suits, whether civil, criminal, or administrative;
- (b) settling and closing the Company's business, causing the Accountants to prepare a final financial statement, and making adjustments among Members with respect to distributions under **Article 4** based upon such financial statement;
- (c) liquidating and reducing to cash the Property as promptly as is consistent with obtaining its fair value;
- (d) discharging or making reasonable provision for the Company's liabilities; and
- (e) distributing the proceeds of liquidation and any undisposed Property to the Members in accordance with **Section 4.2.4**.

#### **1.5 Books, Records and Tax and Accounting Matters.**

1.5.1 Availability. At all times during the existence of the Company, the Managers must keep or cause to be kept complete and accurate books and records appropriate and adequate for the Company's business. Such books and records, whether financial, operational or otherwise, and including a copy of this Agreement, any amendments to it and a

record of ownership by the Members of Units, must at all times be maintained at the principal place of business of the Company. To the extent required by the Delaware Act, each Member shall have the right, at its expense, during normal business hours and in a fashion that does not materially disrupt the Business, to access the records of the Company and obtain information regarding the Company, subject to legal and ethical restrictions relating to patient privacy, subject to protection of Competitively Sensitive Information, and subject to other reasonable standards as may be established by the Managers from time to time. Without limiting the generality of the foregoing, each Member shall have the right, at its expense and during normal business hours and in a fashion that does not materially disrupt the Business, to perform financial, clinical, quality, regulatory and compliance audits of the Company's operations not less frequently than annually, in order to verify among other things that the operations of the Company are consistent with the terms of this Agreement, all agreements between the Company and vendors of services and supplies to the Company, FMCNA policies applicable and relevant to the Company's operations, and all applicable laws.

1.5.2 Tax and Accounting Decisions. All decisions as to tax and accounting matters, except as this Agreement specifically provides otherwise, are made by the Managers, including the election to amortize organizational expenses under Code Section 709, the method of accounting (cash or accrual) and whether to make any elections under Code Section 754. All decisions relating to accounting matters shall be substantially consistent with United States generally accepted accounting principles ("GAAP") or with a comprehensive method of accounting used for tax purposes. The Managers may rely upon the advice of the Accountants as to whether such decisions are in accordance with such methods.

1.5.3 Reports.

(a) Within 30 days after the end of each fiscal month, the Managers shall cause to be delivered to each Member a balance sheet as of the end of such fiscal month, and a statement of profits and losses and a statement of cash flows for such fiscal month, together with any related notes or any report thereon prepared and delivered by the Accountants.

(b) Within 45 days after the end of each of the first three quarters of each fiscal year, the Managers shall cause to be delivered to each Member a balance sheet as of the end of such fiscal quarter, and a statement of profits and losses and a statement of cash flows for such fiscal quarter, together with any related notes or any report thereon prepared and delivered by the Accountants.

(c) Within 120 days after the end of each fiscal year, the Managers shall cause to be delivered to each Member a balance sheet as of the end of such fiscal year and a statement of profits and losses and a statement of cash flows for such fiscal year.

(d) All reports required to be delivered by the Company to the Members pursuant to this **Section 1.5.3** shall be prepared substantially consistent with GAAP applied on a consistent basis, except that monthly and quarterly reports (i) may exclude notes required under GAAP and (ii) will be subject to normal year-end adjustments. In addition, all reports delivered by the Company under this **Section 1.5.3** shall include a comparison of the Company's actual financial performance against the budget for such period.

1.5.4 Tax Returns. The Managers shall cause to be prepared all federal, state, municipal and other tax returns that the Company is required to file, and file with the appropriate taxing authorities all returns required to be filed by the Company in a manner required for the Company to be in compliance with any law governing the timely filing of such returns.

1.5.5 Taxable and Fiscal Year. The Company's taxable and fiscal years are the calendar year.

1.5.6 Depositories. The Managers shall maintain or cause to be maintained one or more accounts for the Company in such depositories as the Managers shall select. Subject to the terms of the Administrative Services Agreement, all receipts of the Company from whatever source received shall be deposited to such accounts, all expenses of the Company shall be paid from such accounts and no funds not belonging to the Company shall be deposited to such accounts. All amounts so deposited shall be received, held and disbursed by a Person or Persons designated by the Managers only for the purposes authorized by this Agreement.

1.5.7 Compliance Program. The Company shall adopt a compliance program, including training, policies, procedures and audit responsibilities comparable to and consistent with the compliance program maintained by FMCNA.

**1.6 Shared Values.** As stated in the Fresenius Medical Care Code of Ethics and Business Conduct, Fresenius Entity upholds the values of quality, honesty and integrity, innovation and improvement, and respect and dignity, as well as lawful conduct, especially with regard to anti-bribery and anti-corruption. FMCNA upholds these values in its own operations, as well as in its relationships with business partners. Fresenius Entity's continued success and reputation depends on a common commitment to act accordingly. Together with Fresenius Entity, Partner Entity is, and each Member admitted to the Company after the date hereof shall be, committed to uphold these fundamental values by adherence to applicable laws and regulations.

## **2. MEMBERS**

### **2.1 Rights and Obligations of Members.**

2.1.1 Units. A Member's interest in the Company shall be represented by Units or fractions thereof held by the Member. Units will be uncertificated unless the Managers determine that certificates are necessary. Any certificates of Units shall be signed by any two Managers and shall bear the Member's name and the number of Units held, except that the number of Units may be expressed by reference to the number of Units standing in a Member's name on the Company's books and records. Interests in voting, Profits, Losses and distributions shall be determined by Units, except as otherwise specifically provided in this Agreement.

2.1.2 Limitation on Members' Liabilities. Each Member's liability shall be limited as set forth in this Agreement, the Delaware Act and other applicable law.

2.1.3 Priority and Return of Capital. Except as may be otherwise specifically set forth in this Agreement, (a) no Member or Economic Interest Owner shall have the right to demand or receive Property as a distribution; and (b) no Member or Economic Interest Owner

shall have priority over any other Member or Economic Interest Owner, either as to the return of Capital Contributions or as to any distributions pursuant to **Article 4**, except as may be otherwise specifically set forth herein.

## **2.2 Meetings.**

2.2.1 Meetings. Meetings of Members may be called by the Managers whenever the Managers deem necessary, and shall be called whenever a Member or Members who collectively hold at least 20% of the then outstanding Units request such a meeting in writing. Any such meetings shall be held at the principal place of business of the Company, or at such other location in Longview, Washington as determined by the Managers, or may be held by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

2.2.2 Manner of Acting. The affirmative vote of a Majority in Interest of the Members is the act of the Members, except as expressly provided by this Agreement.

2.2.3 No Proxies. At all meetings of Members, a Member may vote only in person and not by proxy.

2.2.4 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is taken by Members who would be entitled to vote not less than the minimum number of votes that would be necessary to authorize or take the action. The action must be evidenced by one or more written consents describing the action taken, signed by the Members entitled to take such action and delivered to the Company for inclusion in its records, with a copy of the written consent provided to all Members promptly following the execution of such written consent. Action taken under this **Section 2.2.4** is effective when the Members required to approve such action have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting is the date the first Member signs a written consent.

2.2.5 Notice. The Managers must provide each Member with at least seven days' prior notice of a meeting of the Members in accordance with **Section 7.2.1**. The notice must contain the date, time and place of such meeting. Unless otherwise required by the Delaware Act, the notice need not state the purpose or purposes of the meeting. Information as to how a Member can participate by telephone shall be provided by the Managers promptly upon request.

2.2.6 Waiver of Notice. A Member may waive any notice required by the Delaware Act, the Certificate or this Agreement before or after the date and time of the meeting or event for which notice is required or before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Member entitled to the notice and be delivered to the Company for inclusion in its records. A Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

## **2.3 Capital Contributions.**

2.3.1 Issuance of Units. Fresenius Entity hereby acknowledges and agrees that, immediately prior to the execution and delivery of this Agreement, it was the sole Member of the Company and that, while its membership interest was not previously represented by Units, after giving effect to the transitions contemplated by this Agreement on the date hereof, its membership interest in the Company will hereafter be represented by the Units set forth opposite its name on **Exhibit A**. Concurrently with the execution and delivery of this Agreement, (a) PeaceHealth assigned to the Company its interest in the Contributed Assets, free and clear of all liens, claims or other encumbrances, in return for 400 Units, an initial credit to its Capital Account in the amount of [REDACTED], and an [REDACTED] special distribution pursuant to **Section 4.2.7**, (b) PeaceHealth contributed the 400 Units to Partner Entity, which is an Affiliate of PeaceHealth and (c) Fresenius Entity made an initial, cash Capital Contribution to the Company of [REDACTED] and received 600 Units and an initial credit to its Capital Account in the amount of [REDACTED]. Each Member's Units and Capital Account credits as of the date hereof (after giving effect to the transactions contemplated by this **Section 2.3.1**) are set forth on **Exhibit A** next to such Member's name.

2.3.2 Closing Capital Contributions. Concurrently with the execution of this Agreement, each Member shall make Capital Contributions in cash or other immediately available funds to fund working capital in the amount set forth on **Exhibit A** next to such Member's name. In exchange therefor, each Member shall receive a credit to its Capital Account in the amount of such contribution of cash.

2.3.3 Additional Contributions. Subject to any required approval of a Super-Majority in Interest of the Members, the Managers of the Company may require each Member to make Capital Contributions to the Company from time to time in addition to those contemplated by **Sections 2.3.1** and **2.3.2** if the Managers determine that the Company needs additional capital. Each Member shall contribute its pro-rata share of the requested Capital Contribution in cash or other immediately available funds within ten days of the capital call.

2.3.4 Failure to Make Capital Contributions. If a Member fails or is unable to meet its obligation to contribute capital hereunder, (a) such Member shall be in breach of its obligations hereunder, (b) one or more of the non-defaulting Members may contribute the defaulted contribution for the defaulting Member in proportion to their respective ownership of Units or as they may otherwise agree and (c) in all events, after the making of any such additional Capital Contributions, additional Units shall be issued to the contributing Members sufficient to cause the Members to own Units in proportion to their respective total Capital Contributions to the Company. The Managers may cause **Exhibit A** to be updated from time to time as necessary to accurately reflect any changes to the information set forth thereon.

2.3.5 No Additional Capital Contributions. Except as expressly provided in this Agreement, no Member shall be required or permitted to make additional Capital Contributions to the Company.

#### 2.3.6 Other Matters.

(a) Except as may be otherwise provided in this Agreement, no Member may demand or receive a return of Capital Contributions. No Member has the right to receive property other than cash, except as may be specifically provided in this Agreement. No Member is entitled to interest on any Capital Contribution.

(b) The Managers have no personal liability for the repayment of any Capital Contribution of any Member.

2.3.7 Negative Capital Accounts. No Member is obligated to restore a negative balance in such Person's Capital Account.

### 2.4 Loans.

2.4.1 Loans to the Company. The Members may lend money to the Company as approved by the Managers. If a Member lends money to the Company pursuant to this **Section 2.4.1**, the amount of any such loan is not an increase in the Member's Capital Contribution or Units, does not entitle the Member to any increase in the share of distributions of the Company and does not subject the Member to any greater proportion of the Losses that the Company may sustain. The amount of any such loan shall be a debt due from the Company to the Member, at such rates and on such terms consistent with fair market value and available from an independent third party as determined by the Managers. The provisions of this **Section 2.4.1** do not govern monies owed by the Company to a Member or its Affiliates in connection with goods or services provided to the Company pursuant to an Affiliate Arrangement.

2.4.2 Other Loans. If the Managers determine that funds are reasonably necessary for conducting the business of the Company, the Managers are authorized (but not obligated) to borrow the needed funds on the Company's behalf, and all or any portion of the Company's assets may be pledged or conveyed as security for the indebtedness.

2.4.3 Member Guaranties. If required by a lender, all of the Members shall guarantee any loan or other indebtedness of the Company. Such guaranties shall be on a several basis, in proportion to the Members' respective ownership of Units unless the lender requires joint and several guaranties. If any Member (or any Affiliate of a Member who is a guarantor of the Company's obligations) (a "**Guarantor**") is required to pay any sum with respect to any guaranty of the Company's obligations then (a) such Guarantor shall be fully subrogated to the rights of the lender with respect thereto, (b) the Company shall be obligated to repay such amount (together with reasonable attorneys' fees and other collection costs) to such Guarantor upon demand, (c) such obligations owed to such Guarantor shall continue to be secured as set forth in the loan documents, (d) the outstanding principal amount of such obligation shall bear interest at the rate then applicable under the loan documents (or the rate that would be applicable under the loan documents as if their terms applied after full satisfaction of the Company's obligations to the lender) and (e) no distributions shall be paid by the Company to Members until such obligations owed to such Guarantor have been fully satisfied. In addition, each such paying Guarantor shall have rights of contribution against all co-guarantors such that each guarantor shall pay that portion of the total payments made by co-guarantors to any Company lender equal

to such Guarantor's (or if applicable, its Affiliate Member's) relative portion of the then outstanding Units of all such paying and contributing co-guarantors. At the request of any Member or Guarantor, all Members and Guarantors shall enter into a written contribution agreement to confirm their obligations under this **Section 2.4.3**.

## **2.5 Other Agreements Among Members and the Company.**

2.5.1 General. The fact that any Person is a Member, Manager or an Affiliate of any Member or Manager shall not prohibit the Company from employing or engaging such Person to render or perform a service or from otherwise transacting business with such Person (collectively, the "**Affiliate Transactions**") if the Affiliate Transaction is negotiated at arms' length for Fair Market Value. Each Member represents and warrants to the other Members that such Member has disclosed to the other Members the existence and nature of such Member's interest, and/or the interest of any Affiliate of such Member, in all existing Affiliate Transactions and covenants to make the same disclosures to the other Members (and/or the Managers appointed by each such Member) in advance of the consummation of each proposed new Affiliate Transaction.

2.5.2 Approval of Affiliate Transactions. If it is proposed that the Company enter into any agreement, or effect any transaction with, a Member or an Affiliate of a Member then:

(a) each Member (and the Managers appointed by such Member) may represent such Member's own interests (or the interests of its Affiliate) with respect to the negotiation of any transaction, contract, agreement, lease, or the like between the Company and the Member or the Member's Affiliate;

(b) neither the Member with an interest in the transaction nor the Managers appointed by such Member shall vote on or participate on behalf of the Company in the negotiations; and

(c) the interests of the Company shall be represented solely by the Managers (except for the Managers appointed by the interested Member), who shall have the sole power on behalf of the Company to participate in the negotiations and to vote on that matter and whose decisions on behalf of the Company in that regard shall be given full effect.

2.5.3 Enforcement of Company Rights. If any Member seeks to enforce the Company's rights under any Affiliate Transaction, then (a) such Member shall have authority to do so upon approval and in accordance with the directives of all of the Members, excluding the Member who is a party (or whose Affiliate is a party) to such Affiliate Transaction, (b) the Members bringing the enforcement action shall be entitled to reimbursement of all reasonable attorneys' fees and other costs in pursuing such enforcement action if they prevail on the merits of their claims, and otherwise, such Members shall bear their own costs, and (c) such reimbursement shall be paid by the Member who is a party (or whose Affiliate is a party) to such Affiliate Transaction promptly upon the final non-appealable conclusion of such matter. Any recovery on the Company's behalf in such matter shall accrue to the Company.

2.5.4 Administrative Services Agreement. The Company has entered into an Administrative Services Agreement dated as of the date hereof with an Affiliate of FMCNA (the “**Administrative Services Agreement**”), under which such FMCNA Affiliate will provide certain administrative services to the Company. Each Member and Manager hereby acknowledges and approves the terms of the Administrative Services Agreement; provided that such Administrative Services Agreement shall not be amended except in accordance with the approval process set forth in **Section 2.5.2.**

2.5.5 Medical Director Agreement. The Company has entered into a Medical Director Agreement dated as of the date hereof with PeaceHealth (the “**Medical Director Agreement**”), under which PeaceHealth will provide medical director services to the Longview Facility. Each Member and Manager hereby acknowledges and approves the terms of the Medical Director Agreement; provided that such Medical Director Agreement shall not be amended except in accordance with the approval process set forth in **Section 2.5.2.**

2.5.6 Product Supply Agreement. The Company has entered into a Product Supply Agreement dated as of August 19, 2019, with an Affiliate of FMCNA (the “**Product Supply Agreement**”), under which such FMCNA Affiliate will provide products and other items and services. Each Member and Manager hereby acknowledges and approves the terms of the Product Supply Agreement; provided that such Product Supply Agreement shall not be amended except in accordance with the approval process set forth in **Section 2.5.2.**

2.5.7 Lab Services Agreement. The Company has entered into a Lab Services Agreement dated as of the date hereof with an Affiliate of FMCNA (the “**Lab Services Agreement**”), under which such FMCNA Affiliate will provide lab testing services. Each Member and Manager hereby acknowledges and approves the terms of the Lab Services Agreement; provided that such Lab Services Agreement shall not be amended except in accordance with the approval process set forth in **Section 2.5.2.**

2.5.8 Contribution Agreement. The Company has entered into a Contribution Agreement, dated May 17, 2019, with Fresenius Entity and PeaceHealth (the “**Contribution Agreement**”), under which the parties will make certain contributions to the Company. Each Member and Manager hereby acknowledges and approves the terms of the Contribution Agreement; provided that such Contribution Agreement shall not be amended except in accordance with the approval process set forth in the Contribution Agreement.

2.5.9 Lease Agreement. The Company has entered into a Lease Agreement dated as of the date hereof with PeaceHealth (the “**Lease Agreement**”), under which PeaceHealth will lease the Longview Facility to the Company. Each Member and Manager hereby acknowledges and approves the terms of the Lease Agreement; provided that such Lease Agreement shall not be amended except in accordance with the approval process set forth in **Section 2.5.2.**

**2.6 Nonsolicitation of Employees.** The Company agrees that Fresenius Entity’s Affiliate providing services under the Administrative Services Agreement has invested, and will continue to invest, substantial time and effort in assembling and training its present staff and personnel, including personnel who provide services on such Fresenius Entity Affiliate’s behalf



pursuant to the Administrative Services Agreement. In addition, as a result of employment by such Fresenius Entity Affiliate, such personnel have gained, and will continue to gain, knowledge of the business affairs, marketing, patients and methods of operation of such Fresenius Entity Affiliate that the Company agrees are confidential information and trade secrets of such Fresenius Entity Affiliate. Accordingly, neither the Company nor any of the Members or their Affiliates (other than Fresenius Entity and Affiliates of Fresenius Entity) shall, at any time, directly or indirectly solicit, encourage, entice or induce for employment any employee of such Fresenius Entity Affiliate that provides services at any Facility (including any employee hired by such Fresenius Entity Affiliate after the date hereof or after the termination hereof) or take any action which results in the termination of employment or other arrangements between such Fresenius Entity Affiliate and such employee or otherwise interferes with such employment, except pursuant to a general solicitation that is not directed specifically to any such employees; provided, that nothing in this Section will prevent the Company or its Members or Affiliates from hiring (i) any employee whose employment has been terminated without cause by Fresenius Entity or its Affiliate or (ii) after 180 days after the date of termination of employment, any employee whose employment has been terminated by Fresenius Entity or its Affiliate for cause or has been terminated by the employee.

**2.7 Operating Budget.** The Managers will prepare, or will cause to be prepared, a proposed operating budget of the Company for each fiscal year, and the Members shall promptly review, comment on and, if acceptable, approve such budget. The Members shall negotiate in good faith to agree on a budget for the coming year. If the Members do not approve a budget before the beginning of a year, the Company shall operate in accordance with actual results for the prior year, plus 10%, unless and until the Members approve a budget for such year. In furtherance of the foregoing, the Members shall use good faith efforts to approve a budget for such year as soon as possible.

### **3. MANAGEMENT**

#### **3.1 The Managers.**

**3.1.1 Management and Authority.** The business and affairs of the Company shall be managed under the direction of the Managers. Except with respect to matters where the approval of the Members is expressly required pursuant to this Agreement, or by non-waivable provisions of applicable law, the Managers have, to the full extent permitted by the Delaware Act, sole, exclusive, full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, including, without limitation, the right and power to appoint individuals to serve as officers of the Company and to delegate authority to such officers. In addition, pursuant to the terms of the Administrative Services Agreement, a Fresenius Entity Affiliate shall conduct the day-to-day operations of the Company, and pursuant thereto, shall also be authorized to take action to deal with patient and other emergencies.

**3.1.2 Number, Tenure and Qualifications.** The Company shall have five Managers, three designated by Fresenius Entity and two designated by the Members representing a majority of the Units excluding the Units held by Fresenius Entity. The initial Managers

designated by Fresenius Entity and the other Members are set forth on **Exhibit B**. If any Member ceases to be a Member, the Managers appointed by such Member shall be automatically removed at the time such Member ceases to be a Member. Managers serve at the pleasure of the respective Members who designated such Managers and may be removed with or without cause by such respective Members by written notice. A Manager holds office until the Manager resigns, dies, becomes permanently disabled, is removed or until his successor is duly designated and qualified. If a non-controlling Member or any of its Affiliates owns an interest in any dialysis facility that competes with any Company Facility, such Member's appointees as Managers hereunder will not include any persons who are in a position to share or use Competitively Sensitive Information regarding the Company's business with such competitive business or in a position to share or use Competitively Sensitive Information of such competitive business with the Company, including without limitation, directors, managers and officers of such competitive business, and such Managers will not share or use Competitively Sensitive Information with such competitive business.

### 3.1.3 Meetings and Voting of Managers.

(a) Meetings of the Managers will be held from time to time at the Company's place of business or at such other location in Longview, Washington as determined by the Managers. Meetings may be held by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Information as to how a Manager can participate by telephone or other similar communications equipment shall be provided by the Managers promptly upon request. Notice of the date, time and place of the meeting must be given in accordance with **Section 7.2.1** at least four days prior to the meeting. Each Manager has one vote. The affirmative vote of majority of the Managers shall decide any matter arising in connection with the business and affairs of the Company, except as may be expressly provided otherwise by this Agreement. The Managers will have regularly scheduled meetings not less frequently than quarterly.

(b) As long as Partner Entity is a Member, it shall have the right to designate a physician representative (the "**Observer**"). In the sole discretion of Partner Entity, the Observer may observe the meetings of the Managers; provided, however, that the Observer shall not be entitled to observe all or any portion of a meeting if a majority of the Managers reasonably objects to his being present. Reasonable objections would include, for example, that his presence would waive any privilege that would otherwise be available to the Company or the Managers, such as the attorney-client privilege; his presence could reasonably be deemed to be prohibited by a confidentiality provision binding on the Company; he would be privy to information about the Company that should only be shared with individuals, such as the Managers, who owe certain duties to the Company because of their capacities as Managers; or he would have access to information that should not be shared with the Observer, such as Competitively Sensitive Information. For the avoidance of doubt, the Observer shall not be a Manager, may not participate in the meetings other than as an observer, and his presence shall not be required to convene, adjourn or conduct business at any meeting of the Managers. Partner Entity shall ensure that, prior to attending his first meeting of the Managers, the Observer is bound by a confidentiality agreement reasonably acceptable in form and substance to Fresenius Entity.

3.1.4 Waiver of Notice. A Manager may waive any notice required by the Delaware Act, the Certificate or this Agreement before or after the date and time of the meeting or event for which notice is required or before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Manager entitled to the notice and be delivered to the Company for inclusion in its records. A Manager's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Manager at the beginning of the meeting objects to holding the meeting or transacting business at the meeting. A Manager may designate another Manager to act as his or her proxy at any meeting of Managers by delivering a written proxy to the Company.

3.1.5 Action by Managers Without a Meeting. Action required or permitted to be taken at a meeting of Managers may be taken without a meeting if the action is taken by Managers having the requisite authority to authorize or take the action. The action must be evidenced by one or more written consents describing the action taken, signed by the Managers entitled to take such action and delivered to the Company for inclusion in its records, with a copy of the written consent provided to all Managers promptly following the execution of such written consent. Action taken under this **Section 3.1.5** is effective when the Managers required to approve such action have signed the consent, unless the consent specifies a different effective date.

3.1.6 Duties and Obligations of Managers and Company Representative.

(a) The Managers must take all actions necessary or appropriate (i) for the continuation of the Company's valid existence as a limited liability company under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Members or to enable the Company to conduct the business in which it is engaged and (ii) consistent with the Company's purposes.

(b) The Managers must devote to the Company such time as may be necessary for the proper performance of all of their duties under this Agreement, but the Managers are not required to devote full time to the performance of such duties and may have other business interests or engage in other business activities. Neither the Company nor any Member has any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Managers. The Managers will not incur any liability to the Company or to any Member as a result of engaging in any other business or venture.

(c) The Company Representative in its sole discretion may exercise all authority permitted of a "partnership representative" under the Code and the Regulations. In particular, the Company Representative may, in its sole discretion, make any elections provided for under the New Audit Rules, control and make all decisions with respect to any administrative proceedings relating to tax matters or the judicial review thereof, and settle or litigate any audit adjustments proposed by the Internal Revenue Service in any audit governed by the New Audit Rules. Each Member agrees to cooperate with the Company Representative and to do any or all things reasonably required by the Company Representative in connection with such matters and proceedings. The Company shall fully reimburse and indemnify the Company Representative, to the fullest extent permitted by applicable law, for and against all costs and expenses incurred in its role as Company Representative.

3.1.7 Restrictions on Authority of Managers.

(a) Without the approval of a Majority in Interest of the Members, the Company shall not:

[REDACTED]

(b) Without the approval of a Super-Majority in Interest of the Members, the Company shall not:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


(d)

[REDACTED]

3.1.8 Liability and Exculpation: Exclusive Territory.

(a) The liability of a Manager, Member and Officer for any breach of duty shall be limited or eliminated to the fullest extent permitted by law.

(b) Each Member understands and acknowledges that each other Member and their respective Affiliates are or may become interested, directly or indirectly, in various businesses, undertakings, agreements or arrangements which are not included in the business of the Company, including operations that may be competitive with the Company. Except as may be expressly set forth in this Agreement, or in another written agreement between the Members, the Members agree that neither this Agreement nor the fact that a Member is a Member of this Company shall limit or prohibit such Member's other interests and activities or right to receive and enjoy profits and compensation therefrom, and the Company and each Member hereby waives any rights it may have otherwise to have, share or otherwise participate in such other interests or activities of the other Members or their respective Affiliates. In furtherance of the foregoing, t



3.1.9 Compensation. The Managers will receive no compensation for their services as Managers under this Agreement. The Members acknowledge that a Fresenius Entity Affiliate will receive fees under the Administrative Services Agreement, that PeaceHealth will receive rents and certain fees under the Lease Agreement and medical director fees under the Medical Director Agreement and that a Fresenius Entity Affiliate will receive compensation under the Product Supply Agreement and Lab Services Agreement.

3.1.10 Resignation. A Manager may resign at any time by giving written notice to the Members. The resignation of a Manager takes effect upon receipt of such notice or at such later time as is specified in such notice, and, unless otherwise specified in such notice, the

acceptance of such resignation is not necessary to make it effective. The resignation of a Manager does not affect the Manager's rights as a Member and does not constitute a withdrawal or resignation of a Member.

