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Received and Filed:  
10/1/2024 3:12 PM  
Fee Receipt: \$8.00

**ARTICLES OF MERGER OF  
LIFECENTER ORGAN DONOR NETWORK,  
AN OHIO NONPROFIT CORPORATION  
WITH AND INTO  
KENTUCKY ORGAN DONOR AFFILIATES, INC.,  
A KENTUCKY NONPROFIT CORPORATION**

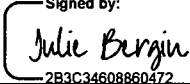
Pursuant to KRS 273.161 to 273.390, the undersigned entities adopt, as of the 1st day of October, 2024 (the "Effective Date"), the following Articles of Merger for the purpose of merging into a single corporation:

1. Kentucky Organ Donor Affiliates, Inc., a Kentucky nonprofit corporation, is the surviving corporation in the merger (the "Surviving Entity"). Following the merger, the name of the Surviving Entity will be Network for Hope, Inc.
2. LifeCenter Organ Donor Network, an Ohio nonprofit corporation, is the merging corporation in the merger (the "Merging Entity").
3. An Agreement and Plan of Merger (the "Plan of Merger") has been approved and executed by each constituent party to the merger in accordance with KRS 273.283. Neither of the constituent parties to the merger has members. Thus, the Plan of Merger was adopted by a majority of directors in office of the Surviving Entity at a meeting on March 19, 2024, and by a majority of directors in office of the Merging Entity at a meeting on March 20, 2024. Such Plan of Merger is attached hereto as Exhibit A and made part hereof by reference as if fully set forth herein.
4. Pursuant to the Plan of Merger, the Amended and Restated Articles of Incorporation of the Surviving Entity have been amended and restated to reflect, amongst other items, the new name of the Surviving Entity, in substantially the same form as attached hereto as Exhibit B and made part hereof by reference as if fully set forth herein (the "Second Amended and Restated Articles").
5. The foregoing Articles of Merger shall be effective as of 12:01 a.m. Eastern Time on the Effective Date.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the undersigned have caused this document to be executed as of the Effective Date.

**KENTUCKY ORGAN DONOR  
AFFILIATES, INC.,**  
a Kentucky nonprofit corporation

Signed by:  
By:   
2B3C34608860472  
Name: Julie Bergin  
Title: President/CEO

**LIFECENTER ORGAN DONOR  
NETWORK,**  
an Ohio nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the undersigned have caused this document to be executed as of the Effective Date.

**KENTUCKY ORGAN DONOR  
AFFILIATES, INC.,**  
a Kentucky nonprofit corporation

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

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

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

**LIFECENTER ORGAN DONOR  
NETWORK,**  
an Ohio nonprofit corporation

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

Name: Barry Massa \_\_\_\_\_

Title: Executive Director \_\_\_\_\_

**Exhibit A**  
**Plan of Merger**

[TO BE ATTACHED]

**AGREEMENT AND PLAN OF MERGER**

**dated March 22, 2024**

**by and between**

**KENTUCKY ORGAN DONOR AFFILIATES, INC. (“KODA”)**

**and**

**LIFECENTER ORGAN DONOR NETWORK (“LIFECENTER”)**

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## **EXHIBITS AND SCHEDULES**

### **Exhibits**

Exhibit A – OH Certificate of Merger

Exhibit B – KY Articles of Merger

Exhibit C – Second Amended and Restated Articles of Incorporation of the Surviving Corporation

Exhibit D – Second Amended and Restated Bylaws of the Surviving Corporation

Exhibit E – Bylaws of the Medical Advisory Board of the Surviving Corporation

### **Joint Schedules**

Schedule 2.3(a) – Initial Directors of the Surviving Corporation

Schedule 2.3(b) – Initial Officers of the Surviving Corporation

Schedule 2.3(c) – Initial Committees and Committee Members of the Surviving Corporation

Schedule 5.7 – Prohibited Pre-Closing Actions

Schedule 6.4 – Governmental Approvals and Notices

Schedule 6.10 – Corporate Policies of the Surviving Entity

Schedule 7.2(e) – Existing Written Employment/Retention Agreements

Schedule 7.3 – Branding Plan

Schedule 7.9 – Post-Closing Notices

Schedule 7.10(a) – KODA Employee Integration Compensation Plan

Schedule 7.10(b) – LifeCenter Employee Integration Compensation Plan

### **KODA Disclosure Schedules**

### **LifeCenter Disclosure Schedules**

## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER** (“Agreement”) is dated as of the 22nd day of March, 2024, by and between **KENTUCKY ORGAN DONOR AFFILIATES, INC.**, a Kentucky nonprofit corporation (“KODA”), and **LIFECENTER ORGAN DONOR NETWORK**, an Ohio nonprofit corporation (“LifeCenter”) (KODA, together with LifeCenter, collectively referred to as the “Parties,” or each individually as a “Party”).