#### 3.1.11 Vacancies.

(a) Any vacancy of the Managers occurring for any reason will be filled by the Members who designated the Manager whose death, removal, permanent disability or resignation caused such vacancy; provided that if Fresenius Entity ceases to be a Member, a Majority in Interest of the Members shall fill such vacancy. The Manager designated to fill a vacancy shall hold office until such Manager's death, permanent disability, resignation or removal or until a successor is duly designated and qualified.

(b) Any vacancy of the Company Representative occurring for any reason shall be filled by the Managers. The Company Representative initially designated herein or elected to fill a vacancy shall hold office until such Company Representative's dissolution, death, permanent disability, resignation or removal.

### 3.2 Officers.

3.2.1 Number and Duties. At the election of the Managers, the Company may have officers. The officers of the Company may consist of a President, a Secretary and a Treasurer and may include one or more Vice Presidents, in each case as elected by the Managers. In the absence of any officers, the Managers, or any one or more Managers designated by them, shall perform the duties of the officers specified herein. The Managers may appoint other officers and a duly appointed officer may appoint other officers in accordance with this **Section 3.2**. The officers will have the authority and shall perform the duties as set forth in this Agreement. The other officers that are appointed will have the authority and shall perform the duties as established by the Managers from time to time. The same person may hold any two or more offices.

3.2.2 Appointment and Term. All officers, if any, shall be appointed by the Managers or by a duly appointed officer in accordance with this **Section 3.2** and shall serve at the pleasure of the Managers or the appointing officers, as the case may be. All officers, however appointed, may be removed with or without cause by the Managers and any officer appointed by another officer may also be removed by the appointing officer with or without cause.

3.2.3 Compensation. Subject to the approval required by **Section 3.1.7(b)**, the Managers shall fix the compensation, if any, of all officers; provided, that such compensation shall be Fair Market Value.

3.2.4 President. The President, if any, will be the chief executive officer of the Company and will have general supervision of the business of the Company. The President shall see that all orders and resolutions of the Managers are carried into effect. Unless this Agreement or a resolution of the Managers provides otherwise, the President may execute and deliver on behalf of the Company any contract, conveyance or similar document not requiring approval by the Managers or Members as provided in this Agreement or in the Delaware Act. The President

will have any other authority and shall perform any other duties that the Managers may delegate to him or her from time to time.

3.2.5 Vice Presidents. In the case of absence or disability of the President, or at the direction of the President, the Vice President, if any, will have the authority and shall perform the duties of the President. If the Company has more than one Vice President, the one designated by the Managers to act in lieu of the President shall act in lieu of the President. A Vice President will have any other authority and shall perform any other duties that the Managers may delegate to him or her from time to time.

3.2.6 Secretary. The Secretary, if any, will have responsibility for preparing minutes of the acts and proceedings of all meetings of the Members, of the Managers, and of any committees of the Managers. The Secretary will have authority to give all notices required by the Delaware Act, other applicable law, or this Agreement. The Secretary will have responsibility for the custody of the Company books, records, contracts and other documents. The Secretary will have authority to affix the Company seal, if any, to any lawfully executed document and shall sign any instruments that require his or her signature. The Secretary shall authenticate records of the Company. The Secretary will have any other authority and shall perform any other duties that the Managers may delegate to him or her from time to time. In the case of absence or disability of the Secretary, or at the direction of the President, any assistant secretary will have the authority and may perform the duties of the Secretary.

3.2.7 Treasurer. The Treasurer, if any, will have responsibility for the custody of all funds and securities belonging to the Company and for the receipt, deposit or disbursement of funds and securities under the direction of the Managers. The Treasurer shall cause to be maintained true accounts of all receipts and disbursements and shall make reports of these to the Managers, upon its request, and to the President, upon his or her request. The Treasurer will have any other authority and shall perform any other duties that the Managers may delegate to him or her from time to time.

### **3.3 Appointment of Managers as Attorneys-In-Fact.**

3.3.1 Managers As Attorneys-in-Fact. Each Member irrevocably constitutes and appoints each Manager as such Member's true and lawful attorney and agent, with full power and authority in such Member's name, place and stead, to execute, acknowledge, deliver, file and record in the appropriate public offices all certificates or other instruments (including without limitation counterparts of this Agreement) which the Manager deems appropriate to qualify or continue the Company as a limited liability company in the jurisdictions in which the Company conducts business, including amendments to this Agreement necessary to correct scriveners' errors.

3.3.2 Survival of Appointment. The appointment by all Members of the Managers as attorneys-in-fact is deemed to be a power coupled with an interest, in recognition of the fact that each of the Members will be relying upon the Managers to act as contemplated by this Agreement in any filing and other action by the Managers on behalf of the Company, and such power shall survive the death or incapacity of any Person hereby giving such power and the Transfer by a Member of all or part of such Member's Units. The foregoing power of attorney



of a Transferor Member will survive such Transfer only until such time as the Transferee shall have been admitted to the Company as a Member, if at all, and all required documents and instruments have been duly executed, filed and recorded to effect such substitution. Any Person dealing with the Company may conclusively presume and rely upon the fact that any such instrument executed by such agent and attorney-in-fact is authorized, regular and binding without further inquiry.

### **3.4 Indemnification of Members, Managers and Officers.**

#### **3.4.1 Definitions.** As used in this **Section 3.4**, the term:

(a) “**Company**” includes any domestic or foreign predecessor entity of the Company in a merger or other transaction in which the predecessor’s existence ceased upon consummation of the transaction.

(b) “**Member**” or “**Manager**” or “**Officer**” means a Person who is or was a Member, Manager or Officer, respectively, of the Company or who, while a Member, Manager or Officer of the Company, is or was serving at the Company’s request as a member, manager, director, officer, partner, trustee, employee, or agent of another domestic or foreign limited liability company, corporation, partnership, joint venture, trust, employee benefit plan or other entity. A Member, Manager or Officer is considered to be serving an employee benefit plan at the Company’s request if his or her duties to the Company also impose duties on, or otherwise involve services by, the Member, Manager or Officer to the plan or to participants in or beneficiaries of the plan. “**Member**,” “**Manager**” or “**Officer**” includes, unless the context otherwise requires, the estate or Personal Representative of the Member, Manager or Officer.

(c) “**Expenses**” includes all reasonable counsel fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding.

(d) “**Liability**” includes claims, demands and the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable Expenses actually incurred with respect to a Proceeding.

(e) “**Party**” includes an individual who was, is, or is threatened to be made a named defendant or respondent in a Proceeding.

(f) “**Proceeding**” means any threatened, pending or completed action, suit or proceeding, including any appeals, whether civil, criminal, administrative, arbitral or investigative and whether formal or informal.

#### **3.4.2 Obligation to Indemnify; Limits.**

(a) General. The Company shall indemnify and hold harmless its Members, Managers, Officers, and any Person who is a Party to a Proceeding because he or she

is or was a Member, Manager or Officer, from and against any and all Liability related to a Proceeding arising in connection with the Company, except that the Company may not indemnify a Member, Manager, Officer or other Person for any Liability incurred in a Proceeding in which such Person is adjudged liable or is subjected to injunctive relief, (i) for acts or omissions that involve intentional misconduct, a knowing violation of law, or gross negligence, (ii) for unlawful distributions, (iii) for any transaction for which such Member, Manager, Officer or other Person received a personal benefit in violation or breach of any provision of this Agreement, or as otherwise prohibited by or disallowed under the Delaware Act or (iv) for any breach or violation by such Person of his, her or its personal obligations under this Agreement or under any other agreement or contractual obligation owed to the Company, another Member or any Affiliate thereof.

(b) Specific. Without limiting the foregoing, the Company must indemnify, hold harmless and pay all Expenses or Liabilities of any Member, Manager or Officer who for the benefit of the Company makes any deposit, acquires any option, or makes any other similar payment or assumes any obligation in connection with any property proposed to be acquired by the Company and who suffers any financial loss as the result of such action.

3.4.3 Partial Indemnification. If any Person is entitled under any provision of this **Section 3.4** to indemnification by the Company for some portion of Liability incurred by him or her, but not the total amount thereof, the Company shall indemnify such Person for the portion of such Liability to which he or she is entitled.

3.4.4 Witness Fees. Nothing in this **Section 3.4** shall limit the Company's power to pay or reimburse Expenses incurred by a Person in connection with his or her appearance as a witness in a Proceeding at a time when he or she is not a Party to such Proceeding.

3.4.5 Security for Indemnification Obligations. The Company may at any time and in any manner, at the discretion of the Managers, secure the Company's obligations to indemnify a Person pursuant to this **Section 3.4**.

3.4.6 No Duplication of Payments. The Company shall not be liable under this **Section 3.4** to make any payment to a Person hereunder to the extent such Person has otherwise actually received payment (under any insurance policy, agreement or otherwise) of the amounts otherwise payable hereunder. The Company's obligation to indemnify a Person who is or was serving at the request of the Company as a member, manager, director, officer, partner, trustee, employee or agent of any other entity shall be reduced by any amount such Person has actually received as indemnification from such other entity.

3.4.7 Subrogation. In the event of payment under this **Section 3.4**, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

3.4.8 Insurance. The Company may purchase and maintain insurance on behalf of any one or more indemnitees under this **Section 3.4** and such other Persons as the Managers determine, against any Liability which may be asserted against or Expense which may be incurred by such Person in connection with the Company's activities, whether or not the Company would have the power to indemnify such Person against such Liability or Expense under the provisions of this Agreement. The Managers and the Company may enter into indemnity contracts with indemnitees and adopt written procedures pursuant to which arrangements are made for the funding of obligations under this **Section 3.4** and containing such other procedures regarding indemnification as are appropriate.

3.4.9 Contract Rights. The right to indemnification conferred hereunder to Members, Managers and Officers is a contract right and cannot be affected adversely with respect to any Member, Manager or Officer by any amendment of this Agreement with respect to any action or inaction occurring prior to such amendment; provided, however, that this provision shall not confer upon any indemnitee or potential indemnitee (in his or her capacity as such) the right to consent or object to any subsequent amendment of this Agreement.

3.4.10 Indemnity Rights Not Exclusive. The rights of a Member, Manager or Officer hereunder shall be in addition to any other rights with respect to indemnification that he or she may have under contract or the Delaware Act or otherwise.

3.4.11 Amendments. To the extent that the provisions of this **Section 3.4** are held to be inconsistent with the provisions of the Delaware Act, such provisions of the Delaware Act shall govern. No amendment, modification or rescission of this **Section 3.4**, or any provision hereof, the effect of which would diminish the rights to indemnification as set forth herein, will be effective as to any Member, Manager or Officer with respect to any action taken or omitted by such Person prior to such amendment, modification or rescission.

3.4.12 Severability. In the event that any of the provisions of this **Section 3.4** (including any provision within a single section, subsection, division or sentence) is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions of this **Section 3.4** will remain enforceable to the fullest extent permitted by law.

3.4.13 Indemnification of Employees and Agents. The Company may indemnify under this **Section 3.4** an employee or agent of the Company who is not a Member, Manager or Officer to the same extent and subject to the same conditions that a Delaware limited liability company could indemnify a Member or Manager, or to any lesser extent (or greater extent if permitted by law) determined by the Managers, in each case consistent with public policy.

## **4. ALLOCATIONS AND DISTRIBUTIONS**

### **4.1 Allocations of Profit and Loss**

4.1.1 Profits and Losses. Except as otherwise provided in this **Section 4.1**, the Profits or Losses recognized by the Company in any fiscal year or other period shall be allocated among Members in proportion to their relative ownership of Units.

#### 4.1.2 Special Allocation Rules.

(a) Allocable Cash Basis Items. Any “**allocable cash basis item**” of the Company (as defined in Section 706(d) of the Code) for any fiscal year that is required to be allocated to the Members in the manner provided in Section 706(d) of the Code must be allocated to the Members in the manner so required.

(b) Section 704(c) Allocation. In accordance with Code Section 704(c) and the Regulations thereunder and with Section 1.704-1(b)(2)(iv)(f)(4) and 1.704-1(b)(4)(i) of the Regulations, income, gain, loss and deduction with respect to any property contributed to the capital of the Company or property revalued on the Company’s books and in the Capital Accounts shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value. Such allocations will be made in accordance with the traditional method under Section 1.704-3(b) of the Regulations.

(c) Limitation on Loss Allocation. Notwithstanding the other provisions of **Section 4.1**, if the amount of Loss that would otherwise be allocated to a Member in any fiscal year under **Section 4.1** would cause or increase a Member’s Adjusted Capital Account Deficit as of the last day of such fiscal year, then a proportionate part of such Loss equal to such excess shall be allocated to the other Members to the extent such allocation can be made without violating the provisions of this **Section 4.1.2(c)** with respect to such other Members.

(d) Qualified Income Offset. Notwithstanding any provision hereof to the contrary, if a Member unexpectedly receives in any fiscal year any adjustment, allocation or distribution described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and if a Member has an Adjusted Capital Account Deficit as of the last day of such fiscal year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income and gain) for such fiscal year (and, if necessary, for subsequent fiscal years) shall be allocated to the Member in the amount and in the manner necessary to eliminate such Adjusted Capital Account Deficit as quickly as possible.

(e) Gross Income Allocation. Notwithstanding any provision hereof to the contrary, if a Member has an Adjusted Capital Account Deficit as of the last day of any fiscal year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income and gain, including gross income) for such fiscal year shall be allocated to such Member in the amount and in the manner necessary to eliminate such Adjusted Capital Account Deficit as quickly as possible.

(f) Minimum Gain Chargeback. Notwithstanding any provision hereof to the contrary, any item of Company income or gain for any fiscal year (or any portion of any such item) that is required to be allocated to the Members under Regulations Sections 1.704-2(f) or 1.704-2(i)(4) shall be allocated to the Members for such fiscal year in the manner so required by such Regulations, including Regulations Section 1.704-2(j)(2).

(g) Member Nonrecourse Deductions. Notwithstanding any provision hereof to the contrary, any item of Company loss, deduction or expenditure described in Section 705(a)(2)(B) of the Code for any fiscal year (or any portion of any such item) that is required to be allocated to the Members under Regulations Section 1.704-2(i)(1) shall be allocated to the Members for such fiscal year in the manner so required by such Regulation.

(h) Curative Allocations. The allocations set forth in subsections (c), through (g) of this **Section 4.1.2** (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Regulations. Notwithstanding any other provision of this **Article 4** other than the Regulatory Allocations, the Regulatory Allocations shall be taken into account in allocating Profits, Losses and items of Company income, gain, loss and deduction to the Members so that, to the extent possible, the net amount of such allocations of Profits, Losses and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

(i) Transfer of Units. If one or more Units are transferred during any fiscal year of the Company, the Company income or loss attributable to such Units for such fiscal year shall be allocated between the Transferor and the Transferee based on the percentage of the year each party was, according to the books and records of the Company, the owner of record of the Company interests transferred during that year.

(j) Special Allocation. If as a result of the issuance of additional Units pursuant to **Section 2.3.4** the ratio of each Member’s Capital Account to its number of Units is not the same as such ratio for each other Member, Profits and Losses shall be specially allocated to cause, as soon as possible and to the greatest extent possible, such ratio to be the same for each Member.

#### 4.1.3 General Rules.

(a) Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction for federal and state income tax purposes, and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Profits or Losses, as the case may be, for the year.

(b) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Managers using any permissible method under Code Section 706 and the Regulations thereunder, except as this Agreement specifically provides otherwise.

4.1.4 Power of Managers to Vary Allocations of Profits and Losses. It is the intent of the Members that each Member’s allocable share of Profits and Losses shall be determined and allocated in accordance with the provisions of this **Section 4.1** to the fullest extent permitted by Section 704(b) of the Code, or its statutory successor. However, if the Company is advised that the allocations provided in this **Section 4.1** will not be respected for Federal income tax purposes, the allocation provisions of this Agreement shall be amended, on

advice of accountants or legal counsel, in the manner and to the extent in the best interest and consistent with the economic sharing of the Members, but in no event shall such reallocation be greater than the minimum reallocation necessary so that the allocation in this **Section 4.1** will be respected for Federal income tax purposes.

## **4.2 Distributions.**

4.2.1 Cash Flow. The Company's Cash Flow and other available assets may be distributed, retained, or reinvested as determined by the Managers. Distributions of Cash Flow shall not be made more frequently than quarterly and shall be supported, in each instance, by a finding by the Managers that the Company will have adequate cash after payment of such distributions to fund anticipated future cash needs. All distributions of cash and assets, other than distributions made in connection with the liquidation or dissolution of the Company pursuant to **Section 1.4.2** or to the special distribution pursuant to **Section 4.2.7**, shall be made to the Members pro-rata in accordance with their respective Units, except as may otherwise be required by **Section 4.2.3**.

4.2.2 Distribution Among Members. If any Units are sold, assigned or transferred during any accounting period, all distributions on or before the date of such Transfer will be made to the Transferor, and all distributions after such date will be made to the Transferee.

4.2.3 Amounts Withheld. The Company is authorized to withhold from payments, distributions or allocations to the Members, and to pay over to any federal, state, local or foreign government, any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state, local or foreign law (any such amount, a "**Withholding Payment**"). All Withholding Payments arising because of a Member's status or tax liability, arising as a result of a Member's interest in the Company, or otherwise specifically attributable to a Member, as reasonably determined by the Managers, shall be treated as amounts paid or distributed, as the case may be, to such Members, and to avoid making distributions not in accordance with this Agreement, the Act or the Code, the Managers may determine that any Withholding Payment shall be treated as a loan from the Company to the applicable Member payable upon demand and bearing interest at 8% per year. Any "imputed underpayment amount" within the meaning of Section 6225 of the Code (as amended by the Bipartisan Budget Act of 2015) paid or payable by the Company as a result of an adjustment with respect to any Company item, including any interest or penalties with respect to any such adjustment (collectively, an "**Imputed Underpayment Amount**"), shall be treated as if it were paid by the Company as a Withholding Payment with respect to the appropriate Members pursuant to this **Section 4.2.3**, and the Managers shall determine in their discretion the portion of an Imputed Underpayment Amount attributable to each Member or former Member. Imputed Underpayment Amounts treated as Withholding Payments also shall include any imputed underpayment within the meaning of Section 6225 of the Code paid or payable by any entity treated as a partnership for U.S. federal income tax purposes in which the Company holds or has held a direct or indirect interest to the extent that the Company bears the economic burden of such amounts, whether by law or agreement. The Managers shall be entitled to make such adjustments to allocations and distributions hereunder as they may deem necessary or advisable in connection with the provisions of this **Section 4.2.3**.

4.2.4 Proceeds Available Upon Dissolution. Upon the dissolution and winding up of the Company, subject to (a) the requirements of **Section 1.4.2**, (b) the payment of all liabilities of the Company, including any debts owed to a Member, and (c) the establishment of such reserves as the Managers reasonably deem necessary for any contingent or unforeseen liabilities or obligations, the proceeds from such liquidation will be distributed, as expeditiously as possible, then to the Members pro-rata according to their ownership of Units.

4.2.5 In Kind Distributions. If any assets of the Company are distributed in kind, such assets will be distributed to Members entitled to such distribution as tenants-in-common in the same proportions as such Members would have been entitled to cash distributions.

4.2.6 Limitation Upon Distributions. No distributions shall be made at any time (i) when the Company has past due accounts payable that are owing to any Person or (ii) when the Company has loans that are outstanding to any Person, except to the extent such loans are outstanding pursuant to a written loan agreement, and then only to the extent permitted by such written loan agreement. No distribution shall be made to Members if such distribution would be prohibited by the Delaware Act.

4.2.7 Special Distribution. Following the Capital Contributions made concurrently with the execution and delivery of this Agreement pursuant to the Contribution Agreement (as described in **Section 2.3.1**), the Company shall make a special distribution of \$8,250,000 to PeaceHealth in cash, by wire transfer of immediately available funds to an account designated by PeaceHealth.

## **5. ENTRANCE AND EXIT**

### **5.1 Transfer of Interests.**

5.1.1 Restriction on Transfers. Except as expressly permitted by this **Article 5**, no Member may Transfer all or any portion of such Member's Units. Except as may be otherwise specified herein, the restrictions, terms and conditions of this Agreement shall remain in effect as to all Units Beneficially Owned now or in the future by a Member, whether or not disposed of in accordance with the terms and conditions of this Agreement and whether or not such Units are in the hands of a Member or an Economic Interest Owner. A Member ceases to be a Member and to have the power to exercise any rights or powers of a Member upon Transfer of all of such Member's Units other than rights intended to survive termination by their terms, including, but not limited to, **Section 3.4**.

5.1.2 Permitted Transfers. Subject to the restrictions set forth in **Section 5.1.3**:

(a) So long as the Joinder Requirements are met, a Member may Transfer all or a part of its Units with the prior written approval of a Super-Majority in Interest of the Members. Such written approval may specify the rights and obligations the Transferee shall have, including whether the Transferee is to be admitted as a Member or is to become an Economic Interest Owner. In addition, if a Transferor pursuant to this **Section 5.1.2(a)**, other than Fresenius Entity or any of its Affiliates, who has not previously executed and delivered a Joinder and Noncompetition Agreement will no longer own any direct or indirect interest in

Units after such Transfer, then as a condition to the permissibility of such Transfer, each such Transferor shall deliver to the Company an original, executed Noncompetition Agreement, pursuant to which such Transferor agrees to be bound by the terms thereof.

(b) A Member may Transfer all or part of its Units to another Member or another Member's Affiliate at any time upon delivering a notice to the Company, together with (i) a certification (in form and substance satisfactory to the non-Transferring Members) regarding the terms of the Transfer and compliance with law and current regulatory guidance on joint ventures and (ii) if a Transferor pursuant to this **Section 5.1.2(b)** is subject to the Joinder Requirements and such Transferor will no longer own any direct or indirect interest in Units after such Transfer, an original, executed Noncompetition Agreement, pursuant to which such Transferor agrees to be bound by the terms thereof.

(c) So long as the Joinder Requirements are met, a Member may Transfer all or a part of its Units to a wholly-owned Affiliate of such Member or, with the consent of the other Members, which consent shall not be unreasonably withheld, to a majority-owned Affiliate of such Member, at any time upon delivering a notice to the Company, together with a certification (in form and substance satisfactory to the non-Transferring Members) regarding the status of such Transferee as an Affiliate and the terms of the Transfer and compliance with law and current regulatory guidance on joint ventures. No further Transfer of Units shall be made by any such Affiliate except back to the Member who originally owned such Units or to another Affiliate of such original Member, or except in accordance with the other provisions of this **Article 5**.

(d) If a Member intends to Transfer all or a part of its Units pursuant to a bona fide and binding written offer ("**Offer**") and such Transfer is not otherwise permitted pursuant to **Sections 5.1.2(a), 5.1.2(b)** or **5.1.2(c)**, then the Transferor may Transfer such Units pursuant to such Offer but only after complying with the provisions of this **Section 5.1.2(d)**. The Member must first offer the Units proposed to be transferred to the other Members on substantially the same terms and conditions contained in the Offer and in accordance with the following provisions (it being understood that Economic Interest Owners shall have no purchase rights under this **Section 5.1.2(d)**):

(i) The Transferor shall give notice of its intent to Transfer ("**Notice of Transfer**") contemporaneously to the Company and the non-transferring Members. The Notice of Transfer must describe the Offer and the terms and conditions upon which the Transferor proposes to Transfer the Units (and contain a complete copy of the Offer). The non-transferring Members may elect to acquire their proportionate share of the Units in the Notice of Transfer by giving notice to the Company and the transferring Member within 30 days after receipt of the Notice of Transfer. The non-transferring Members who elect to exercise their purchase rights shall allocate such rights among themselves in the same proportion as their respective ownership of Units or as they may otherwise agree.

(ii) After such 30-day period, the Transferor shall provide written notice (the "**Remainder Notice**") to each non-transferring Member that elects to purchase its portion of the Units, which Remainder Notice shall specify the number of Units that the other non-transferring Members did not elect to purchase in accordance with subparagraph



5.1.2(d)(i) above. The non-transferring Members who elected to purchase their full portion of the Units shall then have five days after receipt of the Remainder Notice to elect to purchase all or any portion of the unpurchased Units by giving notice to the Company and the Transferor. If such Members together elect to purchase more than the unpurchased Units available, such unpurchased Units shall be allocated to such Members in proportion to their relative ownership of Units or as they may otherwise agree among themselves. If the non-transferring Members do not elect to purchase all, and not less than all, of the Units proposed to be transferred pursuant to the Notice of Transfer or Remainder Notice, then the Transferor is free to Transfer all of the Units proposed to be transferred to the third party Transferee on the terms and conditions originally proposed so long as the Joinder Requirements are met and Transferor provides to the Company (A) a certification (in form and substance satisfactory to the non-Transferring Members) regarding the terms of the Transfer and compliance with law and current regulatory guidance on joint ventures, and (B) if a Transferor pursuant to this **Section 5.1.2(d)** who has not previously executed and delivered a Joinder and Noncompetition Agreement, other than Fresenius Entity or any of its Affiliates, will no longer own any direct or indirect interest in Units after such Transfer, an original, executed Noncompetition Agreement, pursuant to which such Transferor agrees to be bound by the terms thereof. If the Transferor proposes to Transfer Units on other terms, or if more than 90 days have elapsed since the date of such Member's first Notice of Transfer, then such Member will be required to reoffer such Member's Units to the non-transferring Members in accordance with this **Section 5.1.2(d)**.

(iii) Any closing of the purchases contemplated by this **Section 5.1.2(d)** shall take place within 75 days after the date of the Notice of Transfer at a time and place selected by the purchasing Members.

(iv) If any consideration to be received by the Transferor for its Units is property other than cash, then the price for the Units shall be measured to that extent by the fair market value of such non-cash consideration. For purposes of this **Section 5.1.2(d)**, "**fair market value**" of any non-cash consideration offered for Units means the sum of (A) the fair market value of such non-cash consideration in the usual sense of that term, plus (B) the value of any special benefits to the Transferor of such non-cash consideration to the extent such benefits can be reasonably identified and valued, plus (C) the amount of any additional expense or cost (including additional taxes) that would have been incurred by the Transferor in accepting cash instead of such non-cash consideration, in each case without duplication and based upon a valuation of such non-cash consideration, special benefits, expense or cost agreed by the Transferor and the Members electing to purchase or by an appraiser selected by the Company.

(e) If, at any time prior to the Transfer of any Units pursuant to this **Section 5.1.2**, Fresenius Entity is required or permitted to purchase those same Units pursuant to **Section 5.4**, **5.5** or **5.7**, or if any Member exercises its right to purchase those same Units pursuant to **Section 5.6**, the provisions of **Section 5.4**, **5.5**, **5.6** or **5.7**, as applicable, shall govern the Transfer of such Units and this **Section 5.1.2** shall cease to apply to the Transfer of such Units.

5.1.3 Prohibited Transfers. Notwithstanding any provision of this Agreement to the contrary, unless the provisions of this **Section 5.1.3** are waived by a Super-Majority in Interest of the Members, no Units may be Transferred if the Transfer is not registered under

applicable federal and state securities laws and regulations, unless the Company is furnished with an opinion of counsel, at the Transferor's expense, satisfactory to the Managers, that such registration is not required. To satisfy the requirements in the preceding sentence, the Company may require the Transferee to execute and deliver an investor certificate containing customary financial information, representations and warranties necessary to satisfy such requirements. In addition, no Transfer shall be effective unless the Joinder Requirements are met and the Transferor has delivered to the Company (a) a certification (in form and substance satisfactory to the non-Transferring Members) regarding the terms of the Transfer and compliance with law and current regulatory guidance on joint ventures and (b) if such Transferor, other than Fresenius Entity or any of its Affiliates, who has not previously executed and delivered a Joinder and Noncompetition Agreement will no longer own any direct or indirect interest in Units after such Transfer, an original, executed Noncompetition Agreement, pursuant to which such Transferor agrees to be bound by the terms thereof (except that a Transferor pursuant to **Section 5.1.2(c)** shall not be required to do so). In the event that, pursuant to the terms of any loan agreement, promissory note, or other agreement existing at any time between the Company and any lender, the approval of such lender is required prior to the time that any Transfer of any Units may occur, then, notwithstanding any provision of this **Article 5** to the contrary, no Transfer of any Units shall be permitted until all required approvals and consents of any such lender have been obtained. In addition, and notwithstanding anything herein to the contrary, no Member may Transfer any interest in the Company to (i) any nonresident alien individual or any foreign partnership within the meaning of Section 1441(a) of the Code, (ii) any foreign corporation within the meaning of Section 1442 of the Code, (iii) any foreign person within the meaning of Section 1445 of the Code, or (iv) any foreign partner within the meaning of Section 1446 of the Code.

#### 5.1.4 Effect of Unpermitted Transfers.

(a) Any purported Transfer of Units that is not a Permitted Transfer shall be null and void *ab initio* and of no effect whatsoever and shall constitute a breach of this Agreement for which the Company and other Members have the remedies provided hereunder in addition to all other legal and equitable remedies available at law; provided, however, that if the Company is required by law to recognize a Transfer that is not a Permitted Transfer, then (i) the Transferor shall be in breach hereof, (ii) if the Transferor, other than Fresenius Entity or any of its Affiliates, will no longer own any interest in Units after such Transfer, such Transferor shall be bound by the Noncompetition Agreement as of the effective date of Transfer and, if such Transferor has not previously executed and delivered the Joinder and Noncompetition Agreement, shall execute and deliver to the Company an original, executed Noncompetition Agreement dated as of the effective date of Transfer, pursuant to which such Transferor confirms its agreement to be bound by the terms thereof, (iii) the interest transferred is strictly limited to the Transferor's Economic Interest with respect to the transferred Units, and (iv) any allocations and distributions of such Economic Interest Owner and any purchase price payable under **Section 5.4** may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the Transferor or Transferee of such interest may have to the Company.

(b) In the event of a Transfer or an attempted Transfer of Units that is not a Permitted Transfer, including any Transfer that the Company is required by law to

recognize notwithstanding the restrictions herein, the Company has the rights described in **Section 5.4**, in addition to all other remedies in law or in equity.

(c) In the case of a Transfer or attempted Transfer of Units that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer must indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and lawyers' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce this Agreement, including without limitation this **Section 5.1.4**.

5.1.5 Rights of Unadmitted Assignees. A Person who acquires one or more Units but who is not admitted as a substituted Member pursuant to **Section 5.1.6** is entitled to become only an Economic Interest Owner with respect to such Units, with a right to allocations and distributions with respect to such interests in accordance with this Agreement, and otherwise shall be subject to the provisions of this Agreement as an Economic Interest Owner. Such an Economic Interest Owner has no right to any information or accounting of the affairs of the Company, is not entitled to inspect the books or records of the Company, and does not have any of the voting rights, rights to participate in the management of the Company or other rights of a Member under the Delaware Act or this Agreement.

5.1.6 Admission of Interest Holders as Members. Subject to the other provisions of this **Section 5.1**, a Transferee of Units may be admitted to the Company as a substituted Member only upon satisfaction of the following conditions:

(a) The Units with respect to which the Transferee is being admitted were acquired by means of a Permitted Transfer;

(b) The Transferee becomes a party to this Agreement as a Member and executes such documents and instruments (including becoming a party to any existing reimbursement or guaranty agreements) as the Managers deem necessary or appropriate to confirm such Transferee as a Member and such Transferee's agreement to be bound by the terms and conditions of this Agreement;

(c) The Joinder Requirements are met;

(d) The Transferee pays or reimburses the Company for all reasonable legal, filing and publication costs that the Company incurs in connection with the admission of the Transferee as a Member with respect to the transferred Units;

(e) If the Transferee is not a natural person, the Transferee provides the Company with evidence satisfactory to counsel for the Company of the authority of the Transferee to become a Member and to be bound by the terms and conditions of this Agreement; and

(f) A Super-Majority in Interest of the Members consent to the admission of the Transferee as a new Member; provided that all Members hereby consent to the admission of any Member with regard to any Units acquired in accordance with **Section 5.1.2(b)**

and to the admission of any Affiliate of a Member who acquires Units in accordance with **Section 5.1.2(c)**.

**5.2 Additional Members.** After the date of this Agreement, any Person may become a Member only in a transaction structured as a Permitted Transfer of Units or any portion thereof, subject to the terms and conditions of this Agreement, or by admission with the consent of a Super-Majority in Interest of the Members. No new Member shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Managers may, at their option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Code Section 706(d).

**5.3 No Resignation Permitted.** Except as may be otherwise provided in this Agreement, a Member may not resign from the Company unless the resignation is approved by the non-resigning Members holding 75% of the Units held by them. To the fullest extent permitted by law, any attempted voluntary resignation that is not permitted hereunder shall be null and void *ab initio* and of no effect whatsoever and shall constitute a breach of this Agreement for which the Company and other Members have the remedies provided hereunder and under applicable law. Upon any attempted resignation that is not permitted hereunder, the non-resigning Members shall have the option to elect that the Member attempting such resignation shall cease to be a Member of the Company and shall become an Economic Interest Owner. The Member thus becoming an Economic Interest Owner shall remain obligated to make any Capital Contributions required pursuant to **Section 2.3** and to provide member guarantees pursuant to **Section 2.4.3** that would have been required if such Member had remained a Member. In the event of any attempted resignation that is not permitted hereunder, the Company has the rights described in **Section 5.4**, in addition to all other remedies in law or in equity.

**5.4 Purchase Right Upon Cessation Event.**

**5.4.1 Purchase Right.** Upon the occurrence of a Cessation Event with regard to a Member, the Company shall have the right, but not the obligation, to purchase the Units that were held by such Person and any Units that were transferred by such Member to an Affiliate pursuant to **Section 5.1.2(c)** (collectively, the "**Cessation Person**"). The Company may exercise its right to purchase at any time after the occurrence of the Cessation Event by giving written notice to the Cessation Person and must exercise such right to purchase within 90 days after the Company's receipt of a written notice from the Cessation Person stating that a Cessation Event has occurred and describing the Company's rights under this Section. Upon exercise, the Cessation Person must sell its Units to the Company. The approval of the Managers and a Majority in Interest of the Members (excluding those Units held by the Cessation Person and its Affiliates) shall be required to authorize the Company's exercise of its option pursuant to this **Section 5.4**. If the Company does not elect to exercise its right to purchase within 90 days, then Fresenius Entity (if it is still a Member) shall have the right to purchase the Units. Fresenius Entity may exercise its right to purchase at any time after the occurrence of the Cessation Event by giving written notice to the Cessation Person and must exercise such right to purchase within 30 days after the expiration of the Company's 90-day election period. Upon exercise, the

Cessation Person must sell its Units to Fresenius Entity. The purchase price for the Cessation Person's Units shall be their Fair Market Value as of the date on which the Cessation Event occurred and the purchase shall close within 30 days after the Fair Market Value of such Units is finally determined. Upon election of a purchase right hereunder and at such closing, the Cessation Person shall assign and transfer such Units to the Company or Fresenius Entity, as the case may be, free and clear of all liens, encumbrances and adverse claims; and (except in the case of death of the Cessation Person), each Cessation Person, other than Fresenius Entity or any of its Affiliates, shall execute and deliver to the Company the Noncompetition Agreement and, if any Transferors constituting direct or indirect owners of the Cessation Person, other than Fresenius Entity or any of its Affiliates, have not previously executed and delivered the Joinder and Noncompetition Agreement, each shall execute and deliver to the Company an original, executed Noncompetition Agreement dated as of the effective date of Transfer, pursuant to which each Transferor confirms such Transferor's agreement to be bound by the terms thereof. If neither the Company nor Fresenius Entity timely elects to exercise its right to purchase hereunder, the Units shall be retained by the Cessation Person. Any Transfer of Units pursuant to this **Section 5.4** shall be exempt from the provisions of **Section 5.1.2(d)**. The purchase rights provided in this **Section 5.4** are in addition to any and all other remedies available at law or in equity upon a breach of a party's obligations hereunder.

**5.4.2 Payment of Purchase Price.** If the Cessation Event triggering a purchase of Units pursuant to this **Section 5.4** is the death of the Cessation Person, the purchase price shall be paid in full in cash at closing. In all other events, the purchase price for a Cessation Person's Units hereunder may be paid in equal quarterly installments (including principal and interest) over a five-year period (unless a shorter period is agreed by all Managers). In no event, however, will the sum of the quarterly payments be in excess of 25% of the Company's Cash Flow for such quarter after considering distributions and any other redemption payments the Company is obligated to make, or any reserve created therefor (the "**25% Limitation**"). In the event the 25% Limitation is triggered, the applicable payment period shall be extended by the shortest period possible without violating the 25% Limitation. Interest will accrue on the unpaid balance of the purchase price for the period outstanding at the Applicable Federal Rate in effect on the date of the Cessation Event.

**5.5 Legal Event Purchase Option.** If any Member exercises its Legal Event Purchase Option pursuant to **Section 7.2.2**, it shall purchase Units held by the other Members to the extent so provided in **Section 7.2.2**. Any Transfer of Units pursuant to this **Section 5.5** shall be exempt from the provisions of **Section 5.1.2(d)**.

**5.6 Purchase Option Upon Termination of Affiliate Arrangement.** If any Affiliate Arrangement shall terminate for any reason, or shall not be renewed, then Fresenius Entity (if it is then a Member) and the other Members shall either exercise a purchase option (the "**Purchase Option**") or the Company shall be liquidated, in each case as set forth in this **Section 5.6**.

**5.6.1** Fresenius Entity (if it is then a Member) shall have the first option to purchase all, but not less than all, of the Units held by the other Members for the Fair Market Value of such Units as of the date on which the notice of exercise is given. If Fresenius Entity is then a Member, it may give such notice at any time from the date of termination of such Affiliate

Arrangement to a date 60 days subsequent thereto. Fresenius Entity may exercise the Purchase Option by giving the other Members and Economic Interest Owners notice of such exercise. Fresenius Entity shall purchase the Units within 30 days after the Fair Market Value of such Units is finally determined. The closing of the purchase and sale shall occur at a time and place selected by Fresenius Entity, and the purchase price shall be paid in full in cash at closing. At such closing, each Member shall assign and transfer its Units to Fresenius Entity free and clear of all liens, encumbrances and adverse claims, each Transferor pursuant to this **Section 5.6.1** shall be bound by the Noncompetition Agreement as of the effective date of Transfer and, if such Transferor has not previously executed and delivered the Joinder and Noncompetition Agreement, shall execute and deliver to the Company an original, executed Noncompetition Agreement dated as of the effective date of Transfer, pursuant to which each such Transferor confirms its agreement to be bound by the terms thereof. Any Transfer of Units pursuant to this **Section 5.6.1** shall be exempt from the provisions of **Section 5.1.2(d)**.

5.6.2 If Fresenius Entity does not exercise its Purchase Option pursuant to **Section 5.6.1**, then the other Members shall have a second option to purchase all, but not less than all, of the Units held by Fresenius Entity for the Fair Market Value of such Units as of the date on which the notice of exercise is given. The other Members may give such notice at any time from the date 60 days subsequent to the termination of such Affiliate Arrangement to a date 90 days subsequent to the termination of such Affiliate Arrangement. The other Members shall be entitled to purchase Units pro rata in accordance with their respective Units ownership and may exercise the Purchase Option by giving the other Members and Economic Interest Owners notice of such exercise. If one of the other Members fails to exercise the Purchase Option for the full amount of Units available to such other Member pro rata in accordance with its respective Unit ownership, then the remaining other Members must either exercise their Purchase Option such that all of Fresenius Entity's Units are purchased or the liquidation provisions of **Section 5.6.3** shall apply. The other Members shall purchase the Units within 30 days after the Fair Market Value of such Units is finally determined. The closing of the purchase and sale shall occur at a time and place selected by Fresenius Entity and the purchase price shall be paid in full in cash at closing. At such closing, Fresenius Entity shall assign and transfer its Units to each purchasing Member free and clear of all liens, encumbrances and adverse claims. Any Transfer of Units pursuant to this **Section 5.6.2** shall be exempt from the provisions of **Section 5.1.2(d)**.

5.6.3 If neither Fresenius Entity nor the other Members exercise the Purchase Option pursuant to **Section 5.6.1** or **Section 5.6.2**, respectively, then the Company shall be dissolved and its property and assets liquidated in accordance with **Section 1.4**.

**5.7 Tax Event Purchase Option.** If Fresenius Entity exercises its Tax Event Purchase Option pursuant to **Section 7.2.3**, it shall purchase Units held by Partner Entity to the extent so provided in **Section 7.2.3**. Any Transfer of Units pursuant to this **Section 5.7** shall be exempt from the provisions of **Section 5.1.2(d)**.

## **5.8 General Provisions.**

5.8.1 The failure of any Person to satisfy the obligation to close the purchase and sale of Units in accordance with this **Article 5** shall entitle the other parties to such transaction to specific performance of such obligations, in addition to all other equitable and

legal remedies available. For the purposes of this **Article 5**, “**Fresenius Entity**” includes any Affiliate of Fresenius Entity to whom Fresenius Entity has transferred its Units pursuant to **Section 5.1.2(c)**.

5.8.2 If the seller in any transaction for the purchase and sale of Units pursuant to this **Article 5** is directly liable for any Company indebtedness (including as a Guarantor), the purchasers in such transaction shall, as a condition to the closing of such transaction, either obtain a release of the seller’s liability thereunder or provide an indemnity, reasonably satisfactory to the seller, of the seller’s liability thereunder.

5.8.3 Notwithstanding the Transfer of any Units pursuant to this **Article 5**, the seller in such transaction shall remain liable to the Company and the other Members for its capital contribution obligations outstanding as of the date of Transfer and shall remain liable for any claims the Company or any Member may have against such Person regarding such capital contribution obligations or the Company’s operations, except to the extent such liabilities are expressly assumed by the purchasers of the Transferor’s Units with the consent of the other Members. Any such claimant shall have the right and option to require the purchasers of Units in such transaction to pay to such claimant any amounts otherwise payable to the Transferor pursuant to this **Article 5** to satisfy any such liabilities. If the amount of any such liabilities are in dispute, the amount of the purchase price claimed by the claimant as an offset against such liabilities shall be maintained in an escrow account bearing interest at the Applicable Federal Rate and managed by a national bank selected by the Managers until all such amounts have been agreed by the seller and the claimants or finally determined by a court of competent jurisdiction. Interest accruing on the amounts escrowed shall be paid to the seller and the claimants in the same proportion and at the same time as the offset amounts held in escrow are paid out following the final determination of the amount of such liabilities in dispute.

5.8.4 The Members intend that Sections 9-406 and 9-408 of the Uniform Commercial Code shall not apply to the Units, in accordance with Section 18-1101(g) of the Delaware Act. If the Uniform Commercial Code of any jurisdiction other than Delaware is held by a court of competent jurisdiction to apply to the Units, the Units shall be treated as securities covered by Title 6, Article 8 of the Delaware Code (but the designation of the Units as securities for purposes of such law does not mean that they are securities for any other purposes).

## **6. REPRESENTATIONS AND COVENANTS**

**6.1 Investment Representations.** Each Member warrants and represents to, and covenants with, the Company and the other Members and Managers as follows:

(a) If the Member is a natural person, the Member is 21 years of age or older and is either a U.S. citizen or is lawfully admitted to the United States for permanent residence.

(b) If the Member is a corporation, trust, partnership, limited liability company or other entity, it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation (which jurisdiction is located in the United States), it has the power and authority to own its property and carry on its business as

presently conducted, and it is duly qualified to do business and is in good standing in each of the jurisdictions in which the nature of its business so requires or in which it is required for the performance of its obligations under such documents.

(c) The Member acknowledges that, prior to executing this Agreement, it had the opportunity to ask questions of and receive answers from a representative of the Company concerning the financial and other affairs of the Company. Except as may be expressly provided herein, no Member, Manager or its Affiliate has made any representations, and no Member or Manager has relied on any representations made by any other Member, Manager or its Affiliate, in each case, regarding the Company's business, its assets, financial condition or prospects. The Member has been furnished any and all materials that it has requested relating to the Company and the proposed investment therein, and the Member has been afforded the opportunity to obtain any additional information necessary to verify the accuracy of any such information. The Company has satisfactorily answered all inquiries that the Member has made of it concerning the Company and the offering of Units.

(d) The Member acknowledges that its investment in the Company will be governed by the terms of this Agreement, which supersede any summary or description included in any other documentation provided to the Member, including, without limitation, the letter of intent and term sheet.

(e) The Member is an "**accredited investor**" as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended (the "**1933 Act**").

(f) The Member has its principal place of business in the state or territory or other jurisdiction identified in the address set forth on **Exhibit A** and the offer of Units was made to the Member in such state, territory or other jurisdiction.

(g) The Member will acquire Units for its own account and not with an intent to resell or distribute all or any part of such Units, and the Member agrees that the Member will not resell, distribute or otherwise dispose of all or any part of the Units except in compliance with the terms of this Agreement and as permitted by law, including without limitation the 1933 Act.

(h) The Member acknowledges that the offering of Units is being made pursuant to exemptions from the registration requirements of the 1933 Act (including, without limitation, Section 4(a)(2) of the 1933 Act) and applicable state securities laws and that, consequently, no materials relating to the offering have been filed with or reviewed by the Securities and Exchange Commission, the Financial Industry Regulatory Authority or any state securities regulatory agency, and neither the Securities Exchange Commission, the Financial Industry Regulatory Authority nor any state securities regulatory agency has approved or disapproved of the Units or determined if any materials relating to the offering are truthful or complete. The Member acknowledges that the Company will not register the issuance of the Units under the 1933 Act or any applicable state securities laws in reliance upon such exemptions, and that the Company relies upon these exemptions, in part, because of the Member's representations, warranties and agreements contained in this Agreement.



(i) The Member understands that, in addition to the restrictions on transfer of the Units contained in this Agreement, the Member must bear the economic risks of its investment for an indefinite period of time because the Units have not been registered under the 1933 Act and therefore may not be sold or otherwise transferred unless they are registered under the 1933 Act or unless an exemption from such registration is available. The Member also understands that the Company does not intend to register the Units under the 1933 Act or to supply the information that may be necessary to enable the Member to sell its Units pursuant to Rule 144 under the 1933 Act.

(j) The Member has, and the Member had immediately prior to receipt of any offer regarding the Company, such knowledge and experience in financial and business matters as to be able to evaluate the merits and risks of an investment in the Company. The Member is familiar with the business in which the Company will be engaged and understands the nature of an investment in the Company and the risks associated with such an investment. The Member understands that there is no guarantee of any financial return on its investment in the Company and that the Member risks the loss of all capital invested.

(k) The Member is able now, and was able at the time of receipt of any offer regarding the Company, to bear the economic risks of its investment in the Company, including the complete loss of all capital invested.

**6.2 Partner Information.** Concurrently with the execution of the Agreement, each Member that is an accredited investor shall complete and deliver to the Company the accredited investor certificate attached hereto as **Exhibit C**.

**6.3 Enforceability; No Conflicts.** Each Member hereby represents and warrants to each other Member and the Company as follows:

(a) **Organization; Good Standing.** If the Member is a corporation, trust, limited liability company, partnership or other entity, it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization or formation and it has the power and authority to execute, deliver and perform its obligations under this Agreement.

(b) **Authority.** The Member has the full right, power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder and, if the Member is a corporation, trust, partnership or other entity, the execution, delivery, and performance of this Agreement has been duly authorized by all necessary action.

(c) **Enforceability.** This Agreement constitutes the legal, valid and binding obligation of the Member and is enforceable against the Member in accordance with its terms, except as enforceability may be limited by equitable principles or by bankruptcy, fraudulent conveyance or insolvency laws affecting the enforcement of creditors' rights generally.

(d) **No Conflicts.** Neither the Member's execution and delivery of this Agreement, the Member's consummation of the transactions contemplated hereby nor the compliance by the Member with any of the provisions hereof will constitute a breach, default or violation of the organizational documents of the Member (if an entity), any agreement or other

instrument or obligation to which the Member or its Affiliate is a party or is otherwise bound or applicable law.

#### **6.4 Partner Entity.**

6.4.1 Partner Entity represents and covenants to Fresenius Entity that it is a wholly-owned subsidiary of PeaceHealth, which is a participating provider under federal government and state health care programs, including but not limited to, Medicare and Medicaid, and that PeaceHealth (a) has not been nor is it presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) or any state healthcare programs; (b) has not within a three-year period preceding the effective date of this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public securities transaction or contract under a public securities transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in the preceding clause (b) or (d) has not within a three-year period preceding the effective date of this Agreement had one or more public securities transactions terminated for cause or default. Partner Entity shall promptly notify Fresenius Entity if PeaceHealth is excluded or suspended from such programs, if sanctions are imposed against PeaceHealth, or if any inquiry or investigation is commenced by any governmental agency or authority regarding any of the items or services provided by PeaceHealth.

6.4.2 Partner Entity further represents and covenants to Fresenius Entity and the Company that:

(a) No physician has any direct or indirect ownership in Partner Entity.

(b) No physician employed or retained by Partner Entity or its Affiliates receives, or will receive, compensation which varies based on the volume or value of such physician's referrals to the Company or other business generated between Partner Entity and the Company. Partner Entity further represents and covenants to Fresenius Entity and the Company that all physicians who are direct or indirect owners of Partner Entity shall comply with all state physician self-referral laws.

(c) Partner Entity is not subject, and during the term of this Agreement Partner Entity shall not become subject, to any noncompetition covenants or similar restrictions that would preclude its participation in the Company or would restrict the activities of the Company. Without limiting the generality of the foregoing, Partner Entity is not subject, and during the term of this Agreement Partner Entity shall not become subject, to any restrictions that would restrict or prohibit the Company from owning and developing new clinics in the Exclusive Territory or restrict or prohibit Partner Entity or its Affiliate from providing medical director services at any such new clinic.

(d) No payment or gift of money, goods, services or anything of value has been made, offered or promised, or will be made, offered or promised, directly, or indirectly through any third parties, by Partner Entity or any Person acting on Partner Entity's behalf, to any individual, including government officials, for favorable treatment in obtaining, retaining, or directing business for, or to obtain any special concession on behalf of, the Company or an Affiliate of the Company.

(e) Partner Entity is not, and to Partner Entity's knowledge, no Person acting on Partner Entity's behalf is, a government official, and if, at any time during the term of this Agreement, Partner Entity or any Person acting on Partner Entity's behalf becomes a government official, Partner Entity (i) will not use that position to influence the award of business or regulatory approvals or any special concession to or for the benefit of the Company or any Affiliate of the Company, (ii) will notify the Company in writing within three Business Days after such Person becomes a government official, and (iii) will recuse itself, or will cause such Person to recuse himself or herself, from any government decision relating to the Company or any Company Affiliate.

## **6.5 Fresenius Entity.**

6.5.1 Fresenius Entity represents and covenants to Partner Entity that it is a participating provider under federal government and state health care programs, including but not limited to, Medicare and Medicaid, and it (a) has not been nor is it presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) or any state healthcare programs; (b) has not within a three-year period preceding the effective date of this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public securities transaction or contract under a public securities transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in the preceding clause (b) or (d) has not within a three-year period preceding the effective date of this Agreement had one or more public securities transactions terminated for cause or default. Fresenius Entity shall promptly notify Partner Entity if it is excluded or suspended from such programs, if sanctions are imposed against it, or if any inquiry or investigation is commenced by any governmental agency or authority regarding any of the items or services provided by it.

6.5.2 Fresenius Entity further represents and covenants to Partner Entity and the Company that:

(a) No physician employed or retained by Fresenius Entity or its Affiliates receives, or will receive, compensation which varies based on the volume or value of such physician's referrals to the Company or other business generated between Fresenius Entity and the Company.

(b) Fresenius Entity is not subject, and during the term of this Agreement Fresenius Entity shall not become subject, to any noncompetition covenants or similar restrictions that would preclude its participation in the Company.

(c) No payment or gift of money, goods, services or anything of value has been made, offered or promised, or will be made, offered or promised, directly, or indirectly through any third parties, by Fresenius Entity or any Person acting on Fresenius Entity's behalf, to any individual, including government officials, for favorable treatment in obtaining, retaining, or directing business for, or to obtain any special concession on behalf of, the Company or an Affiliate of the Company.

(d) Fresenius Entity is not, and to Fresenius Entity's knowledge, no Person acting on Fresenius Entity's behalf is, a government official, and if, at any time during the term of this Agreement, Fresenius Entity or any Person acting on Fresenius Entity's behalf becomes a government official, Partner Entity will not use that position to influence the award of business or regulatory approvals or any special concession to or for the benefit of the Company or any Affiliate of the Company.

**6.6 No Inducement.** The Members agree that no part of this Agreement shall be construed to induce or encourage the referral of patients or the purchase of health care services or supplies. The Members acknowledge that there is no requirement under this Agreement or any other agreement between the Members that any Member or its Affiliates refer any patients to any health care provider or purchase any health care goods or services from any source. No payment made under this Agreement shall be construed to be in return for such a referral or purchase. Each Member agrees that (a) it will refrain from taking any actions to require or encourage any physicians that it is affiliated with, including without limitation physicians that are employees, independent contractors or medical staff members (collectively, "**Affiliated Physicians**"), to refer patients to any Facility, (b) it and its Affiliates will not track referrals made by Affiliated Physicians to any Facility and (c) it and its Affiliates will not compensate Affiliated Physicians, and will not allocate or otherwise apportion direct or indirect ownership interests in the Company among Affiliated Physicians, in a manner that is related, directly or indirectly, to the volume or value of referrals or other business generated by such physicians to or for any Facility. It is hereby acknowledged that Members in a position to refer patients may refer patients to any provider without limitation.

**6.7 Survival; Indemnity.** The representations, warranties and covenants set forth in this **Article 6** shall survive the execution and delivery, and any restatement or termination, of this Agreement, and the falsity of any representation made hereunder shall constitute a material breach hereof. Each Member shall indemnify and hold harmless the Company and the other Members against all actions, claims, demands and liabilities, and against all loss, damage, costs and expenses, including reasonable attorneys' fees, arising directly or indirectly, from any violation or breach of this **Article 6** by such Member.

## **7. DEFINITIONS AND MISCELLANEOUS**

**7.1 Definitions.** As used in this Agreement, the following terms shall have the following meanings:

“**1933 Act**” has the meaning set forth in **Section 6.1(e)**.

“**Accountants**” means any firm of independent certified public accountants engaged for the Company.

“**Adjusted Capital Account Deficit**” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Such Capital Account shall be increased to reflect the amounts, if any, which such Member is obligated to restore to the Company or is treated or deemed to be obligated to restore pursuant to Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1)(ii) and 1.704-2(i)(5);

(b) Such Capital Account shall be reduced to reflect any items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6);

(c) If such Adjusted Capital Account Deficit is being determined as of the last day of a fiscal year for purposes of **Section 4.1.2(c)**, then such Capital Account shall be adjusted to reflect the allocation to such Member of all amounts required to be allocated to such Member for such fiscal year under **Article 4** (other than **Section 4.1.1**);

(d) If such Adjusted Capital Account Deficit is being determined as of the last day of a fiscal year for purposes of **Section 4.1.2(e)**, then such Capital Account shall be adjusted to reflect the tentative allocation to such Member of all amounts that would be required to be allocated to such Member for such fiscal year if neither **Section 4.1.2(e)** nor **Section 4.1.2(d)** were a part of this Agreement; and

(e) If such Adjusted Capital Account Deficit is being determined as of the last day of a fiscal year for purposes of **Section 4.1.2(d)**, then such Capital Account shall be adjusted to reflect the tentative allocation to such Member of all amounts that would be required to be allocated to such Member for such fiscal year if **Section 4.1.2(d)** were not a part of this Agreement.

“**Administrative Services Agreement**” has the meaning set forth in **Section 2.5.4**.

“**Affiliate**” means, solely for purposes of **Sections 5.1.2(b)** and **5.1.2(c)**, any Person directly or indirectly controlling, controlled by or under common control with such Person through the ownership and control of 100% of the outstanding equity interests of a Person. For all purposes other than **Section 5.1.2(b)** and **5.1.2(c)** under this Agreement, the term “**Affiliate**” means (a) with regard to any Member who is an individual, such Member’s Family Members, a trust for the benefit of such Member or such Member’s Affiliates, or a corporation, partnership, limited liability company or other entity in which such Member or such Member’s Affiliates have an ownership interest or financial interest or business arrangement of any kind, and if such entity is a professional medical practice, including any physician employees of such entity and (b) with regard to any Member that is not an individual, (i) any Person directly or indirectly controlling, controlled by or under common control with such Member through

contract or through the ownership of 2% or more of the outstanding equity interests of a Person, (ii) any and all directors, managers, officers, partners, shareholders, members and physician employees of such Member and all settlors and trustees of any trust and (iii) any Family Member of any Person described in the foregoing clauses (i) and (ii).

**“Affiliate Arrangement”** means any of the agreements or arrangements pursuant to which Fresenius Entity or any of its Affiliates provides administrative management services, lab services and medical products to the Company or any Affiliate of Partner Entity provides medical director services to the Company.

**“Affiliate Transactions”** has the meaning set forth in **Section 2.5.1**.

**“Affiliated Physicians”** has the meaning set forth in **Section 6.6**.

**“Agreement”** has the meaning set forth in the first paragraph of this Agreement.

**“Applicable Federal Rate”** means, depending upon the initial payment period as described in the applicable section, the annual federal short term rate of interest or the annual federal mid-term rate of interest, as appropriate, described in Section 1274(d) of the Code.

**“Beneficially Own,” “Beneficial Owner” or “Beneficial Ownership”** has the meaning set forth in Rule 13d-3 under the Securities and Exchange Act of 1934, as amended.

**“Business Day”** means any day other than a Saturday or Sunday, a legal holiday or a day on which commercial banks in Boston, Massachusetts are authorized or required by law to be closed.

**“Capital Account”** means with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

(a) To each Member’s Capital Account there shall be credited such Member’s Capital Contributions, such Member’s distributive share of Profits and any items in the nature of income or gain that are specially allocated pursuant to **Section 4.1.2**, and the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member;

(b) To each Member’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Property distributed to such Member pursuant to any provision of this Agreement, such Member’s distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to **Section 4.1.2**, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company;

(c) Subject to the provisions of this Agreement, in the event any interest in the Company is transferred in accordance with the terms of this Agreement, the

Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the transferred interest; and

(d) In determining the amount of any liability for purposes of clauses (a) and (b) of this definition, the Person determining the capital account shall take Code Section 752(c) and any other applicable provisions of the Code and Regulations into account in making such determination.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. The Managers are empowered to make modifications to the manner in which Capital Accounts are computed if it is determined that such adjustments are necessary in order to comply with such Regulations, provided that such adjustments are not likely to have a material effect on the amounts distributable to a Member hereunder upon the dissolution of the Company in accordance with **Section 1.4**.

**“Capital Contributions”** means with respect to any Member, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company with respect to the Units held by such Member.

**“Cash Flow”** means all cash funds received by the Company from operations or otherwise (including interest received on reserves), without reduction for any non-cash charges, but less cash used to pay current operating expenses and to pay or establish reasonable reserves for working capital, contingent liabilities, future expenses, debt payments, capital improvements, replacements and other purposes as determined by the Managers. Cash Flow shall be increased by the reduction of any reserve previously established.

**“Certificate”** means the Certificate of Formation of the Company, duly filed with the Secretary of State of the State of Delaware.

**“Cessation Event,”** with regard to any Member, shall mean and include any one of the following: (a) any breach of this Agreement or the Contribution Agreement by such Member, including without limitation any failure to make a required Capital Contribution, any Transfer or attempted Transfer of Units that is not a Permitted Transfer and any attempted resignation by such Member that is not permitted hereby, (b) any breach of the provisions of **Section 3.1.8** by a Member or any of its Affiliates, (c) the death or dissolution of such Member or (d) the happening of any of the events set forth in Section 18-304 of the Delaware Act.

**“Cessation Person”** has the meaning set forth in **Section 5.4.1**.

**“Charitable Care Policies”** has the meaning set forth in **Section 1.3(d)(ii)**.

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

**“Company”** means Fresenius Kidney Care Longview, LLC, a limited liability company organized under the laws of the State of Delaware.

***“Company Representative”*** means the person designated by the Managers to act on behalf of the Company as the “partnership representative” within the meaning of that term in Code Section 6223(a) (as amended by the Bipartisan Budget Act of 2015) in administrative and judicial proceedings relating to the determination of Company items of income, deduction and credit, as well as pursuant to corresponding provisions of state and local tax rules. The initial Company Representative is Fresenius Entity.

***“Competitively Sensitive Information”*** means the terms of payor contracts including without limitation managed care contract rates, other pricing, payor and reimbursement information, strategic plans, market and marketing data and analysis, and business development plans but shall not include any reporting of clinical outcomes as well as any financial information that is included in standard financial reporting (e.g. income statement, balance sheet, accounts receivable reports, accounts payable reports and cash flow statement).

***“Contributed Assets”*** has the meaning assigned in the Contribution Agreement.

***“Contribution Agreement”*** has the meaning set forth in **Section 2.5.8**.

***“Delaware Act”*** or ***“Act”*** means the Delaware Limited Liability Company Act, as amended.

***“Depreciation”*** means, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managers, except as this Agreement specifically provides otherwise.

***“Economic Interest”*** means a Member’s or Economic Interest Owner’s share of the Company’s Profits, Losses and distributions pursuant to this Agreement and the Delaware Act.

***“Economic Interest Owner”*** means the owner of an Economic Interest who is not a Member.

***“Exclusive Territory”***

***“Facility”*** has the meaning set forth in **Section 1.3(a)**.

***“Fair Market Value”*** means (a) with respect to property, including the right to use property, the price at which the property or the right to use the property would



change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell or transfer the property or the right to use the property, and both having reasonable knowledge of the relevant facts, and without any assumption of any particular referrals from a particular source, (b) with respect to services, the amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances and (c) with respect to Units, the fair market value of the Units, which shall be determined as follows: Within ten days after the occurrence of an event giving rise to the determination of Fair Market Value of any Units, the selling Member (the “**Seller**”) and the purchaser, whether the Company or one or more other Members (collectively the “**Purchaser**”), shall negotiate in good faith regarding the fair market value of the Seller’s Units to be sold, which negotiations shall continue at reasonable intervals over at least 30 days. If the Seller and the Purchaser agree on the fair market value, then such agreed fair market value shall be the Fair Market Value for purposes of such transaction. Notwithstanding the foregoing, if the Seller and the Purchaser are unable to agree on such fair market value within 15 days after the event which requires that Fair Market Value be determined, then, at the election of either Seller or Purchaser, the Seller and the Purchaser shall mutually select an independent valuation expert reasonably experienced in valuing interests in businesses similar to that of the Company, and such expert shall determine the fair market value of the Units to be sold. If the parties are unable to agree on the selection of such an expert within ten days after an election to use an expert, then the Seller and the Purchaser shall each choose one such expert (and any failure to make such selection within five days shall be deemed an irrevocable waiver of the right to do so and the single expert appointed by the other Person shall make all determinations of the valuation experts hereunder), and the two experts so chosen will select a third expert, and the Fair Market Value will be (i) the fair market value determined by agreement of such experts or, (ii) if they do not agree, the average of the two valuations that, among all three valuations, are closest in amount to each other; provided, however, that if the high and low valuations are equidistant from the middle valuation the Fair Market Value will be the average of all three valuations; and provided further, if any expert provides a range of values, then the midpoint of such values will be used for purposes of this calculation. All valuations shall be made in a manner that does not take into account the volume or value of anticipated or actual referrals. If one expert determines the Fair Market Value as contemplated above, then the Seller shall pay one-half of the expenses of such determination, and the Purchaser shall pay one-half of such expenses. If three experts determine the Fair Market Value as contemplated above, then the Seller will pay the expenses of the expert selected by it and one-half of the expenses of the third expert, and the Purchaser will pay the expenses of the expert selected by it and one-half of the expenses of the third expert.

“**Family Member**” of any Person means such Person’s spouse, any issue, spouse of issue and any Affiliate of any such Person; provided, however, that any spouse living separate and apart from a Member with the intention by either spouse to cease their matrimonial cohabitation shall not be deemed a Family Member.

“**FMCNA**” means Fresenius Medical Care Holdings, Inc., a New York corporation d/b/a Fresenius Medical Care of North America.

“**Fresenius Entity**” means Renal Care Group Northwest, Inc., a Delaware corporation and an initial Member.

“**GAAP**” has the meaning set forth in **Section 1.5.2**.

“**Gross Asset Value**” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the Fair Market Value of such asset, as determined by the contributing Member and the Company;

(b) The Gross Asset Values of each item of Property shall be adjusted to equal its gross Fair Market Value, as determined by the Managers, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member either in exchange for more than a *de minimis* Capital Contribution or through the exercise of an option to acquire such interest; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Property; and (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that if Gross Asset Values are adjusted as provided herein the Member’s Capital Accounts shall be restated in accordance with Regulations Section 1.704-1(b)(2)(iv)(f) and that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Property distributed to any Member shall be its Fair Market Value on the date of distribution; and

(d) The Gross Asset Values of Property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Property pursuant to Code Section 734(b) or Code Section 743(b) but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (d) of this definition to the extent the Manager determines that an adjustment pursuant to clause (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to clause (d) of this definition.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to clauses (a), (b) or (d) of this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

“**Guarantor**” has the meaning set forth in **Section 2.4.3**.

“**Imputed Underpayment Amount**” has the meaning set forth in **Section 4.2.3**.

“**Joinder and Noncompetition Agreement**” means a joinder and noncompetition agreement in the form attached hereto as **Exhibit D**.

**“Joinder Requirements”** means, as to each Member other than Fresenius Entity or any of its Affiliates, the requirements that a Joinder and Noncompetition Agreement be executed and delivered by each Person who owns a direct or indirect interest in such Member and be in full force and effect as to each such Person, and that each such Person become a party to any existing reimbursement or guaranty agreements of the Company, as the Managers deem necessary or appropriate, by executing and delivering joinders to such reimbursement and guaranty agreements.

**“Lab Services Agreement”** has the meaning set forth in **Section 2.5.7**.

**“Lease Agreement”** has the meaning set forth in **Section 2.5.9**.

**“Legal Event”** has the meaning set forth in **Section 7.2.2**.

**“Legal Event Purchase Option”** has the meaning set forth in **Section 7.2.2**.

**“Longview Facility”** has the meaning set forth in **Section 1.3(a)**.

**“Majority in Interest of the Members”** means Members owning more than 50% of the then outstanding Units.

**“Managers”** means the Persons described in **Section 3.1.2**.

**“Medical Director Agreement”** has the meaning set forth in **Section 2.5.5**.

**“Member”** means a Person who signs a counterpart of this Agreement as a Member and whose name is set forth in the “Initial Members” section of **Exhibit A**, and each Person who may hereafter become a Member in accordance with the terms of this Agreement, in each case until such time as such Person ceases to be a Member as provided herein. Notwithstanding the foregoing, the term **“Member”** also means a Person holding an Economic Interest (regardless of whether such Person is a **“Member”** as described in the preceding sentence) when such term is used with respect to (a) allocations of Profits and Losses, distributions from the Company and Capital Accounts and Capital Contributions, (b) the provisions of **Section 2.6** and **Section 3.1.8**, (c) the restrictions on transfer contained in **Section 5.1** and the sale obligations set forth in **Sections 5.4** through **5.8** and **7.2.2(c)**, but in each case such Person shall not have any approval rights in connection therewith and (d) the obligations set forth in **Sections 6.4, 6.5, 6.6** and **6.7**.

**“New Audit Rules”** means the new partnership audit rules enacted under the Bipartisan Budget Act of 2015.

**“Noncompetition Agreement”** means a noncompetition agreement in the form attached hereto as **Exhibit E**.

**“Notice of Transfer”** has the meaning set forth in **Section 5.1.2(d)(i)**.

**“Noticing Party”** has the meaning set forth in **Section 7.2.2**.

**“Observer”** has the meaning set forth in **Section 3.1.3(b)**.

**“Offer”** has the meaning set forth in **Section 5.1.2(d)**.

**“Organizer”** has the meaning set forth in the Background Statement.

**“Partner Entity”** means Health Ventures, a Washington nonprofit corporation and an initial Member.

**“PeaceHealth”** means PeaceHealth, a Washington nonprofit corporation and an Affiliate of Partner Entity.

**“Permitted Transfer”** means a Transfer of Units in conformity with the provisions of **Section 5.1.2, 5.4, 5.5, 5.6 or 5.7**.

**“Person”** means any individual, partnership, corporation, trust, unincorporated association, joint venture, limited liability company or other entity or any government, governmental agency or political subdivision.

**“Personal Representative”** means the Person acting in a representative capacity as the executor or administrator of a Member’s estate or the duly appointed guardian of the property of a Member.

**“Product Supply Agreement”** has the meaning set forth in **Section 2.5.6**.

**“Profits”** and **“Losses”** means, for each fiscal year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition, shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to clauses (b) or (c) of that definition, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by

reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of Depreciation herein; and

(f) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to **Section 4.1.2** shall not be taken into account in computing Profits or Losses.

**“Property”** means all assets owned by the Company, including, without limitation, all real and personal property.

**“Purchase Option”** has the meaning set forth in **Section 5.6**.

**“Regulations”** means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such Regulations may be amended (including corresponding provisions of succeeding regulations).

**“Regulatory Allocations”** has the meaning set forth in **Section 4.1.2(h)**.

**“Remainder Notice”** has the meaning set forth in **Section 5.1.2(d)(ii)**.

**“Super-Majority in Interest of the Members”** means Members owning more than 80% of the then outstanding Units.

**“Tax Event”** has the meaning set forth in **Section 7.2.3(a)**.

**“Tax Event Purchase Option”** has the meaning set forth in **Section 7.2.3(c)**.

**“Transfer”** means (a) as a noun, the transfer of ownership by sale, exchange, assignment, gift, pledge, donation, grant or other transfer of any kind, whether voluntary or involuntary, including Transfers by operation of law or legal process, and hereby expressly includes, with respect to a Member or assignee, any voluntary or involuntary (i) appointment of a receiver, trustee, liquidator, custodian or other similar official for such Member or assignee of all or any part of the property of such Member or assignee under any bankruptcy or insolvency law, (ii) gift, donation, transfer by will or intestacy or other similar type of transfer or disposition, whether *inter vivos* or *mortis causa*, (iii) any voluntary, involuntary or other transfer or disposition to a spouse or former spouse (including by reason of a separation agreement or divorce, equitable or community or marital property distribution, judicial decree or other court order relating to the division or partition of property between spouses or former spouses or other persons) and (iv) as to any Member other than Fresenius Entity (and its Affiliates pursuant to **Section 5.1.2(c)**), any indirect Transfer in the form of any direct or indirect change of ownership of such Member or any grant of a proxy or any other right to any Person not a Member to direct or control the exercise of a Member’s rights under this

Agreement; and (b) as a verb, the act of making any Transfer. Notwithstanding the foregoing, a Transfer shall not include (i) the pledge of any Units to a lender to secure an obligation for borrowed money; however, except with regard to a lender described in clause (ii) of this sentence, any exercise by such lender of any rights to vote, take title to, or otherwise exercise rights with regard to the pledged Units shall constitute a Transfer and thus, shall trigger the rights to purchase such pledged Units pursuant to **Section 5.4** or (ii) the pledge and transfer of any Units to (A) a lender that is an Affiliate of a Member to secure an obligation for borrowed money and (B) any assignee of such lender's rights. A "**Transferor**" includes a Member or a direct or indirect owner of a Member who Transfers or proposes to Transfer Units directly or indirectly, and a "**Transferee**" is a Person who acquires any interest in a Unit.

"**Units**" means a Member's Unit of ownership in the Company, including such Member's right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement or the Delaware Act. Notwithstanding the foregoing, the term "**Unit**" also means an Economic Interest (regardless of whether such interest is a "Unit" as described in the preceding sentence) when such term is used with respect to (a) allocations of Profits and Losses, distributions from the Company and Capital Accounts and Capital Contributions, (b) the exclusivity provisions of **Section 3.1.8**, (c) the restrictions on transfer contained in **Section 5.1** and the sale obligations set forth in **Sections 5.4** through **5.7** and **7.2.2**, but in each case the owner of such Economic Interest shall not have any approval rights in connection therewith and (d) the obligations set forth in **Sections 6.4, 6.5, 6.6** and **6.7**. Each Member's initial ownership of Units is set forth on **Exhibit A** to this Agreement. To the extent the Members' ownership of Units changes and Members are added or resign, such changes will be reflected in the Company's books and records without the requirement of amending this Agreement.

"**Withholding Payment**" has the meaning set forth in **Section 4.2.3**.

## **7.2 Miscellaneous.**

7.2.1 Notices. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement must be in writing and signed by the party giving the same and are deemed given or made (a) three Business Days after being mailed by certified or registered mail, postage prepaid, (b) when hand delivered or (c) one day after being sent by overnight delivery service, in each case to the intended recipient as indicated on **Exhibit A** to this Agreement or to any other address of which prior written notice has been given.

### **7.2.2 Legal Events.**

(a) Legal Event; Consequences. The parties acknowledge that this Agreement has been negotiated and entered into to effect compliance with the provisions of the Medicare and Medicaid anti-kickback statute, 42 U.S.C. § 1320a-7b(b), and the Stark law, 42 U.S.C. § 1395nn, and all other applicable laws and regulations. Notwithstanding any other provision of this Agreement, if any law is adopted or amended, if any rule or regulation is published for public comment, promulgated or modified, if any administrative ruling,

administrative guidance, bulletin, alert or advisory opinion or any judicial interpretation in any jurisdiction is issued or modified, if any court or administrative tribunal in any jurisdiction issues any decision, judgment, order or interpretation or if any governmental agency having jurisdiction over any party to this Agreement imposes any requirement on such party (collectively or individually, “**Legal Event**”), which, in the reasonable judgment of one party (the “**Noticing Party**”), draws into question the terms of this Agreement in a manner that may materially and adversely affect the Company or a Member or its Affiliates’ licensure, or ability to refer, to accept any referral, to bill, to claim, to present a bill or claim, or to receive payment or reimbursement from any federal, state or local governmental or non-governmental payor or that may subject the Company or a Member or its Affiliate to a substantial risk of prosecution or civil monetary penalty, then the Noticing Party may give the other party notice of such Legal Event in accordance with the next subparagraph.

(b) Notice Requirements. The Noticing Party shall give notice to the other Members together with a description of the Legal Events and related information as follows:

- (i) The Legal Events giving rise to the notice;
- (ii) Documentation from legal counsel describing the Legal Event and the consequences or potential consequences of the Legal Events as to the Company or a Member or its Affiliates; and
- (iii) Either (A) the Noticing Party’s proposal to amend this Agreement, together with a description of the terms of such amendment and the purposes thereof, or (B) an opinion from legal counsel expressing its view that no amendment to this Agreement can reasonably avoid the material and adverse consequences of the Legal Events.

(c) Renegotiation Period; Purchase Options. Upon the giving of a notice pursuant to **Section 7.2.2(b)**, the parties shall proceed in good faith to attempt to amend this Agreement in accordance with the Noticing Party’s proposal, if any, or otherwise as the parties may agree. To the fullest extent possible, any such amendment shall preserve the responsibilities and duties and the underlying economic and financial arrangements among the Members and the Company with the least amount of changes to such parties’ expectations hereunder. If the parties do not execute and deliver an amendment for any or no reason within 15 Business Days after the effective date of the notice pursuant to **Section 7.2.2(b)**, then Fresenius Entity (if it is then a Member) and the other Members shall either exercise a purchase option (the “**Legal Event Purchase Option**”) or the Company shall be liquidated, in each case as set forth in this **Section 7.2.2**.

(d) Fresenius Entity Purchase Option. Fresenius Entity (if it is then a Member) shall have the first option to purchase all, but not less than all, of the Units held by the other Members for the Fair Market Value of such Units as of the date on which the notice of exercise is given. If Fresenius Entity is then a Member, it may give such notice at any time within 15 Business Days after the expiration of the 15-Business Day renegotiation period referred to in **Section 7.2.2(c)**. Fresenius Entity may exercise the Legal Event Purchase Option by giving the other Members and Economic Interest Owners notice of such exercise. Fresenius

Entity shall purchase the Units within 30 days after the Fair Market Value of such Units is finally determined. The closing of the purchase and sale shall occur at a time and place selected by Fresenius Entity, and the purchase price shall be paid in full in cash at closing. At such closing, each Member shall assign and transfer its Units to Fresenius Entity free and clear of all liens, encumbrances and adverse claims, each Transferor pursuant to this **Section 7.2.2** shall be bound by the Noncompetition Agreement as of the effective date of Transfer and, if such Transferor has not previously executed and delivered the Joinder and Noncompetition Agreement, shall execute and deliver to the Company an original, executed Noncompetition Agreement dated as of the effective date of Transfer, pursuant to which each such Transferor confirms its agreement to be bound by the terms thereof.

(e) Other Members Purchase Option. If Fresenius Entity does not exercise its Legal Event Purchase Option, then the other Members shall have a second option to purchase all, but not less than all, of the Units held by Fresenius Entity for the Fair Market Value of such Units as of the date on which the notice of exercise is given. The other Members may give such notice at any time within 15 Business Days after expiration of Fresenius Entity's Legal Event Purchase Option. The other Members shall be entitled to purchase Units pro rata in accordance with their respective Units ownership and may exercise the Legal Event Purchase Option by giving the other Members and Economic Interest Owners notice of such exercise. If one of the other Members fails to exercise the Legal Event Purchase Option for the full amount of Units available to such other Member pro rata in accordance with its respective Unit ownership, then the remaining other Members must either exercise their Legal Event Purchase Option such that all of Fresenius Entity's Units are purchased or the liquidation provisions of **Section 7.2.2(f)** shall apply. The other Members shall purchase the Units within 30 days after the Fair Market Value of such Units is finally determined. The closing of the purchase and sale shall occur at a time and place selected by Fresenius Entity and the purchase price shall be paid in full in cash at closing. At such closing, Fresenius Entity shall assign and transfer its Units to each purchasing Member free and clear of all liens, encumbrances and adverse claims.

(f) Liquidation. If neither Fresenius Entity nor the other Members exercise the Legal Event Purchase Option, then the Company shall be dissolved and its property and assets liquidated in accordance with **Section 1.4**.

(g) General. Any Transfer of Units pursuant to this **Section 7.2.2** shall be exempt from the provisions of **Section 5.1.2(d)**. All communications presented by the Noticing Party hereunder, and any communications given by the other Members in response, shall be deemed confidential and given solely for purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed so as to make any admission or waive any privileges otherwise applicable thereto. All opinions of counsel delivered in accordance with this Section shall be deemed confidential, given solely for the purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed so as to waive any privileges otherwise applicable.

### 7.2.3 Tax Event.

(a) Tax Event; Consequences. Notwithstanding any other provision of this Agreement to the contrary, if Partner Entity's (or any of its tax-exempt Affiliates') tax-



exempt status is challenged by a governmental authority as a result of its participation in the Company or in the event that Partner Entity obtains a legal opinion from a qualified tax attorney stating that (i) Partner Entity's (or any of its tax-exempt Affiliates') tax-exempt status will be jeopardized as a result of its continuing participation in the Company or (ii) the activities of the Company will generate unrelated business income tax for Partner Entity (each, a "**Tax Event**"), Partner Entity shall notify the other Members of such Tax Event.

(b) Notice Requirements. Partner Entity shall give notice to the other Members together with a description of the Tax Event and related information as follows:

- (i) The Tax Event giving rise to the notice;
- (ii) Documentation from legal counsel describing the Tax Event and the consequences or potential consequences of the Tax Event as to Partner Entity; and
- (iii) Either (A) Partner Entity's proposal to amend this Agreement or the operating agreement of the relevant subsidiary, together with a description of the terms of such amendment and the purposes thereof, or (B) an opinion from qualified legal counsel expressing its view that no amendment to this Agreement or the subsidiary operating agreement can reasonably avoid the material and adverse consequences of the Tax Event.

(c) Renegotiation Period; Purchase Options. Upon the giving of a notice pursuant to **Section 7.2.3(b)**, the parties shall proceed in good faith to attempt to amend this Agreement in accordance with Partner Entity's proposal, if any, or otherwise as the parties may agree. To the fullest extent possible, any such amendment shall preserve the responsibilities and duties and the underlying economic and financial arrangements among the Members and the Company with the least amount of changes to such parties' expectations hereunder. If the Members do not execute and deliver an amendment to this Agreement for any or no reason in each case within 15 Business Days after the effective date of the notice pursuant to **Section 7.2.3(b)**, and Partner Entity has received an opinion from qualified legal counsel that it is more likely than not that Partner Entity's tax-exempt status will be jeopardized, then Fresenius Entity (if it is then a Member) shall either exercise a purchase option (the "**Tax Event Purchase Option**") or the Company shall be liquidated, in each case as set forth in this **Section 7.2.3**.

(d) Fresenius Entity Purchase Option. Fresenius Entity (if it is then a Member) shall have the option to purchase all, but not less than all, of the Units held by Partner Entity for the Fair Market Value of such Units as of the date on which the notice of exercise is given. Fresenius Entity may give such notice at any time within 15 Business Days after the expiration of the 15-Business Day renegotiation period referred to in **Section 7.2.3(c)**. Fresenius Entity may exercise the Tax Event Purchase Option by giving the other Members and Economic Interest Owners notice of such exercise. Fresenius Entity shall purchase the Units within 30 days after the Fair Market Value of such Units is finally determined. The closing of the purchase and sale shall occur at a time and place selected by Fresenius Entity after consultation with Partner Entity, and the purchase price shall be paid in full in cash at closing. At such closing, Partner Entity and/or its Affiliate shall assign and transfer its Units to Fresenius Entity free and clear of all liens, encumbrances and adverse claims, Partner Entity, pursuant to this **Section 7.2.3**, shall be bound by the Noncompetition Agreement as of the effective date of Transfer and, if such

Transferor has not previously executed and delivered the Joinder and Noncompetition Agreement, shall execute and deliver to the Company an original, executed Noncompetition Agreement dated as of the effective date of Transfer, pursuant to which Partner Entity confirms its agreement to be bound by the terms thereof.

(e) Liquidation. If Fresenius Entity does not exercise the Tax Event Purchase Option, then the Company shall be dissolved and its property and assets liquidated in accordance with **Section 1.4**.

(f) Priority. Any Transfer of Units pursuant to this **Section 7.2.3** shall be exempt from the provisions of **Section 5.1.2**.

7.2.4 Severability; Reformation. In the event of the invalidity of any provision of this Agreement, such provision shall be deemed stricken from this Agreement, which will continue in full force and effect as if the invalid provision were never a part of this Agreement.

7.2.5 Captions. Captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or prescribe the scope of this Agreement or the intent of any provision.

7.2.6 Person and Gender. The masculine gender includes the feminine and neuter genders and the singular includes the plural.

7.2.7 Benefits and Burdens. The restrictions on assignment contained herein and the terms and provisions of this Agreement are binding upon, and inure to the benefit of, the successors, assigns, Personal Representatives, estates, heirs and legatees of Members.

7.2.8 Applicable Law. Notwithstanding the place where this Agreement may be executed by any of the parties, the parties expressly agree that all the terms and provisions of this Agreement are construed under and governed by the laws of the State of Delaware, without giving effect to conflict of laws principles. The United States District Court for the Western District of Washington shall have sole and exclusive jurisdiction over any lawsuit or other proceeding relating to or arising from this Agreement. If such court lacks federal subject matter jurisdiction, the parties agree that the courts in King County, Washington shall have sole and exclusive jurisdiction. Any of these courts shall be proper venue for any such lawsuit or judicial proceeding and the parties hereto waive any objection to such venue. The parties hereto consent to and agree to submit to the jurisdiction of, and agree to accept service of process to vest personal jurisdiction over them in, any of the courts specified herein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

7.2.9 Entire Agreement. This Agreement, together with its Exhibits, constitutes the entire agreement of the parties with respect to matters set forth in this Agreement and supersedes any prior understanding or agreement, oral or written, with respect to such matters, including without limitation that certain letter agreement dated June 21, 2018 (except for certain provisions that expressly survive the termination of the letter agreement) and any prior operating agreement of the Company.

7.2.10 Agreement in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

7.2.11 Amendment to Certificate. The Certificate may be amended only with the written consent of all of the Members.

7.2.12 Amendment to Agreement. This Agreement may not be modified, amended or supplemented except by a writing signed by the authorized officers of the parties hereto, and such writing must refer specifically to this Agreement.

7.2.13 Further Assurances. Each Member agrees to execute and deliver all such further instruments and do all such further acts as the Managers deem advisable to effectuate this Agreement.


7.2.14 Waivers. No term of this Agreement, and no breach of this Agreement, shall be waived, altered or modified except by written instrument signed by the party sought to be bound thereby. A waiver of any breach on any one occasion shall not constitute a waiver of any other or subsequent breach whether of like or different nature. No delay or failure by any party to insist upon the strict performance of any term of this Agreement, or to exercise any right or remedy available upon any breach of this Agreement, shall operate as a waiver thereof, and no single or partial exercise of any right or remedy under this Agreement shall preclude other or further exercise thereof or the exercise of any other right, power or privilege. No course of dealing between the parties shall be effective to change, modify or discharge any provision of this Agreement or to constitute a waiver of any default hereunder.

[signatures begin on next page]

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

**COMPANY:**

**FRESENIUS KIDNEY CARE LONGVIEW,  
LLC**

By:  \_\_\_\_\_  
Ryan M. Valle, a Manager

By: \_\_\_\_\_  
Daniel E. Fontoura, a Manager


[signatures continue on next pages]

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

**COMPANY:**

**FRESENIUS KIDNEY CARE LONGVIEW,  
LLC**

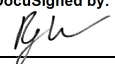
By: \_\_\_\_\_  
Ryan M. Valle, a Manager

By:  \_\_\_\_\_  
Daniel E. Fontoura, a Manager

[signatures continue on next pages]

**MEMBERS:**

**RENAL CARE GROUP NORTHWEST, INC.**

DocuSigned by:  
By:   
Name: Ryan M. Valle  
Title: Vice President

[signatures continue on next page]

**HEALTH VENTURES**

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

Name: Mike Dwyer

Title: President and CEO

# EXHIBIT A

## Member Information

As of September 1, 2019

Members' Names and Addresses	Contributed Assets Capital Account Credit	Initial Cash Capital Contribution for Units Purchased	Working Capital Contributions	Total Initial Capital Contributions	Units
INITIAL MEMBERS					
Renal Care Group Northwest, Inc., a Delaware corporation  Notice Information:  920 Winter Street Waltham, MA 02451 Attention: General Counsel  with a copy to:  Robinson, Bradshaw & Hinson, P.A. 101 North Tryon Street Suite 1900 Charlotte, NC 28246 Attention: Kent J. McCready					600
Health Ventures, a Washington nonprofit corporation  Notice Information:  1115 SE 164th Avenue Vancouver, WA 98683 Attention: Executive Vice President, Strategy and Community Health  with a copy to:  PeaceHealth Legal 1115 SE 164th Avenue Vancouver, WA 98683 Attention: EVP and General Counsel					400
ADDITIONAL MEMBERS					
None					

1



## **EXHIBIT B**

### **Initial Managers**

1. Fresenius Entity's designees:

Casey Stowell

Antoinette Ordish

Ryan Valle; to be replaced by Steve Nottingham, effective at 12:01 a.m. on September 21, 2019

2. Other Member designees:

Daniel E. Fontoura

Sean Jay Gregory

## EXHIBIT C

### ACCREDITED INVESTOR CERTIFICATE

The undersigned hereby certifies to Fresenius Kidney Care Longview, LLC (the “**Company**”) that as of \_\_\_\_\_, 20\_\_\_\_ (the “**Certification Date**”), one or more of the following categories of “**accredited investor**” (as defined in Rule 501(a) of Regulation D of the Securities Act of 1933, as amended (the “**Securities Act**”)) correctly and in all respects describes the undersigned, and the undersigned has indicated in the appropriate place which provisions below so describes it (check all that apply):

- \_\_\_\_ A natural person whose individual net worth, or joint net worth with such person’s spouse, is in excess of \$1,000,000. For purposes of this determination, (i) such person’s primary residence shall not be included as an asset; (ii) indebtedness that is secured by such person’s primary residence, up to the estimated fair market value of the primary residence as of the date hereof, shall not be included as a liability (except that if the amount of such indebtedness outstanding as of the date hereof exceeds the amount that was outstanding on the date 60 days prior to the date hereof, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and (iii) indebtedness that is secured by such person’s primary residence in excess of the estimated fair market value of the primary residence as of the date hereof shall be included as a liability.
- \_\_\_\_ A natural person who had an individual income in excess of \$200,000 or joint income with such person’s spouse in excess of \$300,000 in each of the last two calendar years and who reasonably expects to reach the same income level in the current calendar year.
- \_\_\_\_ A corporation, Massachusetts or similar business trust, partnership, limited liability company, or organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, not formed for the specific purpose of acquiring a membership interest in the Company, with total assets in excess of \$5,000,000.
- \_\_\_\_ A bank (as defined in Section 3(a)(2) of the Securities Act) or a savings and loan association or other institution (as defined in Section 3(a)(5)(A) of the Securities Act), whether acting in regard to this investment in its individual or a fiduciary capacity.
- \_\_\_\_ A broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934.
- \_\_\_\_ An insurance company (as defined in Section 2(a)(13) of the Securities Act).
- \_\_\_\_ An investment company registered under the Investment Company Act of 1940, as amended (the “**Investment Company Act**”).
- \_\_\_\_ A business development company (as defined in Section 2(a)(48) of the Investment Company Act).

- \_\_\_ A Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.
- \_\_\_ A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if the plan has total assets in excess of \$5,000,000.
- \_\_\_ An employee benefit plan (an “**ERISA Plan**”) within the meaning of Title I of Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), whose decision to purchase a membership interest in the Company was made by a plan fiduciary (as defined in Section 3(21) of ERISA) that is either a bank, savings and loan association, insurance company or registered investment adviser.
- \_\_\_ An ERISA Plan with total assets in excess of \$5,000,000.
- \_\_\_ A private business development company (as defined in Section 202(a)(22) of the Investment Advisers Act of 1940).
- \_\_\_ A trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring a membership interest in the Company, whose purchase of such membership interest is directed by a sophisticated person as described in Rule 506(b)(2)(ii) under the Securities Act.
- \_\_\_ An entity in which all of the equity owners fit into at least one of the categories above.

[certificate continues on following pages]

## Rule 506 Questions

For purposes of the questions below, capitalized terms used without definition have the respective meanings assigned to them in the Limited Liability Company Agreement of the Company (the “Agreement”) in connection with which this Certificate is being executed.

(i) if the undersigned is an individual and is completing this Certificate in his or her sole capacity as such, the term “Covered Person” means the undersigned;

(ii) if the undersigned is completing this Certificate on behalf of a Member of the Company other than Fresenius Entity, the term “Covered Person” means and includes the Member and any Manager initially designated by that Member pursuant to Section 3.1.2 of the Agreement; and

(iii) if the undersigned is completing this Certificate on behalf of Fresenius Entity, the term “Covered Person” means and includes Fresenius Entity, the Company, any predecessor issuer or affiliated issuer of the Company, any Manager initially designated by Fresenius Entity pursuant to Section 3.1.2 of the Agreement, any executive officer of the Company or any other officer participating in the offering of Units, any promoter connected with the Company at the time of offering or sale of Units or any person that has or will be paid (directly or indirectly) remuneration for soliciting purchasers in connection with the sale of Units.

1. Within ten years prior to the Certification Date, has a Covered Person been convicted of any felony or misdemeanor: (a) in connection with the purchase or sale of any security; (b) involving the making of any false filing with the Securities and Exchange Commission (the “SEC”); or (c) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment advisor or paid solicitor of purchasers of securities?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If yes, please provide dates and details on a separate sheet.**

2. Is a Covered Person, or has a Covered Person been, subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the Certification Date, restraining or enjoining such Covered Person from engaging or continuing to engage in any conduct or practice: (a) in connection with the purchase or sale of any security; (b) involving the making of any false filing with the SEC; or (c) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment advisor or paid solicitor of purchasers of securities?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If yes, please provide dates and details on a separate sheet.**

3. Is a Covered Person, or has a Covered Person been, subject to a final order of a state securities commission (or an agency of officer of a state performing like functions), a state authority that supervises or examines banks, savings associations, or credit unions, a state

insurance commission (or an agency or officer of a state performing like functions), an appropriate federal banking agency, the Commodity Futures Trading Commission, or the National Credit Union Administration that (a) bars such Covered Person from: (i) association with an entity regulated by such commission, authority, agency or officer; (ii) engaging in the business of securities, insurance or banking; or (iii) engaging in savings association or credit union activities; or (b) constitutes a final order based on a violation of any law or regulation prohibiting fraudulent, manipulative, or deceptive conduct entered within ten years prior to the Certification Date?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If yes, please provide dates and details on a separate sheet.**

4. Is a Covered Person, or has a Covered Person been, subject to an order of the SEC entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (the "Exchange Act") or section 203(e) or 203(f) of the Investment Advisers Act of 1940 (the "Advisers Act") that: (a) suspends or revokes such Covered Person's registration as a broker, dealer, municipal securities dealer or investment adviser; (b) places limitations on the activities, functions or operations of, or imposes or imposed civil money penalties on, such Covered Person; or (c) bars such Covered Person from being associated with any entity or from participating in the offering of any penny stock?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If yes, please provide dates and details on a separate sheet.**

5. Is a Covered Person, or has a Covered Person been, subject to any order of the SEC, entered within five years prior to the Certification Date, that orders such Covered Person to cease and desist from committing or causing a future violation of: (a) any scienter-based (generally, intent-based or recklessness-based) anti-fraud provision of the federal securities laws, including, but not limited to, Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 15(c)(1) of the Exchange Act and Section 206(1) of the Advisers Act or any other rule or regulation thereunder; or (b) Section 5 of the Securities Act?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If yes, please provide details and dates and details on a separate sheet.**

6. Is a Covered Person, or has a Covered Person been, suspended or expelled from membership in, or suspended or barred from association with a member of, a securities self-regulatory organization (e.g., a registered national securities exchange or a registered national or affiliated securities association) for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If yes, please provide dates and details on a separate sheet.**

7. Has a Covered Person filed (as a registrant or issuer), or been an underwriter or named as an underwriter in, any registration statement or Regulation A offering statement filed with the SEC that, within five years prior to the Certification Date, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is or has been the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If yes, please provide dates and details on a separate sheet.**

8. Is a Covered Person, or has a Covered Person been (a) subject to a United States Postal Service false representation order entered within five years prior to the Certification Date or (b) subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If yes, please provide dates and details on a separate sheet.**

[signature page follows]

The undersigned (i) certifies that the information provided in this Certificate is, to the best of the undersigned's knowledge and belief after reasonable investigation, true and correct as of the Certification Date, (ii) acknowledges and consents to the Company's reliance on such information and disclosure of such information as deemed necessary or appropriate by the Company to comply with SEC rules and regulations, and (iii) agrees to promptly notify Kent J. McCready at [kmccready@robinsonbradshaw.com](mailto:kmccready@robinsonbradshaw.com) or (704) 377-8312 of any changes in any of the information provided in this Certificate that would render such information inaccurate as of the time of sale of Units in the Company to the undersigned or any affiliated party of the undersigned in connection with the closing of the transaction contemplated by the Agreement.

**IN WITNESS WHEREOF**, the undersigned has executed this Certificate as of the date first above written.

**[INVESTOR NAME]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT D

### Joinder and Noncompetition Agreement

This Joinder and Noncompetition Agreement (the “**Agreement**”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and among FRESINIUS KIDNEY CARE LONGVIEW, LLC, a Delaware limited liability company (the “**Company**”), and \_\_\_\_\_ (“**Indirect Investor**”).

WHEREAS, Indirect Investor is a direct or indirect owner of \_\_\_\_\_ (“**JV Investor**”), and JV Investor is a member of the Company and a party to the Company’s Limited Liability Company Agreement dated as of September 1, 2019 (as amended from time to time in accordance with its terms, the “**Operating Agreement**”).

WHEREAS, JV Investor is required under the terms of the Operating Agreement to cause Indirect Investor to execute and deliver this Agreement to the Company.

WHEREAS, Indirect Investor is willing to be a party to this Agreement to make representations as to securities laws matters related to his or her indirect investment in the Company and due to the benefits accruing to him or her as an indirect investor in the Company.

WHEREAS, Indirect Investor has applied for a National Provider Identifier (“**NPI**”) as required under the Health Insurance Portability and Accountability Act of 1996, and the Company needs such information to comply with such statute.

NOW, THEREFORE, in consideration of the terms and conditions and representations and warranties herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be bound hereby, the parties agree as follows:

1. **Defined Terms.** Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Company’s operating agreement in effect from time to time on or prior to the date of any Transfer by Indirect Investor of his/her/its indirect ownership interest in the Company. Indirect Investor has been provided, and shall be provided at any time upon his/her/its request, with a copy of such operating agreement.

2. **Covenants Protecting Business Interests of the Company.** Indirect Investor hereby acknowledges and agrees that he/she and his/her Family Members are Affiliates (as defined in the Operating Agreement) of JV Investor and agrees to be bound by the provisions of **Section 2.6** and **Section 3.1.8(b)** of the Operating Agreement.

3. **Acknowledgements by Indirect Investor.** Indirect Investor acknowledges that, as an indirect investor in the Company, he/she/it occupies a position of trust and confidence with respect to the Company’s business and has access to and may become familiar with the following, any and all of which constitute confidential information of the Company (collectively, the “**Confidential Information**”): (a) data, know-how, processes, designs, inventions and ideas, patient records and lists, pricing information, payor contracts and arrangements, market studies,



business plans, computer software and programs, database technologies, systems, improvements, devices, know-how, discoveries, concepts, methods, information of the Company and any other information, however documented, related to the Company, including information that is a trade secret under applicable law; (b) information concerning the Company including historical financial statements, financial projections and budgets, historical and projected revenues and expenses, capital spending budgets and plans, the names and backgrounds of key personnel, contractors, agents, suppliers and potential suppliers, personnel training and techniques and materials, purchasing methods and techniques, however documented; (c) any and all notes, analysis, compilations, studies, summaries and other material prepared by or for the Company or Indirect Investor with respect to the Company containing or based, in whole or in part, upon any information included in the foregoing and (d) trade secrets of the Company. Confidential Information shall not include any information that is or becomes generally publicly known other than as a result of disclosure by Indirect Investor or any of his/her Affiliates (“**Representatives**”) in breach of the Operating Agreement.

Indirect Investor acknowledges that (i) the Company competes with other businesses that are or could be located in any part of the world, (ii) the Company has required that Indirect Investor enter into this Joinder and Noncompetition Agreement as a condition to becoming an indirect investor in the Company and the Company would not otherwise agree to allow Indirect Investor to do so; (iii) the provisions of this Joinder and Noncompetition Agreement are reasonable and necessary to protect and preserve the Company’s interests in and right to the use of its assets and the operation of its businesses; and (iv) the Company would be irreparably damaged if Indirect Investor were to breach the covenants set forth in this Joinder and Noncompetition Agreement.

4. **Nondisclosure.** Indirect Investor shall protect and keep confidential all Confidential Information and shall cause each of his/her/its Affiliates and Representatives to protect and keep confidential all Confidential Information. Indirect Investor shall not use, and shall cause each of his/her/its Affiliates and Representatives not to use, any Confidential Information for any purpose whatsoever. Indirect Investor shall not disclose, and shall cause each of his/her/its Affiliates and Representatives not to disclose, any Confidential Information to any other Person.

Notwithstanding the foregoing, Indirect Investor and his/her/its Representatives and Affiliates may make disclosure of Confidential Information to the extent required by legal requirements if such Person (a) gives the Company written notice of such proposed disclosure, in reasonable detail, as far in advance of such disclosure as practicable, (b) cooperates reasonably with the Company in its efforts to protect the information from disclosure, including, without limitation, assisting the Company in obtaining, at the Company’s expense, an appropriate protective order or other reliable assurance that confidential treatment will be accorded such information and (c) limits its disclosure to the minimum required by legal requirements unless the Company agrees in writing to a greater level of disclosure.

5. **Noncompetition Covenant.** Indirect Investor hereby agrees that, after the date of any Transfer by Indirect Investor of his/her/its indirect investment interest in the Company, the Company shall be entitled to the goodwill and going concern value of its business and to protect and preserve the same to the maximum extent permitted by law. For a period of five years after

the date of Transfer (which date, for these purposes, is deemed the date on which Indirect Investor and all of his/her/its Affiliates cease to have a direct or indirect ownership or beneficial interest in the Company), Indirect Investor hereby agrees that he/she/it and his/her/its Affiliates, will not engage, directly or indirectly, either as principal, officer, director, agent, proprietor, shareholder, owner, partner, consultant, manager or employee, or participate in the ownership, management, operation or control of any outpatient hemodialysis facility, program, entity or business located in the Exclusive Territory or any home dialysis training, support, or supplies service facility, program, entity or business located in the Exclusive Territory. Notwithstanding the foregoing, the terms of this Joinder and Noncompetition Agreement shall not (a) limit any Indirect Investor or his/her/its Affiliates from engaging in the practice of medicine and charging fees for administering such professional medical services to patients (though not in excess of the usual and customary charges for physician services), (b) require any Indirect Investor or his/her/its Affiliates to admit individuals to, or refer any other business to, any Facility owned by the Company or its Affiliates, (c) require any Indirect Investor or his/her/its Affiliates to prescribe, utilize or purchase any items or services from any Facility owned by the Company or its Affiliates, (d) restrict any Indirect Investor or his/her/its Affiliates from admitting individuals to any other dialysis facility, hospital or entity or (e) restrict any Indirect Investor and his/her/its Affiliates from owning up to (but not more than) 5% of any class of securities of any enterprise (but without otherwise participating in the activities of such enterprise) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Securities Exchange Act of 1934, as amended. In the event of a breach by Indirect Investor of any covenant set forth in this paragraph, the term of such covenant shall be extended by the period of the duration of such breach.

6. **Nonsolicitation Covenant.** For a period of one year after the date of Transfer, Indirect Investor shall not, and shall not permit any of its Affiliates or related parties to, at any time, directly or indirectly, solicit or induce any employee of the Company or any Member and its Affiliates to terminate employment or other contractual arrangements between the Company or such Member and its Affiliates and such employee. Notwithstanding the foregoing, no Indirect Investor shall be prohibited from hiring based upon general job postings and advertisements.

7. **Investment Representations.**

Indirect Investor warrants and represents to, and covenants with, the Company as follows:

(a) Indirect Investor is 21 years of age or older and is either a U.S. citizen or is lawfully admitted to the United States for permanent residence.

(b) Indirect Investor acknowledges that, prior to executing this Agreement and making an indirect investment in the Company, it had the opportunity to ask questions of and receive answers from a representative of the Company concerning the financial and other affairs of the Company. Except as may be expressly provided in the Operating Agreement, no Member, Manager or its Affiliate has made any representations, and Indirect Investor has not relied on any representations made by any Member, Manager or its Affiliate, in each case, regarding the Company's business, its assets, financial condition or prospects. Indirect Investor has been

furnished any and all materials that it has requested relating to the Company and the proposed indirect investment therein, and Indirect Investor has been afforded the opportunity to obtain any additional information necessary to verify the accuracy of any such information. The Company has satisfactorily answered all inquiries that Indirect Investor has made of it concerning the Company and the offering of Units to JV Investor.

(c) Indirect Investor acknowledges that JV Investor's investment in the Company will be governed by the terms of the Operating Agreement, which supersede any summary or description included in any other documentation provided to JV Investor or Indirect Investor, including, without limitation, the letter of intent and term sheet. Indirect Investor has been provided with copies of the Operating Agreement and the documents referenced in **Section 2.5** of the Operating Agreement and the Company has satisfactorily answered all inquiries that Indirect Investor has made of it concerning such documentation.

(d) Indirect Investor is an "accredited investor" as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended (the "1933 Act"). Indirect Investor's principal place of residence is located in the State of \_\_\_\_\_.

(e) JV Investor has its principal place of business in the state or territory or other jurisdiction identified in the address set forth on Exhibit A of the Operating Agreement and the offer of Units was made to JV Investor in such state, territory or other jurisdiction.

(f) JV Investor will acquire Units for its own account and not with an intent to resell or distribute all or any part of such Units, and Indirect Investor agrees that JV Investor will not resell, distribute or otherwise dispose of all or any part of the Units except in compliance with the terms of the Operating Agreement and as permitted by law, including without limitation the 1933 Act.

(g) Indirect Investor acknowledges that the offering of Units to JV Investor is being made pursuant to exemptions from the registration requirements of the 1933 Act (including, without limitation, Section 4(a)(2) of the 1933 Act) and applicable state securities laws and that, consequently, no materials relating to the offering have been filed with or reviewed by the Securities and Exchange Commission, the Financial Industry Regulatory Authority or any state securities regulatory agency, and neither the Securities Exchange Commission, the Financial Industry Regulatory Authority nor any state securities regulatory agency has approved or disapproved of the Units or determined if any materials relating to the offering are truthful or complete. Indirect Investor acknowledges that the Company will not register the issuance of the Units under the 1933 Act or any applicable state securities laws in reliance upon such exemptions, and that the Company relies upon these exemptions, in part, because of the Indirect Investor's representations, warranties and agreements contained in this Agreement.

(h) Indirect Investor understands that, in addition to the restrictions on transfer of the Units contained in the Operating Agreement, JV Investor must bear the economic risks of its investment for an indefinite period of time because the Units have not been registered under the 1933 Act and therefore may not be sold or otherwise transferred unless they are registered under the 1933 Act or unless an exemption from such registration is available. Indirect Investor

also understands that the Company does not intend to register the Units under the 1933 Act or to supply the information that may be necessary to enable JV Investor to sell its Units pursuant to Rule 144 under the 1933 Act.

(i) Indirect Investor has, and the Indirect Investor had immediately prior to receipt of any offer regarding JV Investor's investment in the Company, such knowledge and experience in financial and business matters as to be able to evaluate the merits and risks of an investment in the Company. Indirect Investor is familiar with the business in which the Company will be engaged and understands the nature of an investment in the Company and the risks associated with such an investment. Indirect Investor understands that there is no guarantee of any financial return on its indirect investment in the Company and that the JV Investor risks the loss of all capital invested.

(j) Indirect Investor is able now, and was able at the time of receipt of any offer regarding JV Investor's investment in the Company, to bear the economic risks of its indirect investment in the Company, including the complete loss of all capital invested.

## 8. **General.**

Reasonable Restraint. The parties agree that the covenants in this Agreement impose a reasonable restraint on Indirect Investor and his/her/its Affiliates in light of the activities and business of the Company and Indirect Investor.

Covenants Not Exclusive. Indirect Investor acknowledges and agrees that the covenants contained in this Agreement shall not be deemed exclusive of any common law rights of the Company; and that the Company shall have any and all rights as may be provided by law.

Notices. Any and all notices required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if delivered either personally, by same day delivery service, overnight delivery service, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If notice is served personally, notice shall be deemed effective upon receipt. If notice is served by same day delivery service or overnight expedited delivery service, notice shall be deemed effective the day after it is sent, and if notice is given by mail, notice shall be deemed effective five days after it is sent. In all instances, notice shall be sent to the parties at the respective addresses set forth above. Any party may change its address for the purpose of receiving notices by a written notice given to the other party in accordance with this paragraph.

Amendment. The provisions of this Agreement may be amended, modified, supplemented, or otherwise altered only by an agreement, in writing, executed by the Company and Indirect Investor.

Waiver of Breach. A waiver by either party of any breach of the provisions of this Agreement by the other party, or, in any particular instance or series of instances, of any term or condition of this Agreement, shall not constitute or be deemed a waiver of such breach or any such term or condition in any other instance nor shall any waiver constitute a continuing waiver hereunder. No waiver shall be binding unless executed in writing by the party making the waiver.

Substantive Law. This Agreement shall be governed by the substantive laws of the State of Delaware, without giving effect to conflict of laws principles.

Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, but Indirect Investor's rights and obligations hereunder are personal to it and shall not be subject to voluntary or involuntary alienation, assignment or transfer.

Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Specific Performance. It is agreed that the rights granted to the parties hereunder are of a special and unique kind and character and that, if there is a breach by any party of any material provision of this Agreement, the other party would not have any adequate remedy at law. It is expressly agreed, therefore, that the rights of the parties hereunder may be enforced by an action for specific performance and other equitable relief.

Remedies Cumulative. All remedies available to each party for breach of the provisions of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of the other remedies. Upon any such breach, the Company shall have, and may pursue, all remedies at law and in equity.

Headings. The headings of sections in this Agreement are for convenience only and shall not affect or limit the interpretation of its provisions.

Severability. The provisions of this Agreement are severable. If any provision of this Agreement shall be held to be invalid or otherwise unenforceable, in whole or in part, the remaining provisions or enforceable parts thereof shall not be affected thereby and shall be enforced to the fullest extent permitted by law. In addition, should any provision or any portion thereof ever be adjudicated by a court of competent jurisdiction to exceed the time or other limitation permitted by applicable law as determined by such court in such action, then such provisions shall be decreased, or performed to the maximum time or other limitations prescribed by applicable law, the parties acknowledging their desire that in such event such action be taken.

Third Party Beneficiary. The Company's present and future parent corporations, including but not limited to, Fresenius Medical Care Holdings, Inc., are intended third party beneficiaries of this Agreement and shall independently have the right to enforce each of the provisions of this Agreement.

Further Assurances. Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things

reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement, and any and all prior agreements, understandings or representations are hereby terminated and canceled in their entirety.

Attorneys' Fees. The prevailing party or substantially prevailing party in any action or legal proceeding shall be entitled to recover from the other party all of the actual and reasonable fees, costs and expenses incurred by such party in connection with such proceeding, including, without limitation, attorneys' fees.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date written above.

**COMPANY:**

**FRESENIUS KIDNEY CARE LONGVIEW,  
LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**INDIRECT INVESTOR:**

---

[Name], Individually

NPI: \_\_\_\_\_



## EXHIBIT E

### Form of Noncompetition Agreement

(to be signed upon Transfer of All Units)

#### **NONCOMPETITION AGREEMENT**

This Noncompetition Agreement (this “**Agreement**”) is entered into as of [Insert date of **Transfer of Units**] by and between **FRESENIUS KIDNEY CARE LONGVIEW, LLC**, a Delaware limited liability company (the “**Company**”), and \_\_\_\_\_, a \_\_\_\_\_ and a former direct or indirect owner of membership interest in the Company (“**Former Member**”) [Note: If Former Member is not an individual, the individual members of Former Member must also sign this agreement.]

#### Recitals

WHEREAS, as of the date hereof, Former Member is directly or indirectly transferring or has transferred all of its/his/her membership interest in the Company such that Former Member will no longer be a member of the Company. Such transaction is referred to herein as the “**Transfer**.”

WHEREAS, prior to the Transfer, Former Member has been a direct or indirect party to the Company’s Limited Liability Company Agreement dated as of September 1, 2019 (as amended from time to time in accordance with its terms, the “**Operating Agreement**”), and the rights and obligations of Former Member’s direct or indirect membership interest in the Company were governed by the Company’s Operating Agreement.

WHEREAS, the Company’s Operating Agreement restricts the transfer of membership interests in the Company, including the Transfer, and requires, as a condition to such Transfer, that the Former Member execute and deliver this Agreement to the Company as of the effective date of the Transfer, thereby agreeing to be bound hereby. The Transfer is prohibited by the terms of the Operating Agreement unless and until Former Member executes and delivers this Agreement to the Company.

#### Statement of Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Recitals. The parties hereto confirm and adopt the recitals stated above.

1. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Company’s Operating Agreement in effect as of the date of Transfer. A copy of such Operating Agreement is attached hereto and incorporated herein as if fully set forth herein.

2. Acknowledgements by Former Member. Former Member acknowledges that, prior to the date hereof, Former Member has occupied a position of trust and confidence with respect to the Company's business and has had access to and become familiar with the following, any and all of which constitute confidential information of the Company (collectively, the "**Confidential Information**"): (a) data, know-how, processes, designs, inventions and ideas, patient records and lists, pricing information, payor contracts and arrangements, market studies, business plans, computer software and programs, database technologies, systems, improvements, devices, know-how, discoveries, concepts, methods, information of the Company and any other information, however documented, related to the Company, including information that is a trade secret under applicable law; (b) information concerning the Company including historical financial statements, financial projections and budgets, historical and projected revenues and expenses, capital spending budgets and plans, the names and backgrounds of key personnel, contractors, agents, suppliers and potential suppliers, personnel training and techniques and materials, purchasing methods and techniques, however documented; (c) any and all notes, analysis, compilations, studies, summaries and other material prepared by or for the Company or the Former Member with respect to the Company containing or based, in whole or in part, upon any information included in the foregoing and (d) trade secrets of the Company. Confidential Information shall not include any information that is or becomes generally publicly known other than as a result of disclosure by Former Member or any of its Affiliates ("**Representatives**") in breach of this Agreement.

Former Member acknowledges that (i) the Company competes with other businesses that are or could be located in any part of the world, (ii) the Company has required that the Former Member enter into this Agreement as a condition to permitting the Transfer and the Company would not otherwise permit the Transfer; (iii) the provisions of this Agreement are reasonable and necessary to protect and preserve the Company's interests in and right to the use of its assets and the operation of its Businesses from and after the date of Transfer; and (iv) the Company would be irreparably damaged if Former Member were to breach the covenants set forth in this Agreement.

3. Nondisclosure. Former Member shall protect and keep confidential all Confidential Information and shall cause each of its/his/her Affiliates and Representatives to protect and keep confidential all Confidential Information. Former Member shall not use, and shall cause each of its/his/her Affiliates and Representatives not to use, any Confidential Information for any purpose whatsoever. Former Member shall not disclose, and shall cause each of its/his/her Affiliates and Representatives not to disclose, any Confidential Information to any other Person.

Notwithstanding the foregoing, Former Member and its/his/her Representatives and Affiliates may make disclosure of Confidential Information to the extent required by legal requirements if such Person (a) gives the Company written notice of such proposed disclosure, in reasonable detail, as far in advance of such disclosure as practicable, (b) cooperates reasonably with the Company in its efforts to protect the information from disclosure, including, without limitation, assisting the Company in obtaining, at the Company's expense, an appropriate protective order or other reliable assurance that confidential treatment will be accorded such information and (c) limits its disclosure to the minimum required by legal requirements unless the Company agrees in writing to a greater level of disclosure.

4. Noncompetition Covenant. Former Member hereby agrees that, after the date of Transfer, the Company shall be entitled to the goodwill and going concern value of its business and to protect and preserve the same to the maximum extent permitted by law. For a period of [REDACTED] after the date of Transfer, Former Member hereby agrees that it/he/she and its/his/her Affiliates, will not engage, directly or indirectly, either as principal, officer, director, agent, proprietor, shareholder, owner, partner, consultant, manager or employee, or participate in the ownership, management, operation or control of any outpatient hemodialysis facility, program, entity or business located in the Exclusive Territory or any home dialysis training, support, or supplies service facility, program, entity or business located in the Exclusive Territory. Notwithstanding the foregoing, the terms of this Agreement shall not (a) limit Former Member and its Affiliates from engaging in the practice of medicine and charging fees for administering such professional medical services to patients (though not in excess of the usual and customary charges for physician services), (b) require Former Member or its Affiliates to admit individuals to, or refer any other business to, any Facility owned by the Company or its Affiliates, (c) require Former Member or its Affiliates to prescribe, utilize or purchase any items or services from any Facility, the Company or its Affiliates, (d) restrict Former Member or its Affiliates from admitting individuals to any other dialysis facility, hospital or entity, or (e) restrict Former Member and its Affiliates from owning up to (but not more than) 5% of any class of securities of any enterprise (but without otherwise participating in the activities of such enterprise) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Securities Exchange Act of 1934, as amended. In the event of a breach by Former Member of any covenant set forth in this paragraph, the term of such covenant shall be extended by the period of the duration of such breach.

5. General.

Reasonable Restraint. The parties agree that the covenants in this Agreement impose a reasonable restraint on Former Member and its/his/her Affiliates in light of the activities and business of the Company and Former Member.

Covenants Not Exclusive. Former Member acknowledges and agrees that the covenants contained in this Agreement shall not be deemed exclusive of any common law rights of the Company; and that the Company shall have any and all rights as may be provided by law.

Notices. Any and all notices required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if delivered either personally, by same day delivery service, overnight delivery service, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If notice is served personally, notice shall be deemed effective upon receipt. If notice is served by same day delivery service or overnight expedited delivery service, notice shall be deemed effective the day after it is sent, and if notice is given by mail, notice shall be deemed effective five days after it is sent. In all instances, notice shall be sent to the parties at the respective addresses set forth above. Any party may change its address for the purpose of receiving notices by a written notice given to the other party in accordance with this paragraph.

Amendment. The provisions of this Agreement may be amended, modified, supplemented, or otherwise altered only by an agreement, in writing, executed by the Company and Former Member.

Waiver of Breach. A waiver by either party of any breach of the provisions of this Agreement by the other party, or, in any particular instance or series of instances, of any term or condition of this Agreement, shall not constitute or be deemed a waiver of such breach or any such term or condition in any other instance nor shall any waiver constitute a continuing waiver hereunder. No waiver shall be binding unless executed in writing by the party making the waiver.

Substantive Law. This Agreement shall be governed by the substantive laws of the State of Delaware, without giving effect to conflict of laws principles.

Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, but Former Member's rights and obligations hereunder are personal to Former Member and shall not be subject to voluntary or involuntary alienation, assignment or transfer.

Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docuSign.com](http://www.docuSign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Specific Performance. It is agreed that the rights granted to the parties hereunder are of a special and unique kind and character and that, if there is a breach by any party of any material provision of this Agreement, the other party would not have any adequate remedy at law. It is expressly agreed, therefore, that the rights of the parties hereunder may be enforced by an action for specific performance and other equitable relief.

Remedies Cumulative. All remedies available to each party for breach of the provisions of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of the other remedies. Upon any such breach, the Company shall have, and may pursue, all remedies at law and in equity.

Headings. The headings of sections in this Agreement are for convenience only and shall not affect or limit the interpretation of its provisions.

Severability. The provisions of this Agreement are severable. If any provision of this Agreement shall be held to be invalid or otherwise unenforceable, in whole or in part, the remaining provisions or enforceable parts thereof shall not be affected thereby and shall be enforced to the fullest extent permitted by law. In addition, should any provision or any portion thereof ever be adjudicated by a court of competent jurisdiction to exceed the time or other limitation permitted by applicable law as determined by such court in such action, then such

provisions shall be decreased, or performed to the maximum time or other limitations prescribed by applicable law, the parties acknowledging their desire that in such event such action be taken.

Third Party Beneficiary. The Company's present and future parent corporations, including but not limited to, Fresenius Medical Care Holdings, Inc., are intended third party beneficiaries of this Agreement and shall independently have the right to enforce each of the provisions of this Agreement.

Further Assurances. Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement, and any and all prior agreements, understandings or representations are hereby terminated and canceled in their entirety.

Attorneys' Fees. The prevailing party or substantially prevailing party in any action or legal proceeding shall be entitled to recover from the other party all of the actual and reasonable fees, costs and expenses incurred by such party in connection with such proceeding, including, without limitation, attorneys' fees.

[signatures follow on next page]

PLEASE NOTE: BY SIGNING THIS AGREEMENT, FORMER MEMBER IS HEREBY CERTIFYING THAT FORMER MEMBER (A) RECEIVED A COPY OF THIS AGREEMENT FOR REVIEW AND STUDY BEFORE EXECUTING IT; (B) READ THIS AGREEMENT CAREFULLY BEFORE SIGNING IT; (C) HAD SUFFICIENT OPPORTUNITY BEFORE SIGNING THE AGREEMENT TO ASK ANY QUESTIONS FORMER MEMBER HAD ABOUT THE AGREEMENT AND RECEIVED ANSWERS TO ALL SUCH QUESTIONS; AND (D) UNDERSTANDS ITS/HIS/HER OBLIGATIONS UNDER THE AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**FRESENIUS KIDNEY CARE LONGVIEW,  
LLC**

By: \_\_\_\_\_  
A Manager

\_\_\_\_\_  
\_\_\_\_\_, Former Member

[attach operating agreement]

**EXHIBIT F**

**Form of Initial Written Consent of Managers**

(see attached)

Schedule 1.3

Facility Locations

	<u>Facility Address</u>	<u>Operational ID</u>	<u>PC ID</u>
1.	600 Broadway Longview, WA 98632	<u>100915</u>	<u>00A7650000</u>



**Exhibit 7B.**  
**Administrative Services Agreement**

## ADMINISTRATIVE SERVICES AGREEMENT

This **ADMINISTRATIVE SERVICES AGREEMENT** (the “**Agreement**”) is entered as of September 1, 2019 (the “**Effective Date**”), by and between **Fresenius Management Services, Inc.**, a Delaware corporation (the “**Company**” or “**FMS**”) and an affiliate of Fresenius Medical Care Holdings, Inc., a New York corporation d/b/a Fresenius Medical Care North America, and **Fresenius Kidney Care Longview, LLC**, a Delaware limited liability company (the “**Owner**”).

WHEREAS, the Owner operates a chronic outpatient and home dialysis center at 600 Broadway, Longview, Washington 98632 (the “**Business**”) and desires to obtain certain administrative services for the Business so as to be able to provide health care services to the community including, without limitation, to patients with end stage renal disease (“**ESRD**”); and

WHEREAS, the Company, either directly or through its affiliates, provides consulting and administrative services to chronic dialysis programs throughout North America, conducts research relating to the field of nephrology, and has developed proprietary systems and techniques to enhance the operation of the chronic dialysis programs; and

WHEREAS, the Owner desires to retain the Company to provide certain consulting and administrative services for the Business, and the Company desires to provide such services upon the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

### ARTICLE I

#### RELATIONSHIP OF THE PARTIES

Section 1.1 Appointment of the Company. The Owner hereby engages the Company as the Owner’s sole and exclusive provider of administrative services, and the Company accepts such engagement, pursuant to the terms and conditions contained herein, to perform or cause to be performed the services relating to the Business, as described in **Article II** (the “**Services**”). The Owner acknowledges that the Company is one of many operating companies owned by Fresenius Medical Care Holdings, Inc., and that certain of the services contemplated hereby may be provided through the Company by the Company’s affiliates.

Section 1.2 Retention of Ownership and Control. The Owner shall hold all necessary licenses and permits to operate the Business. The Owner will provide to the Company immediate notice of any termination or suspension of any necessary license or permit. In providing services under this Agreement, the Company shall have the reasonable and necessary use of all assets of the Owner to the extent permitted by applicable law. Notwithstanding any other provision in this Agreement, the Owner shall remain responsible for compliance with respect to all applicable provisions of the federal, state, and local laws, rules, regulations and ordinances, and standards of accreditation. The Owner shall retain the ultimate authority over

the overall policy, operation and assets of the Business. The Owner shall not delegate to the Company, and the Company will not be responsible for, any powers and responsibilities not specifically allocated to the Company in this Agreement. Specifically, notwithstanding anything in this Agreement to the contrary, the Owner retains all authority and responsibility over the following:

- (a) Authority for hiring or terminating any employees of the Owner;
- (b) Controlling and maintaining the books and business records of the Business which will remain owned by the Owner;
- (c) Disposing of assets and incurring of liabilities on behalf of the Owner;
- (d) Adopting and enforcing policies regarding the operation of the Business; and
- (e) Compliance with all laws.

The Owner shall consider and respond to, promptly and in good faith, all recommendations of the Company regarding governance, operations, policies and procedures relating to the Business, to the extent relevant to the obligations of the Company hereunder, and the Owner agrees not to take any actions which will unreasonably interfere with the duties of the Company hereunder.

Whenever, pursuant to the terms hereof, the Owner's approval is required or requested, the Company shall submit such request for approval in writing, together with the Company's recommendations, and the Owner shall be required to respond to the Company with its approval or disapproval within 14 calendar days after receiving such notice, or such shorter period requested by the Company if the circumstances require a shorter response time. If the Owner does not respond to the Company by the end of such 14-day or other time period, the Owner shall be deemed to have approved the matter so submitted. Notwithstanding the foregoing, any matter which, pursuant to the Owner's limited liability company operating agreement, requires a supermajority vote of the members or managers of the Owner, shall not be deemed approved prior to express approval by such members or managers, as applicable, in the manner provided in the Owner's limited liability company operating agreement.

Section 1.3 Status of Parties. The parties are independent contractors that engage in the operation of their own respective businesses. Neither party is, or is to be considered, the agent or employee of the other party for any purpose. Neither party has authority to enter into contracts or assume any obligations for the other party or to make any warranties or representations on behalf of the other party except as specifically provided herein. Nothing in this Agreement shall be construed to establish a relationship of co-partners or joint venturers between the parties.

Section 1.4 Practice of Medicine. The parties acknowledge and agree that the Company is not authorized or qualified to engage in any activity that may constitute the practice of medicine. Nothing in this Agreement is intended or shall be construed to allow the Company to exercise control or direction over the manner or method by which physicians on the medical staff of the Business perform medical services or other professional health care services. To the

extent that any act or service herein required of the Company should be construed by a court of competent jurisdiction or any regulatory or administrative body having oversight responsibilities regarding such professional activities to constitute the practice of medicine, the requirement to perform that act or service by the Company shall be deemed waived and unenforceable.

Section 1.5 Appointment of Medical Director. The Owner shall appoint a Medical Director to direct the medical activities of the Business and to perform the duties as may be assigned from time to time by the Company and required under the applicable regulations of the Medicare ESRD Program, 42 C.F.R. § 494.150, or such successor regulations. Such Medical Director shall initially be employed by PeaceHealth Medical Group pursuant to the Medical Director Agreement dated the date hereof. The Company shall not assume any of the Owner's liabilities or obligations with respect to the Owner's compliance or non-compliance with applicable federal and state laws in the securing of medical director services for the Business.

Section 1.6 HIPAA Matters. The Owner hereby consents to inclusion in the Affiliated Covered Entity ("ACE") that the Company's affiliate has established for HIPAA purposes. The Owner further authorizes the Company to execute, on the Owner's behalf, any documents reasonably necessary to effectuate such inclusion in the ACE.

## ARTICLE II

### CONSULTING AND ADMINISTRATIVE SERVICES

Section 2.1 Scope of Services. The Company shall provide, on an exclusive basis, certain administrative and non-physician services described in this **Article II**. This Agreement applies to all locations of the Business, including any future location, substitute location, or expansion location of the Business. Notwithstanding anything to the contrary in **Section 7.7** hereof, if, during the term of this Agreement, the Owner establishes or acquires any dialysis-related program or entity, the Owner shall promptly notify the Company and, at the sole discretion of the Company, this Agreement shall be amended to include such programs or entities as part of the Business covered by this Agreement and the Service Fee will be adjusted to include the additional services provided by the Company. The Company shall provide the Services described herein without discrimination as to race, creed, color, religion, national origin, sex or disability within the Owner's treatment capacity, sexual orientation, or source of payment of patients.

Section 2.2 Facilities and Equipment. The Company shall pay, pursuant to **Section 2.6(d)** herein as a part of the budgeted expenses of the Business, rent, maintenance and improvements, supplies, utility (telephone, electric, gas, water) expenses, normal janitorial services, refuse disposal, and all other similar costs, in each case, if any. The Company will assist the Owner in the selection of equipment and supplies and will maintain all of the dialysis equipment of the Business, in accordance with the Company's maintenance policies. The Company shall assist in the negotiation of vendor contracts and assist with the evaluation of alternate proposals and bids submitted by various companies relating to the Business. The Company shall assist in maintaining records of inventory and arrange for purchases of necessary and appropriate supplies and equipment on behalf of the Owner for the Business, including management information system items or systems for the Business. The Company shall process

all approved invoices and oversee correct payment and receipt of goods. The Owner shall be responsible for approving and executing all contracts and purchases for facilities, equipment, and supplies, after consultation with the Company. To facilitate such purchasing, the Company may provide consolidated purchasing of equipment and supplies through the Company's contracts, subject to the Owner's approval, and the Owner shall be required to pay the prices for such equipment and supplies, net of all applicable rebates and discounts. The Company shall have no independent power or authority to incur any debt or liability of any kind or nature on behalf of the Owner without the consent of the Owner. All payments made by the Company to third parties or to the Company pursuant to this paragraph will be paid out of the Special Account in accordance with **Section 2.6(d)**.

Section 2.3 No Warranties. THE COMPANY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO ANY MATTER WHATSOEVER RELATING TO THE EQUIPMENT AND PREMISES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE DESIGN AND CONDITION OF ANY EQUIPMENT, THE CONFORMANCE THEREOF TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO, ANY WARRANTY OF MERCHANTABILITY, AND THE FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE, AND THE DESIGN, FUNCTION OR WORKMANSHIP OF ANY OWNER FACILITY. The Company shall enforce for the benefit of the Owner during the term of this Agreement all of the Owner's rights under all manufacturers' warranties relating to any equipment provided hereunder.

Section 2.4 Employees. To the extent requested by the Owner, the Company will provide all full-time and part-time personnel necessary to manage and operate the non-physician aspects of the Business. Such personnel will be employees or independent contractors of the Company. The Company shall hire and manage such personnel in a commercially reasonable manner, including by employing commercially reasonable verification efforts to ensure that each such employee or independent contractor has all the licenses and certifications required under applicable law or regulations for his or her individual position, and by conducting reasonable background checks on all such personnel. The Company shall be responsible for the payment and provision of all wages, fringe benefits and other compensation to its personnel, and shall be reimbursed for such expenses by the Owner to the extent set forth herein. The Company's human resources policies will apply to these employees. The Owner may at any time request the removal of specific persons rendering services for the Business if, in the good faith judgment of the Owner, removal would be in the best interests of the Business and its patients. In such event, the Company will remove or reassign any such person within a reasonable time after the Owner's request, subject to compliance with applicable personnel policies and procedures, applicable law and the Company's ability to secure a replacement reasonably acceptable to the Owner. Notwithstanding the foregoing, if necessary in the Owner's reasonable judgement to protect patient health or safety, the Owner shall so advise the Company and the person will be immediately suspended from providing services under this Agreement. All of the Company's employee expenses (including without limitation salaries, fringe benefits, pension insurance, workers' compensation claims, expense and travel) for employees at the level of "Area Manager" or "Director of Operations," as the case may be, and below will be charged as an expense of the Business, and the Owner shall reimburse the Company for all employee expenses related to the Business in accordance with this paragraph and **Section 2.6(d)** below. If

employees provide services to more than one facility, the Owner's portion of such employee costs shall be allocated in a manner consistent with the allocation methods used for all facilities for whom such employees provide services. All of the Company's employee expenses for employees at the level of "Regional Vice President" and above will be absorbed by the Company and shall not be reimbursed by the Owner, except as may be expressly provided herein. Attached hereto as **Exhibit A** is a listing of full-time and part-time positions based on the Company's current, good-faith estimate of the Business's staffing needs in accordance with FMS's current staffing ratio policy. The number of employee positions may be changed from time to time as determined in good faith by FMS for any reason including, but not limited to, (i) any change in patient census at the Facility, in FMS's personnel policies or procedures, in applicable legal or regulatory requirements, in industry standards or local market practice, or in applicable technology or methodologies; (ii) the specific needs of the patient population or the Business; or (iii) the desire to improve qualitative or quantitative metrics of the Facility or the staff. In the event the Company elects to modify the foregoing number of employee positions or staffing ratios under this **Section 2.4**, the Company must promptly notify the Owner in writing following such modification.

**Section 2.5 Billing and Collection.** The Company shall prepare and submit on behalf of the Owner all bills for items and services provided by the Business, and shall administer controls and systems for the recording and collection of the revenues of the Business as follows:

(a) The Company shall verify patient eligibility, enrollment, and termination with respect to Medicare, Medicaid and other third party payor programs, and shall respond to billing inquiries from patients, payors and physicians.

(b) The Company shall administer the charge structure of the Business over which the Owner retains authority.

(c) The Company shall administer the Owner's collection policies for the Business that are reasonable, appropriate and consistent with all applicable laws, regulations, and as agreed to with third party payors, as applicable, it being understood that the Company has no control over the adoption of policies by the Owner. The Owner shall pay all out-of-pocket collection costs incurred by the Company. The Company will implement Owner's financial assistance patient policies and procedures.

(d) All payments relating to claims for items and services provided by the Business shall be deposited into a lockbox account over which the Owner has sole control. The Owner shall cause the amounts in the lockbox account to be deposited on a daily basis in a bank account of the Owner separate from any bank account in which the Owner's other funds are maintained (the "**Special Account**"). The Company shall use these funds to pay costs and expenses of the Business, including, without limitation, payment of the Service Fee as described in **Article III**, and performance of any function required under this Agreement. If, at any time, the Company elects to fund the payment of the Owner's expenses on a short term basis through the Company's accounts, then the Company may do so and shall be reimbursed for such expenses from the Special Account.

(e) Nothing in this Article grants the Company authorization in any way to dispose of the Owner's assets without prior approval by the Owner.

(f) The Owner shall promptly forward to the Company copies of all documents relating to claims for items and services provided by the Business.

(g) The Company shall prepare, in the name of the Business and for the Owner's signature, all cost reports, exception requests, and other reports and data necessary for obtaining appropriate reimbursement for the items and services provided by the Business under the Medicare and Medicaid programs and any other third party payor programs in which the Business participates.

(h) All costs of establishing and maintaining billing, collection, accounting, tax reporting and similar systems (if purchased separately for the Owner), and for purchasing services from third parties regarding such matters, will be charged as an expense of the Business, and the Owner shall reimburse the Company for all such costs in accordance with this paragraph and **Section 2.6(d)** below.

**Section 2.6 Accounting and Financial Services.** The Company shall provide, or arrange for the provision of, accounting and financial services to the Owner for the Business as follows:

(a) For each full fiscal year after the Effective Date, the Company shall submit to the Owner a draft budget for the Business, with an estimate of the operating revenues and expenses and capital expenditures for the Business for the ensuing fiscal year. The budget shall contain an explanation of plans and projections regarding the operations of the Business, utilization, services, staffing and other factors that may affect the budget, and shall include an amount equal to the Company's direct costs allocated to the Business and the Company's estimated Service Fee for the ensuing year. The budget may be updated from time to time, subject to the Owner's approval, to reflect changes in reimbursement levels and estimated expenses of the Business. Upon approval of a budget by the Owner, which approval shall not be unreasonably withheld, the parties shall use their commercially reasonable efforts to operate the Business so that actual expenses and revenues are consistent with the budget. If the Owner and Company cannot agree on the budget within such time period, then the prior year's actuals, increased by 15%, shall constitute the budget for the subsequent year until the Owner and Company agree to a new budget.

(b) The Company shall prepare and submit to the Owner, within 30 days following the end of each month, monthly and year-to-date comparative financial statements prepared in a manner substantially consistent with generally accepted accounting principles ("**GAAP**") for the Business, showing actual revenues and expenses of the Business, which shall include a report of utilization, an analysis of accounts receivable activity, and reasonable explanations of any variances from the budget.

(c) The Company shall operate financial and accounting systems for the Business, and shall use such accounting policies and procedures in a manner substantially consistent with

GAAP for the Business, as necessary or appropriate for the operations of the Business and the performance of the Company's duties hereunder.

(d) On behalf of the Owner, the Company shall pay from the Special Account any and all costs and expenses related to the operation of the Business of which it is aware (or had notice), including without limitation the following:

(A) Costs to investigate and correct any violation or suspected violation of federal, state and municipal laws, ordinances, regulations and orders relative to the use, operating, repair and maintenance of the Owner's facilities, or relative to the rules, regulations or orders of the local Board of Fire Underwriters or other similar body.

(B) Costs of making all repairs, replacements, additions, decorations and alterations.

(C) Costs incurred by the Company in connection with the operation and management of the Business and the purchase of supplies, other goods and services.

(D) Fees and expenses of third-party accountants, auditors, attorneys and other professionals providing services to the Business.

(E) Cost of capital expenditures.

(F) All compensation and expenses payable to the Company pursuant to this Agreement.

(G) Office lease, utility, property tax and insurance costs.

(H) Employee expenses for the employees retained by the Company under **Section 2.4.**

Any shortfall between revenues and expenses will be considered an accrued liability of the Owner. The Company shall provide notice to the Owner in the event of any actual or projected shortfall, and the Owner will within two business days after receipt of such notice deposit in the Special Account an amount of money sufficient to pay the shortfall.

(e) With regard to any emergency relating to life support systems, building safety or other emergencies threatening damage to persons or to the Owner's facilities, then notwithstanding any limitations on the Company's authority hereunder, the Company may make such emergency repairs and take such actions as reasonably necessary or advisable in connection therewith, at the Owner's expense. The Company will promptly notify the Owner of any such activity.

(f) To the extent that the Owner maintains any line of credit or other credit facility with a bank or other institution, the Company shall oversee and manage all advances and payment under such credit facility, the cost thereof to be borne by the Owner and paid in accordance with **Section 2.6(d).**



(g) The Company shall cause to be provided such information to the members of the Owner regarding the Owner's taxable income or loss that is relevant to reporting the Owner's income. This information shall also show each member's distributive share of each class of income, gain, loss, or deduction. This information shall be furnished to the Owner's members as soon as reasonably practical (and in any event within the time period required by law) after the close of the Company's taxable year, the cost thereof to be borne by the Owner and paid in accordance with **Section 2.6(d)**.

(h) The parties agree that the books and business records of the Business will remain under the ownership and control of the Owner at all times, and that the Company will function in an administrative capacity in performing its obligations hereunder. Notwithstanding the foregoing, financial, purchasing, payroll and other records of the Company shall be and remain the property of the Company.

**Section 2.7 Policies and Procedures.** The Company will provide to the Owner during the term of this Agreement copies of its standard policy manuals for use by the Business. All such policies existing as of the date of this Agreement are listed in **Exhibit B** and are hereby adopted. The Company shall use commercially reasonable efforts to administer the policies and procedures of the Business, as adopted by the Owner. The Owner reserves the right to change the Business' policies, procedures and forms at any time, in its reasonable discretion, with the Company's input and subject to compliance with applicable law (in which case the insurance rates applicable under **Section 2.14** may be adjusted). Upon the termination or expiration of this Agreement, the Owner shall return all copies of all policies, procedures, and forms prepared by the Company for use by the Business, and the Owner agrees that all such documents are the sole property of the Company and are Confidential Information (as defined hereinafter) of the Company.

**Section 2.8 Proprietary Materials; Patient Safety Program.** During the term of this Agreement, the Company shall make available to the Owner:

(a) Certain proprietary products, materials, technology and programs owned by an FMS affiliate (the "**Proprietary Materials**") to deliver healthcare to patients. The Proprietary Materials shall include (but shall not be limited to) distinctive renal care related policies and procedures, training, marketing techniques, technology, architectural designs (as applicable and available), as well as electronic and written materials, curriculum manuals, patient education materials, powerpoint presentations, forms, posters, assessment and evaluation tools, training materials, workbooks, and CD ROMs. If the Owner accesses any Proprietary Materials, the Owner is hereby granted a non-exclusive, royalty-free license to use related trademarks, including logos and designs.

(b) The opportunity to participate in certain patient safety initiatives (the "**Patient Safety Program**"). The "Patient Safety Program" may involve the collection and analysis of data, the development and dissemination of information with respect to improving patient safety, such as recommendations, protocols, or information regarding best practices, the utilization of data for the purposes of encouraging a culture of safety and of providing feedback and assistance to effectively minimize patient risk, and activities related to the operation and feedback of a patient safety evaluation system, as appropriate.

The Owner's use of the Proprietary Materials and participation in the Patient Safety Program shall be conditioned, at all times, on its compliance with program contracts, standards and policies, all of which the Company shall make available to the Owner. The parties acknowledge that any materials provided pursuant to this **Section 2.8** must be used without material alteration. The Owner agrees that all materials provided pursuant to this **Section 2.8** are the sole property of the Company (or its affiliate) and are Confidential Information (as defined hereinafter) of the Company (or its affiliate). The Owner may not disclose, manufacture, advertise for sale, sell or give away any portion of the materials and may use such materials solely in connection with the operation of the Business. Upon the termination or expiration of this Agreement, the Owner shall return all copies of all materials provided under this **Section 2.8** and immediately cease use of any trademarks.

**Section 2.9 Service Contracts.** The Company shall negotiate, execute and maintain contracts and arrangements for and in the name of the Owner with such individuals or entities appropriate for the Business, including, but not limited to, ancillary medical items and services (e.g., laboratory, blood, EKG, pharmacy, etc.), third party payor contracts, transplant agreements, affiliation agreements and related agreements, and other contracts or arrangements appropriate for the Business.

(a) With regard to the procurement of dialysis pharmaceuticals for the Owner, the Company will utilize its existing national pharmaceutical supply contracts, as amended, terminated or changed from time to time, to the extent permitted under the Company's contracts, and shall pass through to the Owner any discounts from list price received at the time of purchase and any earned and paid rebates. All expenses for such purchases shall be the responsibility of the Owner. The Owner hereby agrees and certifies that all dialysis pharmaceuticals will be for the Owner's "own use" and further certifies that all such dialysis pharmaceuticals shall be for the exclusive use of treating dialysis patients.

(b) With regard to third party payor contracts, the Company may use its master third party payor contracts in existence from time to time, to the extent permitted under such contracts, and the Company will use good faith efforts to include the Owner as a participating provider in certain additional plans as agreed by the parties.

(c) With regard to the procurement of dialysis products, disposable supplies and/or laboratory testing services, the Company will facilitate contacts with personnel at the Company's affiliated product and laboratory companies. It shall be the responsibility of the Owner to contract directly with and to pay for such product and laboratory companies for the procurement of such supplies or services.

**Section 2.10 Project Development and Real Estate Services.**

(a) The Company shall provide project development services relating to the start-up of the Business. Project development services shall consist of site visits to determine the applicability of all potential sites for use as a dialysis clinic, development of preliminary plans to verify that all programmatic requirements are met by the space(s) under consideration, coordination of architectural, engineering and other consultants necessary to produce contract documents, bidding of the contract documents, coordinating the work of the general contractor,

ordering all equipment, furnishings and fixtures furnished by the Owner and arranging for delivery and installation of same, coordinating the commissioning phase (the phase which begins when construction has been completed and ends with receipt of CMS certification) and managing the start-up of the Owner's facility.

(b) After start-up, the Company shall also provide such project development assistance as the Owner may reasonably request in connection with any expansion, modification or relocation of the Business' office and clinic space.

(c) Real estate services shall be provided by Company's wholly owned subsidiary, Health Property Services, Inc., a Delaware corporation ("**Health Property Services**"). Such services shall consist of market analysis, site selection, solicitation of proposals from landlords of potentially viable locations and negotiation of lease terms and conditions (including analysis by the Company's law department) so that the Owner is presented with a complete, negotiated lease. The parties acknowledge that Health Property Services shall enter into a co-brokerage agreement with a local commercial broker. Brokerage fees are usually 5% of the total lease payment and are paid by the landlord. The Owner hereby acknowledges and agrees that Health Property Services shall be entitled to receive and keep for its own account its share of the brokerage fees paid by a landlord as compensation for the real estate services to be provided by the Company.

(d) The Company will obtain the Owner's approval for all site location, leasing, architectural, engineering and construction matters relating to the Business. The Owner shall be responsible for payment of all capital costs related to the development of the Owner's facilities, including, but not limited to, leasehold improvements, architectural fees and fixed assets, in addition to payment of the Company's fees and expenses as specified herein for all project development and real estate services.

Section 2.11 Quality and Utilization Controls. The Company shall perform medical record audits and conduct utilization review and quality assurance/control review for the Business and other related activities as necessary and appropriate or as reasonably requested by the Owner for the operation of the Business.

Section 2.12 Home Dialysis Business. At the request of the Owner, the Company will assist in the development and maintenance of a program for home dialysis, including CAPD, CCPD, and home hemodialysis.

Section 2.13 Software Systems. The Business will have access to the Company's Patient Statistical Profile database package, and the Company will provide the same reports and statistical services to the Business that the Company provides for its own facilities. The Company may aggregate the Business' data with similar data from similar operations owned or managed by Company and its affiliates and may share and use such aggregated data for any purpose so long as such data does not identify any patient or physician by name. The Business will be licensed in accordance with applicable software licenses to use the standard software necessary to connect to the Patient Statistical Profile, its clinical systems, and billing and accounting systems, that Fresenius Medical Care North America provides to its own facilities.

The Owner will pay for any non-standard software that it requires, as well as for wiring and telecom lines.

Section 2.14 Insurance.

(a) The Company shall maintain insurance for the Owner and the Company under blanket policies and insurance programs maintained by Fresenius Medical Care North America, for itself and its affiliates. All insurance maintained for the Owner pursuant to this Agreement shall be expenses chargeable to the Business and paid pursuant to **Section 2.6(d)** and shall be adjusted or trued-up from time to time to reflect a significant change in treatment levels as defined in the insurance program. Such insurance premiums shall be determined and charged in a manner consistent with the claim experience and related insurance costs for all Fresenius Medical Care North America insured facilities and dialysis operations. The Company shall bear all costs for its insurance; provided that workers' compensation insurance maintained by the Company shall be charged to the Owner as part of the employee expenses payable by the Owner hereunder.

(b) Company Insurance. Such insurance shall include, for the Company, the following coverages, subject to deductibles and exclusions as applicable:

(A) the equivalent of ISO special form property insurance against direct physical loss or damage to the Company's property in the amount of the full replacement value of the Company's property, and with all rights of subrogation and any coinsurance waived;

(B) commercial general liability insurance (on an occurrence form), including professional liability and errors and omissions coverage, in an amount of at least \$2,000,000 per occurrence, and \$4,000,000 general aggregate, single limit for bodily injury and property damage combined, and including contractual liability (hold harmless) insurance covering the obligations of the Company under this Agreement;

(C) business automobile liability with a combined single limit of at least \$1,000,000 per accident;

(D) statutory workers' compensation; and

(E) umbrella liability insurance in the amount of at least \$5,000,000.

This insurance shall be placed with a company or companies with current Best's Rating(s) of at least B+, and, except for (b)(A) and (D) above, shall include the Owner as additional insured, with a provision giving the Owner, at the address shown herein, at least 30 days prior written notice of cancellation, non-renewal, or material reduction of the coverage. Certificates of insurance confirming the required insurance coverages, amounts and terms shall be delivered to the Owner no more frequently than annually at the Owner's request.

(c) Owner Insurance. Such insurance shall include, for the Owner, the following coverages, subject to deductibles and exclusions as applicable:

(A) the equivalent of ISO special form property insurance on its assets (which includes the Owner's business personal property only, not buildings) in the amount of the full replacement value thereof, with all rights of subrogation against the Company waived;

(B) commercial general liability, in an amount not less than \$4,000,000, with a deductible of \$25,000;

(C) malpractice insurance in an amount not less than \$2,000,000 per occurrence and \$4,000,000 in annual aggregate, with a deductible of \$25,000, which insurance shall also cover losses for bodily injury and property damage for the Medical Director arising from his/her negligent acts and omissions related solely to the administrative duties described under the applicable Medical Director Agreement, but not including any liability coverage in his/her role as a treating physician; and

(D) umbrella liability insurance in the amount of at least \$5,000,000.

Such insurance maintained for the Owner shall be primary for the Owner and the Company and shall be noncontributory with respect to any insurance arranged by the Company. Any self-insured retention and/or deductible is the sole responsibility of the Owner, and shall be treated the same as if it were valid and collectible insurance. This insurance shall be placed with a company or companies with current Best's Rating(s) of at least B+, and, except for (c)(A) above, shall include the Company as additional insured.

Section 2.15 NxStage Patient Personal Electronic Devices. To the extent that the Owner has patients receiving home hemodialysis (a "**Home Patient**") on a home-use NxStage portable hemodialysis system, the Company will make available to Owner one iPad or other tablet computer (the "**Device**") per Home Patient. The sole capability of the Device shall be the transmission of treatment data to the Owner via Company's Nx2Me Connected Health® telehealth platform (or a successor application). Company shall charge the Owner a monthly fee equal to the depreciated per-month cost of each such furnished Device.

Section 2.16 Patient Information. During the term of this Agreement, the Company and the Owner will work together to try to provide PeaceHealth, at its expense, with reasonable access to the Owner's patient information, to the extent permitted by law.

### ARTICLE III

#### COMPENSATION

Section 3.1 Compensation. In consideration of the provision of the Services herein, the Owner shall pay the Company, and the Company shall accept as full and sufficient compensation therefor, the following:

(a) Monthly service fee equal to [REDACTED], as adjusted as provided below (the "**Service Fee**"), plus the Company's direct expenses applicable to the Business to the extent reimbursable under this Agreement. A treatment includes in-center, home and acute hemodialysis, CAPD and CCPD treatments, as applicable. For purposes of calculating

the Service Fee with regard to the Owner's home program (if any), the “per treatment” equivalent for a home patient shall be calculated as the number of calendar days during which such patient undergoes treatment, multiplied by the fraction of 3/7. A treatment shall be deemed to have occurred if the treatment is billable to the patient’s insurer or, if the patient is uninsured, if the treatment would be billable to Medicare if the patient had such coverage. In the event that this Agreement is terminated prior to the end of any calendar month, the Service Fee shall be prorated to reflect the actual number of days in which Services were rendered during that month. The Company will submit periodic invoices for the Service Fee and other expenses of the Business. The Company shall pay such invoices from the Special Account pursuant to the provisions of **Section 2.6(d)**. As of January 1 of each year, beginning January 1, 2021, the Service Fee shall be increased by 2.5%.

(b) For services rendered pursuant to **Section 2.10(a)** and **2.10(b)**, a project development fee equal to [REDACTED] of “**Total Project Costs**,” which includes only the cost of architectural and engineering fees, the total amount payable to any general contractor or other contractors, including authorized adjustments, for the performance of the work under the construction documents, and the cost of all furniture, fixtures and equipment; provided however that the cost of dialysis machines and other medical equipment shall not be included in Total Project Costs. The estimated Total Project Costs as of the date hereof in connection with the proposed relocation of the Business following the term of the current lease are set forth on **Exhibit C** attached hereto. In addition, the Owner shall reimburse the Company for any direct expenses incurred by the Company in providing project development services including without limitation the travel expenses of the Company’s personnel who provide project development services hereunder. The Company will submit monthly to the Owner a statement of project development fees and expenses due hereunder. The Company shall pay within 30 days after the submission of such statement from the Special Account pursuant to the provisions of **Section 2.6(d)**.

**Section 3.2    Audit of Books and Records.** Each of the Company and the Owner shall have the right, at its sole cost and expense, and upon reasonable prior notice to the other party, to audit the books and records maintained by the other party to verify the costs and expenses of operating the Business.

**Section 3.3    Taxes.** All taxes and other governmental obligations properly imposed on the Owner shall be the obligation of the Owner, and the Company shall have no responsibility for such liabilities. Each party shall be and remain the employer of its employee personnel. Such personnel shall at no time be deemed to be employees of the other party and shall not be entitled or eligible to participate in benefits or privileges provided or extended by the other party to its employees.

**Section 3.4    Termination Payments.** If this Agreement is terminated prior to its expiration in accordance with **Section 4.2**, the Owner shall pay the Company any unpaid Service Fees and project development fees, on a pro rata basis, as applicable, for services rendered by the Company prior to the termination of the Agreement.

## ARTICLE IV

### TERM AND TERMINATION

Section 4.1 Term. The initial term of this Agreement shall begin on the Effective Date and shall continue for ten years unless sooner terminated as provided in this Agreement.

Section 4.2 Termination. Either party may terminate this Agreement if there is a material breach of and failure to cure a party's obligations hereunder. Upon discovery of the occurrence of a material breach of this Agreement, the non-breaching party shall notify the breaching party in writing of its desire to terminate this Agreement and shall include in such notice the basis on which termination is being effected. If the breaching party fails either to cure the breach within 90 days after the date of the notice of breach (including removal and replacement of any employee) period or to commence good faith efforts to cure the breach within 90 days after notice and diligently to pursue the cure to completion, then the noticing party may terminate this Agreement; provided that in the event of an unresolved dispute between the parties as to whether a material breach exists or has been cured, either party may submit such dispute to binding arbitration before a single arbitrator and the Agreement shall not terminate (based on the notice of breach then at issue pursuant to this **Section 4.2** unless and until such arbitration results in a ruling that a material breach exists that has not been cured. The arbitration shall be triggered by one party providing the other party written notice of the arbitration. The arbitration shall be conducted within 60 days thereafter by the American Health Lawyers Association (AHLA) Alternative Dispute Resolution Service at a location chosen by Alternative Dispute Resolution Service. The arbitrator shall be chosen in accordance with the rules of the AHLA Alternative Dispute Resolution Service then in effect. If the AHLA Alternative Dispute Resolution Service is no longer in effect, then the arbitration shall be conducted as set out above by the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association then in effect. The parties irrevocably grant the arbitrator the authority to determine the question of whether a material breach exists or has been cured under this **Section 4.2**. Arbitration shall be binding for settlement of the issue as stated in the foregoing sentence. The parties shall share the costs of such arbitrators equally between them. Each party shall bear its own expenses of preparation for and participation in arbitration.

## ARTICLE V

### INDEMNIFICATION

Section 5.1 Company Indemnification. The Company shall indemnify, defend and hold harmless the Owner and its officers, directors, shareholders, managers, members and employees ("**Owner Indemnitees**"), from and against any and all liability, suits, claims, losses, damages and expenses (including reasonable attorneys' fees) ("**Losses**") incurred by any Owner Indemnitee that are not otherwise reimbursed under the insurance policies and programs required pursuant to **Section 2.14**, to the extent they arise from (i) any material breach by the Company of its obligations hereunder, (ii) any willful misconduct by the Company in connection with its provision of Services hereunder, or (iii) any gross negligence by the Company in connection with its provision of Services hereunder. Notwithstanding the fact that Company is providing staffing services to Owner hereunder (as a pass-through expense), the parties agree that it is

Owner, rather than Company, that will bear the risks inherent in having human actors onsite at the location(s) where the Business' clinical operations are conducted. Thus, notwithstanding any other provision in this Agreement, including this **Section 5.1**, the Company shall not be liable to any Owner Indemnitee, and shall not indemnify any Owner Indemnitee, for Losses due to or related to the conduct of the staff that is onsite at the location(s) where the Business' clinical operations are conducted, except and to the extent the Company breaches an express obligation hereunder. This **Section 5.1** provides the exclusive means for recovery for any Losses incurred by Owner Indemnitees with respect to this Agreement, whether incurred as a result of claims by third parties or as a result of acts or failures to act by the Company hereunder.

**Section 5.2    Owner Indemnification.** The Owner shall indemnify and hold harmless the Company and its officers, directors, shareholders, affiliates and employees ("**Company Indemnitees**"), from and against any and all Losses incurred by any Company Indemnitee to the extent they arise from any event or circumstance for which the Company is not obligated to indemnify the Owner pursuant to **Section 5.1** above. In addition, the Owner shall indemnify, defend and hold harmless the Company for the Owner's failure to pay any expenses of the Business to the extent that necessary funds for such payment are not made available to the Company by the Owner upon request by the Company.

**Section 5.3    Notice of Claims.** If any person entitled to indemnification pursuant to this **Article V** (an "**Indemnified Party**") has a claim for Losses resulting from the assertion of liability by a third party, such Indemnified Party will, within 30 days after receiving notice thereof, give the other party (the "**Indemnitor**") notice of any such third-party claim (provided that the Indemnified Party shall not be subject to any liability or loss for a delay in the delivery of such notice if such delay does not compromise or prejudice any right of the Indemnitor), and the Indemnitor may undertake the defense thereof if (i) the Indemnitor provides written notice to such Indemnified Party that the Indemnitor intends to undertake such defense and will indemnify the Indemnified Parties against all Losses resulting from or relating to such third-party claim pursuant to this **Article V**, (ii) the Indemnitor provides such Indemnified Party with evidence acceptable to such Indemnified Party that the Indemnitor will have the financial resources to defend against the third-party claim and fulfill its indemnification obligations hereunder, (iii) the third-party claim involves only money damages and does not seek an injunction or other equitable relief, (iv) settlement of, or an adverse judgment with respect to, the third-party claim is not, in the good faith judgment of such Indemnified Party, likely to establish a precedent adverse to the continuing business interests of such Indemnified Party and (v) the defense of the third-party claim is conducted actively and diligently by legal counsel reasonably acceptable to such Indemnified Party. If the Indemnitor does undertake the defense of such claim in accordance herewith, the Indemnified Parties may, by counsel of their choice, participate in such proceedings, negotiations or defense at their own expense. The Indemnified Parties shall furnish to the Indemnitor in reasonable detail such information as the Indemnified Parties may have with respect to such claim, including all records and similar materials that are reasonably required in the defense of such third-party claim. In the event that within ten days after notice of any such third-party claim, the conditions set forth in clauses (i) through (v) above are not satisfied, or if such conditions later become unsatisfied, each Indemnified Party will (upon further notice to the Indemnitor) have the right to undertake the defense, compromise or settlement of such claim, and shall continue to have all rights to indemnification hereunder. In that case, the Indemnitor may elect to participate in such proceedings, negotiations or defense at any time at its own expense,



subject to any claims the Indemnified Parties may thereafter have under this **Article V**. No Indemnitor and no Indemnified Party may settle any claim for which indemnification is sought hereunder without the prior written consent of the other. All fees and expenses payable by Indemnitor pursuant to this **Article V** shall be paid from time to time as incurred, both in advance of and after the final disposition of such action or claim.

Section 5.4 Payment and Offset. The Indemnitor shall pay, in cash, to the Indemnified Party who presents a claim for Losses subject to indemnification hereunder, the full amount of such claim, subject to the other provisions of this **Article V**, within 30 days of the making of such claim, if the Indemnitor does not dispute such claim within such 30-day period. Any Indemnified Party may satisfy any undisputed claim for indemnity hereunder or any claim for indemnification in respect of a final judgment against the Indemnitor by offsetting such claim against any payment due to the Indemnitor from the Indemnified Party hereunder.

Section 5.5 Rights and Obligations Survive. The rights and obligations of the parties and the Indemnified Parties under this **Article V** shall survive any termination of this Agreement. The Indemnified Parties are express third party beneficiaries of this **Article V**.

## ARTICLE VI

### COVENANTS

Section 6.1 Nondisclosure of Proprietary Information. The Owner acknowledges and agrees that during the term hereof, it shall have access to Confidential Information (as defined below) and other proprietary information of the Company relating to the operation of ESRD programs of the Company, its subsidiaries, or its affiliates which the Owner acknowledges and agrees is confidential. The Owner shall not, and its respective owners, employees, agents and affiliates of the foregoing shall not, except as may be required by any lawful subpoena, court order or legal process, at any time without the Company's prior written consent: (i) disclose any such information to any third party, or (ii) reproduce or utilize any such information in furtherance of any business venture other than the Business. If the Owner is required by lawful subpoena, court order, or legal process to disclose any Confidential Information or other proprietary information of the Company, the Owner shall provide sufficient notice thereof to the Company to enable the Company to seek a protective order or other appropriate legal or equitable remedy to prevent such disclosure. The Company shall keep the Confidential Information of the Owner confidential subject to the same requirements applicable to the Owner in accordance with the first two sentences of this **Section 6.1**. The Company shall also keep medical records of the Owner confidential in accordance with all applicable state and federal laws. For purposes of this **Section 6.1**, the term "**Confidential Information**" shall mean the non-public information of a party, or any entity with which a party contracts to provide any of the Services, including, but not limited to, a formula, pattern, compilation, program, device, method, system, technique, process, financial information, business strategy, or costing data, patient list, payor list, manuals, policies and procedures, forms, contractual arrangements, etc. Confidential Information shall not include information which: (i) is known to the receiving party prior to receiving it from the other party, (ii) is generally known to the public; (iii) is disclosed to one party at any time by a third party who had the legal right to disclose it; or (iv) is

independently developed by the other party in compliance with law. The provisions of this **Section 6.1** shall survive the termination of this Agreement.

Section 6.2 Nonsolicitation of Employees. The Owner agrees that the Company has invested, and will continue to invest, substantial time and effort in assembling and training the Company's present staffs and personnel, including personnel who provide services on the Company's behalf pursuant to this Agreement. In addition, as a result of employment by the Company, such personnel have gained, and will continue to gain, knowledge of the business affairs, marketing, patients and methods of operation of the Company that the Owner agrees are confidential information and trade secrets of the Company. Accordingly, throughout the term of this Agreement and for a period of one year after termination of this Agreement for any reason, neither the Owner nor any of its owners and affiliates (other than those who are affiliates of the Company) shall, at any time, directly or indirectly solicit, encourage, entice or induce for employment any employee of the Company (including any employee hired by the Company after the date hereof or after the termination hereof) or take any action which results in the termination of employment or other arrangements between the Company and such employee or otherwise interferes with such employment except pursuant to a general solicitation which is not directed specifically to any such employees; provided, that nothing in this Section will prevent the Owner or its owners and affiliates from hiring (i) any employee whose employment has been terminated by the Company without cause or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee or by the Company for cause. The existence of any claim or cause of action by Owner against Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by Company of the foregoing, but shall be litigated separately.

Section 6.3 Reasonableness of Restrictions. The parties acknowledge that the restrictions in this **Article VI** are reasonable and necessary to protect the legitimate interests of the parties and that any violation would result in irreparable injury to the non-disclosing party. The parties further acknowledge that, in the event of a violation of any such restrictions, the non-disclosing party shall be entitled to preliminary and permanent injunctive relief without having to prove actual damages or immediate or irreparable harm or to post a bond. The non-disclosing party shall also be entitled to an equitable accounting of all earnings, profits and other benefits arising from such violation, which rights shall be cumulative and in addition to any other rights or remedies to which the non-disclosing party may be entitled at law or in equity. Notwithstanding the foregoing, if the restrictions specified in this **Article VI** are adjudged unreasonable in any court proceeding, the parties hereby agree to the reformation of such restriction by the court to such limits as it finds reasonable, and neither party will assert that such restrictions should be eliminated in their entirety by such court.

## **ARTICLE VII**

### **MISCELLANEOUS**

Section 7.1 Shared Values. As stated in the Fresenius Medical Care Code of Ethics and Business Conduct, the Company upholds the values of quality, honesty and integrity, innovation and improvement, and respect and dignity, as well as lawful conduct, especially with regard to anti-bribery and anti-corruption. FMCNA upholds these values in its own operations,

as well as in its relationships with business partners. The Company's continued success and reputation depends on a common commitment to act accordingly. Together with the Company, the Owner is committed to uphold these fundamental values by adherence to applicable laws and regulations.

Section 7.2 Exhibits Incorporated by Reference. The Exhibits to this Agreement are a part of this Agreement as if set forth at length verbatim where reference is made to them in this Agreement.

Section 7.3 Change in Law. If there is a change in Medicare, Medicaid or other federal or State statutes or regulations or in the interpretation thereof, which renders any of the material terms of this Agreement unlawful or unenforceable, this Agreement shall be amended by the parties hereto as a result of good faith negotiations to the least extent necessary in order to carry out the original intention of the parties in compliance with such law or regulation. In the event such law or regulation is subsequently amended or interpreted in such a way as to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered valid from the effective date of such interpretation or amendment.

The Owner and the Company further agree that the benefits to the Owner hereunder do not require, are not payment for, and are not in any way contingent upon, the referral (as that term is defined in 42 U.S.C. § 1395nn or 42 U.S.C. § 1320a-7(b)), admission or any other arrangement for the provision of any item or service offered by the Company to patients of the Owner in any facility or health care operation controlled, managed, or operated by the Company.

Section 7.4 Approvals. Where the agreement, approval, acceptance or consent by either party is required under of this Agreement, such action shall not be unreasonably delayed or withheld.

Section 7.5 Assignment. Neither party shall have the right, without the other party's prior written consent (not to be unreasonably withheld), to assign this Agreement or to assign any of its rights hereunder, except to a purchaser of the Business. Notwithstanding the foregoing, the Company may assign its rights to this Agreement to a wholly-owned affiliate without the Owner's prior written consent, and the Owner shall attorn to the assignee. If only a portion of the Business is sold, this Agreement will be partially assigned for that portion of the Business sold, and the Service Fee will be ratably apportioned.

Section 7.6 Force Majeure. If either party is delayed or prevented from fulfilling any of its obligations under this Agreement, other than the obligations relating to reimbursement of expenses and payment of the Service Fee contained in **Article III**, by *force majeure*, such party shall not be liable under this Agreement for the delay or failure. "*Force majeure*" means any cause beyond the reasonable control of a party, including but not limited to an act of God, act or omission of civil or military authorities of a state or nation, fire, strike, flood, riot, war, delay of transportation, or inability due to any of these causes to obtain necessary labor, materials or facilities.

Section 7.7 Amendment. This Agreement may be amended only by a writing signed by the Company and the Owner.

Section 7.8 Entire Agreement. This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between the parties with respect to the subject matter hereof.

Section 7.9 Confidentiality of the Agreement. The terms and conditions of this Agreement, as well as any documents or information (not publicly available) provided in connection with the negotiation and preparation of this Agreement, are Confidential Information.

Section 7.10 Non-waiver. No delay or failure by a party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right.

Section 7.11 Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

Section 7.12 Governing Law and Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware without regard to conflict of laws principles. The United States District Court for the Western District of Washington shall have sole and exclusive jurisdiction over any lawsuit or other proceeding relating to or arising from this Agreement. If such court lacks federal subject matter jurisdiction, the parties agree that the courts in King County, Washington shall have sole and exclusive jurisdiction. Any of these courts shall be proper venue for any such lawsuit or judicial proceeding and the parties hereto waive any objection to such venue. The parties hereto consent to and agree to submit to the jurisdiction of, and agree to accept service of process to vest personal jurisdiction over them in, any of the courts specified herein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

Section 7.13 Access to Books and Records.

(a) Access to the Company's Books and Records. To the extent that the cost or value of the Company's management services hereunder exceed or would exceed \$10,000 for a 12-month period, until expiration of a period of four years following the last date the Company furnishes services pursuant to this Agreement, the Company shall make available to such entity, upon written request by the Secretary of HHS, the Comptroller General of the United States or any of their duly authorized representatives, all contracts, books, documents and other records of the Company which are necessary to verify the nature and extent of the costs of the Company's services hereunder. The Company shall notify the Owner within ten days of receipt of such a request.

(b) Access to Subcontractor's Books and Records. If the Company carries out any of its duties under this Agreement through a subcontract with a related organization involving a value or cost of \$10,000 or more over a 12-month period, the Company will cause the subcontract to contain a clause to the effect that, until expiration of four years after the furnishing of any service pursuant to the subcontract, the related organization shall make available, upon written request by the Secretary of HHS, the Comptroller General of the United States or any of their duly authorized representatives, the subcontract and the books, documents and other records

of the organization which are necessary to verify the nature and extent of the costs of the related organization's services.

(c) Purpose of Access Clauses. It is understood and agreed that this **Section 7.13** is designed to implement Section 1861(v)(1)(I) of the Social Security Act, as amended, and the regulations promulgated thereunder. If such statutory provision and regulations shall be deemed inapplicable hereto, then the access provisions of this **Section 7.13** shall be deemed inoperative and without force and effect.

**Section 7.14 Notice**. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement must be in writing and signed by the party giving the same and are deemed given or made (a) three business days after being mailed by certified or registered mail, postage prepaid, (b) when hand delivered or (c) one day after being sent by overnight delivery service, in each case to the intended recipient as indicated below or to any other address of which prior written notice has been given.

If to the Company: Fresenius Management Services, Inc.  
c/o Fresenius Medical Care North America  
920 Winter Street  
Waltham, MA 02451  
Attention: General Counsel

If to the Owner: Fresenius Kidney Care Longview, LLC  
920 Winter Street  
Waltham, MA 02451  
Attention: General Counsel

with a copy to: Kent J. McCready  
Robinson, Bradshaw & Hinson, P.A.  
101 North Tryon Street  
Suite 1900  
Charlotte, NC 28246

with a copy to: Health Ventures  
1115 SE 164th Avenue  
Vancouver, WA 98683  
Attention: Michael Dwyer  
Executive Vice President, Strategy and  
Community Health

with a copy to: PeaceHealth Legal  
1115 SE 164th Avenue  
Vancouver, WA 98683  
Attention: EVP and General Counsel

**Section 7.15 Compliance with Law**. Notwithstanding any other provision in this Agreement, the Owner remains responsible for ensuring that the ownership and operation of the

Business, and any Services provided pursuant to this Agreement, comply with all pertinent provisions of federal, state and local statutes, rules and regulations. Each of the Company and the Owner agrees that it shall comply with all pertinent provisions of federal, state and local statutes, rules and regulations in carrying out its responsibilities hereunder.

Section 7.16 Representation by Counsel. The parties agree that each have had the benefit of representation by legal counsel in negotiating this Agreement. No party is to be construed as the drafter of this Agreement for purposes of determining the meaning of any provision of this Agreement, or for allocating the benefit of any future ambiguity.

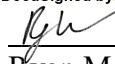
Section 7.17 Severability. In the event any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement or any other application thereof shall not in any way be affected or impaired thereby.

Section 7.18 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Signature pages follow]

**IN WITNESS WHEREOF**, the parties have caused their duly authorized officers to execute this Agreement as of the day and year above written.

**FRESENIUS MANAGEMENT SERVICES,  
INC.**

DocuSigned by:  
By:   
Name: Ryan M. Valle  
Title: Vice President

[Signatures continue on next page.]

**FRESENIUS KIDNEY CARE LONGVIEW,  
LLC**

By:   
Name: Daniel E. Fontoura  
Title: Manager



## **EXHIBIT INDEX**

### **Description**

### **Exhibit**

List of Expected Employee Positions  
Listing of Policy/Procedure Manuals  
Total Project Costs

A  
B  
C

**Exhibit A**

**LIST OF EXPECTED EMPLOYEE POSITIONS  
AS OF CLOSING DATE**

(see attached)

[illegible]

11

12

13

14

## **Exhibit B**

### **POLICIES AND PROCEDURES**

#### **Facility Design and Maintenance Support**

1. Building Maintenance Manual

#### **Clinical**

2. Home Therapy Peritoneal Dialysis Manual
3. UKM Clinical Training Manual
4. Clinical Services Integrated Policy and Procedure Manual (Volumes I and II)
5. Central Venous Catheter Training Manual
6. Hemodialysis Therapist Training Module: Vascular Access
7. Bloodborne Pathogen Program & Infection Control Manual
8. FMS Inpatient Services Policy & Procedure Manual

#### **Operations**

9. Forms Guide Manual

#### **Technical**

10. Technical Policy & Standards Manual
11. Technical Policy & Standards Manual – Inpatient Services/Acute Program
12. Technical Policy & Standards Manual – Home Hemo
13. NxStage Home Hemo Technical Policy and Standards Manual (Vol. II)

#### **Health, Safety, Environmental, Engineering, Security and Risk Management**

14. Environmental Health & Safety Manual
15. State Specific Medical Waste Protocol
16. Claims Handling Procedures and Forms
17. Protection to Fight Infection – Remember Proper Handwashing Techniques
18. Protection to Fight Infection – Wear Your Personal Protective Equipment
19. Protection to Fight Infection – Avoid Needlesticks: Use Care in Disposal of Needles/Sharps
20. Environmental, Health & Safety Policy
21. Weapons and Firearms Policy
22. If you Require Assistance Walking
23. Important Reminders In Preventing Needlesticks
24. Important Reminders in Preventing Back Injuries
25. Hazard Communication
26. OSHA Workplace Inspection Guidelines
27. Back Injuries While Handling Patients
28. Protecting Your Back
29. Lockout Tagout Procedures
30. Tuberculosis Control
31. Clearing the Air: Proper Use & Maintenance of Air Purifying Respirators
32. Personal Protective Equipment
33. Protecting Yourself Against BBP

34. Workplace Violence
35. Healthcare Electrical Safety
36. Fire Extinguisher Safety
37. Revised Needlestick Safety
38. Defensive Driving
39. Medical Waste Handling
40. Accident Investigation
41. Outside Contractor Training for Dialysis Services
42. Patient Infection Control Guidelines & Emergency Takeoff Procedures
43. Revised Dealing with Non-Compliance Patient & Patient Rights and Responsibilities
44. DOT Hazardous Materials Training for Dialysis Services
45. Safety First – Revised Safety Orientation Video
46. Quizzes for the Videos

### **Compliance**

47. General Compliance Policy
48. Functional Compliance Policy
49. Privacy Policy
50. Electronic Information Security Awareness Training
51. Annual Compliance Training

**Exhibit C**

**TOTAL PROJECT COSTS**

CapEx	
Direct construction cost for tenant improvement only, including contractors OH&P	\$2,600,000
Design	\$234,000
Contingency 15% FMC mandated	<u>\$425,000</u>
Total design and construction	\$3,259,000
FF&E	<u>\$558,000</u>
Total cap x for TI only does not include landlord work or shell/site ground up construction	\$3,817,000
-square footage, 13,612	
-station count 30+1+4 per space program	

**Exhibit 8.**  
**Proof of Landlord Ownership**





## Cowlitz County Property Information

Property ID: 3052911

Parcel: 094761003

Site Address: 600 TRIANGLE CTR 120

### Owner Information

**Owner:** TRIANGLE TOWN CENTER NW LLC  
**Mailing Address:** 2315 GALAHAD RD  
SAN DIEGO, CA 92123

### General Property Info

**Jurisdiction:** LONGVIEW  
**Acres:** 0.0000  
**Curr Assmt Yr:** 2020  
**Abbr Prop Ref:** 35 (AP 17) -3 15 28 -8N -2W LOT 3 THRU  
15,36A,37B,38C,38D AKA TR D ROS 24/184.  
**Sect/Township/Range:** 28-8N-2W  
**Property Use:** RETAIL STORE  
**Neighborhood:** WASH WAY\_15TH\_OBH  
**Tax Code Area:** 400

### Current Assessed Values For 2020

**Land Value:** \$5,485,260  
**Improvement Value:** \$8,794,100  
**Current Use:** \$0  
**Total Assessed Value:** \$14,279,360

### Current Taxes For 2021 Payable Year

**Taxes:** \$150,645.56  
**Assessments:** \$6,553.14  
**Total Charges:** \$157,198.70  
**First Half:** \$0.00  
**Second Half:** \$0.00  
**Total Paid:** \$78,599.38  
**Total Due:** \$78,599.32

### Photos





## Cowlitz County Property Information

Property ID: 3052911

Parcel: 094761003

Site Address: 600 TRIANGLE CTR 120

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### Property Details

Year Built - COMM

Area (SQFT) - COMM SUB\_CODE

00

**Exhibit 9.**  
**Equipment List**

## FKC Cowlitz - Equipment List

### *Relocation*

#### Fixed Equipment

Description	Quantity	Price Per Unit	Total Cost
30100 - Signage	1	\$12,500	\$12,500
Scale	2	\$3,049	\$6,098
34120 -Transfer Switch/Generator	1	\$133,075	\$133,075
34122 - Project Water Treatment Equipment	1	\$400,000	\$400,000
Security System	1	\$4,500	\$4,500
Subtotal Fixed Equipment			\$556,173
Sales Tax			\$45,050
<b>Total Fixed Equipment</b>			<b>\$601,223</b>

#### Moveable Equipment

Description	Quantity	Price Per Unit	Total Cost
<u>Artwork/Furniture</u>			
HT Room	4	\$550	\$2,200
HT Nurse	4	\$500	\$2,000
Chief Tech office and work	1	\$1,500	\$1,500
CM Office	1	\$2,350	\$2,350
Conf Room	1	\$3,700	\$3,700
Dialysis Area	1	\$600	\$600
Dietician Office	1	\$1,850	\$1,850
Dr Exam Room	1	\$1,450	\$1,450
Dr Office	1	\$1,250	\$1,250
Exam Room	1	\$1,100	\$1,100
Locker area	1	\$650	\$650
Lounge	1	\$4,500	\$4,500
Nurse Station	1	\$1,000	\$1,000
Receptionist	1	\$1,250	\$1,250
Social Worker Office	1	\$1,850	\$1,850
Storage Shelving	1	\$3,500	\$3,500
Waiting Room	1	\$5,500	\$5,500
Warehousing and delivery	1	\$7,000	\$7,000
Artwork	1	\$4,500	\$4,500
<u>Equipment</u>			
Network Rack	1	\$3,472	\$3,472
34105 - TV's	31	\$1,200	\$37,200
34108 - Dialysis Machine	25	\$15,000	\$375,000
34111.a - Dialysis Beds (Nocturnal or By Request	1	\$4,500	\$4,500
Dialysis Chairs (IC and HT)	28	\$2,000	\$56,000
Hoyer Lift	1	\$1,500	\$1,500
Hand Truck/Pallet jack	1	\$900	\$900
Crash Cart	2	\$750	\$1,500
O2 Concentrator	6	\$1,000	\$6,000
Telephone System	1	\$5,000	\$5,000
Subtotal Moveable Equipment			\$538,822
Sales Tax (Excluding Dialysis Machines)			\$14,416
<b>Total Moveable Equipment</b>			<b>\$553,238</b>

## FKC Cowlitz - Equipment List

### *Expansion*

#### Fixed Equipment

Description	Quantity	Price Per Unit	Total Cost
34122 - Project Water Treatment Equipment	11	\$1,200	\$13,200
Subtotal Fixed Equipment			\$13,200
Sales Tax			\$1,162
<b>Total Fixed Equipment</b>			<b>\$14,362</b>

#### Moveable Equipment

Description	Quantity	Price Per Unit	Total Cost
34105 - TV's	11	\$1,550	\$17,050
34108 - Dialysis Machine	11	\$15,000	\$165,000
Dialysis Chairs	11	\$1,880	\$20,680
IV Pump	2	\$1,500	\$3,000
O2 Concentrator	2	\$1,000	\$2,000
Subtotal Moveable Equipment			\$207,730
Sales Tax <b>(Excluding Dialysis Machines)</b>			\$3,760
<b>Total Moveable Equipment</b>			<b>\$211,490</b>

**Exhibit 10.**  
**Financial Commitment Letter**



**Pacific Northwest Regional Center**  
20900 SW 115<sup>th</sup> Ave, Suite 190 Tualatin, OR 97062  
PH: 503-506-9100 Fax: 503-506-9163

May 5, 2021

Department of Health  
Certificate of Need Program  
PO Box 47852  
Olympia, WA 98504-7852

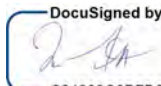
**RE: Fresenius Kidney Care Longview, LLC Requesting to relocate and expand in Cowlitz County.**

Dear Sir or Madam:

Please accept this letter as evidence of Fresenius Medical Care Holdings, Inc.'s financial support for the certificate of need application by Fresenius Kidney Care Longview, LLC to relocate and expand its clinic in Longview, WA. Fresenius' subsidiary, Renal Care Group Northwest, Inc., has 60% interest in Fresenius Kidney Care Longview, LLC.

Fresenius is pleased to commit from its corporate reserves, the funding for the estimated capital expenditures required for this health care facility. Fresenius has sufficient cash reserves to fully fund the intended project.

Sincerely,

DocuSigned by:  
  
C24308C6D7D84DF...

Mark Fawcett  
Senior Vice President & Treasurer

**Exhibit 11A.**

**Balance Sheet—Fresenius Kidney Care Longview, LLC.**



**FRESENIUS KIDNEY CARE LONGVIEW, LLC**  
**BALANCE SHEET**

	<u>December 31,</u> <u>2019</u>	<u>December 31,</u> <u>2020</u>
<b>Assets</b>		
Current assets:		
Cash and Cash Equivalents	\$ 3,246,688	\$ 6,600,071
Net Accounts Receivable	1,809,804	1,357,202
Inventory	109,516	196,551
Other Current Assets	224,331	67,217
Total Current Assets	5,390,339	8,221,042
 Property, Plant, and Equipment, Net	 706,413	 662,637
Net Right of Use	449,633	179,833
Intangible Assets	13,666,473	13,584,310
<b>Total Assets</b>	<b>\$ 20,212,858</b>	<b>\$ 22,647,822</b>
<b>Liabilities</b>		
Current liabilities:		
Due to Manager	\$ 577,519	\$ 536,574
Accounts Payable, Other	655,349	73,516
Accrued Salaries and Wages	108,180	130,435
Unreconciled Payments	20,922	443,332
Short Term Lease Liability	305,680	222,777
Other Current Liabilities	86,215	186,401
Total Current Liabilities	1,753,864	1,593,035
 Long Term Lease Liability	 523,652	 277,965
<b>Total Liabilities</b>	<b>2,277,516</b>	<b>1,871,000</b>
<b>Stockholders' Equity</b>		
Contributed Capital, Total	18,145,911	18,145,910
Total Retained Earnings	(210,569)	2,630,912
<b>Total Stockholders' Equity</b>	<b>17,935,342</b>	<b>20,776,822</b>
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$ 20,212,858</b>	<b>\$ 22,647,822</b>

**Exhibit 11B.**

**Fresenius Medical Care's 2019 Annual Report featuring 2019  
and 2018 Consolidated Financial Statements**

*Electronic Copy: please see the audited statements included as  
a supplemental PDF.*

**Exhibit 11C.**

**Fresenius Medical Care's 2020 Annual Report featuring 2019 and  
2020 Consolidated Financial Statements**

*Electronic Copy: please see the audited statements included as a  
supplemental PDF.*

## **Exhibit 11D.\***

### **PeaceHealth Audited Financials, FY 2019 – 2018**

*\*Exhibit 11D PDF file protected and cannot be merged. See supplemental PDF to email submission.*

## **Exhibit 11E.\***

### **PeaceHealth Audited Financials, FY 2020 – 2019**

*\*Exhibit 11E PDF file protected and cannot be merged. See supplemental PDF to email submission.*

**Exhibit 12.**  
**Affiliation/Transfer Agreement**

## **DIALYSIS UNIT EMERGENCY BACK UP AGREEMENT**

This AGREEMENT made as of this 25 day of November, 2020 (“Effective Date”), between Peace Health St. John Medical Center, an unincorporated division of PeaceHealth (the “Hospital”), and Fresenius Kidney Care Longview, LLC d/b/a Fresenius Kidney Care Cowlitz County (hereinafter referred to as “Fresenius Kidney Care” or the “Company”).

WHEREAS, Company desires to assure the availability of the Hospital’s facilities for its patients who are in need of inpatient treatment at a hospital and those residing in the hospital’s distinct/part/skilled intermediate care unit, in compliance with 42 C.F.R. Part 494.180(g), and the Hospital is equipped and qualified to provide hospital care on an inpatient basis for such patients; and

WHEREAS, the Hospital desires to assure the availability of hemodialysis treatment for its patients who are in need of outpatient treatment, and Company is experienced and qualified to administer dialysis treatments and clinically manage patients with chronic renal failure on an outpatient basis;

1. The Hospital agrees to make the facilities and personnel of its routine emergency service available for the treatment of acute life-threatening emergencies, which may occur to any of Company’s patients. In the event of an emergency at Company, the responsible physician shall notify the patient’s physician of record, as indicated in Company’s files, and shall promptly notify the Emergency Room physician of the particular emergency. Company shall be responsible for arranging to have the patient transported to the Hospital and shall send appropriate interim medical records. There will be an interchange, within one working day but preferably within 2 hours, of medical and other information necessary or useful in the care and treatment of patients referred to the Hospital from Company, or in determining whether such patients can be adequately cared for otherwise than in either of the facilities. Admission to Hospital, and the continued treatment by Hospital, shall be provided regardless of the patient’s race, color, creed, sex, age, disability, or national origin.
2. In the event the patient must be transferred directly from Company to the Hospital, Company shall provide for the security of, and be accountable for, the patient’s personal effects during the transfer.
3. Company shall keep medical records of all treatments rendered to patients by Company. These medical records shall conform to applicable standards of professional practice. If requested by the Hospital, Company shall provide complete copies of all medical records of a patient treated by Company who is, at the time of the request, an inpatient at the Hospital.
4. [Section omitted.]

5. [Section omitted.]
6. [Section omitted.]
7. Company agrees to develop, maintain and operate, in all aspects, an outpatient hemodialysis facility, providing all physical facilities, equipment and personnel necessary to treat patients suffering from chronic renal diseases. Company shall conform to standards not less than those required by the applicable laws and regulations of any local, state or federal regulatory body, as the same may be amended from time to time. In the absence of applicable laws and regulations, Company shall conform to applicable standards of professional practice. Company shall treat such commitment as its primary responsibility and shall devote such time and effort as may be necessary to attain these objectives. Admission to Company, and the continued treatment by Company, shall be provided regardless of the patient's race, color, creed, sex, age, disability, or national origin.
8. The cost of such facilities, equipment and personnel shall be borne by Company. The location of such facilities shall be selected by Company, but shall be sufficiently close to the proximity to the Hospital to facilitate the transfer of patients, and communication between the facilities.
9. Company shall engage a medical director of Company's outpatient hemodialysis facility who shall have the qualifications specified in 42 C.F.R. Part 494.140(a). This individual must be a physician properly licensed in the profession by the state in which such facility is located. In accordance with 42 C.F.R. Part 494.140(b)-(f), Company shall employ such duly qualified and licensed nurses, technicians, and other personnel as shall be necessary to administer treatment at its facility, in accordance with applicable local, state, and federal laws and regulations.
10. With the approval of the patient, the patient's physician shall consult with the Company Medical Director. If outpatient treatment is considered appropriate by the patient's physician and the Company Medical Director, said patient may be referred to Company for outpatient treatment at a facility operated by Company which is most convenient for the patient (or, in the event space is not available, to an affiliated unit). There will be an interchange, within one working day, of the Patient Long-Term Care Program and Patient Care Plan Team, and of medical and other information necessary or useful in the care and treatment of patients referred to Company from the Hospital, or in determining whether such patients can be adequately cared for otherwise than in either of the facilities.
11. With respect to all work, duties, and obligations hereunder, it is mutually understood and agreed that the parties shall own and operate their individual facilities wholly independent of each other. All patients treated at the facilities of Hospital or Company shall be patients of that facility. Each party shall have the sole responsibility for the treatment and medical care administered to patients in their respective facilities.



12. Company and Hospital shall each maintain in full force and effect throughout the term of this Agreement, at its own expense, a policy of comprehensive general liability insurance and professional liability insurance covering it and Company's Staff and Hospital staff and physicians, respectively, each having a combined single limit of not less than \$1,000,000 per occurrence, \$3,000,000 annual aggregate for bodily injury and property damage to insure against any loss, damage or claim arising out of the performance of each party's respective obligations under this Agreement. Each will provide the other with certificates evidencing said insurance, if and as requested. Company and Hospital further agree to maintain, for a period of not less than three (3) years following the termination of this Agreement, any insurance required hereunder if underwritten on a claims-made basis. Either party may provide for the insurance coverage set forth in this Section through self-insurance.
13. Each party agrees to indemnify and hold harmless the other, their officers, directors, shareholders, agents and employees against all liability, claims, damages, suits, demands, expenses and costs (including but not limited to, court costs and reasonable attorneys' fees) of every kind arising out of or in consequence of the party's breach of this Agreement, and of the negligent errors and omissions or willful misconduct of the indemnifying party, its agents, servants, employees and independent contractors (excluding the other party) in the performance of or conduct related to this Agreement.
14. The Parties expressly agree to comply with all applicable patient information privacy and security regulations set for in the Health Insurance Portability and Accountability Act ("HIPAA") final regulations for Privacy of Individually Identifiable Health Information by the federal due date for compliance, as amended from time to time.
15. Whenever under the terms of this Agreement, written notice is required or permitted to be given by one party to the other, such notice shall be deemed to have been sufficiently given if delivered in hand or by registered or certified mail, return receipt requested, postage prepaid, to such party at the following address:

To the Hospital:

PeaceHealth  
1115 SE 164<sup>th</sup> Ave  
Vancouver, WA 9683  
Attn: General Counsel

To Company:

Kendall Beatty

Attn: Director of Operations

With a copy to:

c/o Fresenius Medical Care North America  
920 Winter Street  
Waltham, MA 02451-1457  
Attn: Corporate Legal Department

16. If any provisions of this agreement shall, at any time, conflict with any applicable state or federal law, or shall conflict with any regulation or regulatory agency having jurisdiction with respect thereto, this Agreement shall be modified in writing by the parties hereto to conform to such regulation, law, guideline, or standard established by such regulatory agency.
17. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all negotiations, prior discussions, agreements or understandings, whether written or oral, with respect to the subject matter hereof, as of the Effective Date. This Agreement shall bind and benefit the parties, their respective successors and assigns.
18. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State where Hospital is located, without respect to its conflicts of law rules.
19. The term of this Agreement is for one (1) year, beginning on the Effective Date, and will automatically renew for successive one year periods unless either party gives the other notice prior to an expiration date. Either party may terminate this Agreement, at any time, with or without cause, upon thirty (30) days written notice to the non-terminating party.
20. The parties agree to cooperate with each other in the fulfillment of their respective obligations under the terms of this Agreement and to comply with the requirements of the law and with all applicable ordinances, statutes, regulations, directives, orders, or other lawful enactments or pronouncements of any federal, state, municipal, local or other lawful authority.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the date above written.

**Hospital:**

**Peace Health St. John Medical Center**

**Company:**

**FKC Cowlitz County JV Dialysis Clinic**

By: Richard DeCarlo  03/22/2021  
03:42 PM EDT

Name: Richard DeCarlo

Title: EVP, Chief Operating Officer

By: Kendall Beatty

Name: 

Title: Director of Operations