### RECITALS:

**WHEREAS**, each of the Parties is a nonprofit corporation without members and is a tax-exempt organization described in Section 501(c)(3) of the Code;

**WHEREAS**, the mission of each Party is to work closely with hospitals, patients, and their families in its respective region to facilitate the donation of organs and tissues for transplantation;

**WHEREAS**, the Parties have discussed a proposed transaction whereby KODA and LifeCenter would combine through a merger of LifeCenter into KODA in furtherance of the Parties’ charitable purposes under Section 501(c)(3) of the Code;

**WHEREAS**, consistent with and in furtherance of their respective charitable missions, the Parties desire to pursue the Merger to achieve, among other things, a combination of resources and distribution of best practices for enhanced performance and service in the following areas: (i) public education on donation, (ii) authorization of organ and tissue donors, (iii) donor management, (iv) organ allocation and utilization, (v) recovery, preservation and logistics of recovered organs and tissues, (vi) processing opportunities for donated tissue, (vii) call center operations, and (viii) family services during and after donation; and

**WHEREAS**, the Parties believe that it is advisable and in the best interest of their respective organizations and the communities that they serve to effect the transaction described in this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements and covenants contained herein, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE I DEFINITIONS

#### Section 1.1. Certain Definitions

In addition to the words and terms defined elsewhere in this Agreement, for ease of reference, the words and terms set forth below as used in this Agreement (including the above-referenced recitals) shall have the following meanings:

“**AAA**” has the meaning set forth in Section 9.2(c)(ii).

“**Articles of Incorporation**” has the meaning set forth in Section 2.2(b).

“**Assets**” means all of the assets and properties of a Party of every kind and description, wherever located, whether tangible or intangible, real, personal, or mixed as of the applicable date.

“**Board**” has the meaning set forth in Section 7.1(a).

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in Louisville, Kentucky are authorized or required by Law to be closed for business.

**“Bylaws”** has the meaning set forth in Section 2.2(c).

**“Closing”** has the meaning set forth in Section 2.6.

**“Closing Date”** has the meaning set forth in Section 2.6.

**“CMS”** means Centers for Medicare and Medicaid Services.

**“COBRA”** means the provisions for the continuation of health care enacted by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and as codified in Section 4980B of the Code and Section 601 *et. seq.* of ERISA, and the rules and regulations promulgated thereunder.

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

**“Confidentiality Agreement”** means that certain confidentiality agreement by and between the Parties dated April 5, 2023.

**“Construction Project”** has the meaning set forth in Section 7.5(b).

**“Continuing Employee”** has the meaning set forth in Section 7.2.

**“Dispute Notice”** has the meaning set forth in Section 9.2(c)(i).

**“DSA”** and **“DSAs”** have the meaning set forth in Section 2.5.

**“Effective Time”** means the time that the Transactions are effective, as set forth in Section 2.6.

**“Environmental Laws”** means any federal, state, or local statute (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, the Federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y, and the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.* (only with respect to exposure to Hazardous Substances), each as amended, or any equivalent state or local statute, and any amendments thereto), charter or ordinance, and any rule, regulation, binding interpretation, binding policy, judgment, judicial or administrative order, directive, or consent decree or settlement agreement issued or entered into, which pertains to: (i) pollution or pollution control; (ii) protection of the environment; (iii) protection of human health from exposure to Hazardous Substances; and (iv) the management, presence, use, generation, processing, treatment, labeling, transport, storage, collection, distribution, disposal or release or threat of release of Hazardous Substances.

**“Environmental Permits”** means all material licenses, permits and approvals necessary or required under all applicable Environmental Laws.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and the rules, notices and regulations promulgated thereunder.

**“ERISA Affiliate”** means, with respect to either Party, any corporation or trade or business (whether or not incorporated) which is treated with such Party as a single employer within the meaning of Section 414 of the Code.

**“Execution Date”** means the date as of which this Agreement is executed, as specified on the first page of this Agreement.

**“Existing KODA Indebtedness”** means the outstanding long-term debt obligations of KODA which are set forth on Schedule 3.6.

**“Existing LifeCenter Indebtedness”** means the outstanding long-term debt obligations of LifeCenter which are set forth on Schedule 4.6.

**“Foreign Qualification Filings”** has the meaning set forth in Section 2.4(b).

**“GAAP”** means generally accepted accounting principles as applied in the United States of America.

**“Governmental Authority”** means any United States or non-United States federal, national, supranational, state, provincial, local, or similar government, governmental regulatory or administrative authority, branch, agency, department, commission, board, bureau, instrumentality or any court, tribunal, or arbitral or judicial body.

**“Government Programs”** means the Medicare or Medicaid programs.

**“Hazardous Substances”** means any (i) hazardous or toxic waste, substance, or material defined as such in any Environmental Laws, (ii) asbestos-containing material, (iii) medical and biologic wastes regulated under Environmental Law, (iv) infectious and chemotherapeutic wastes regulated under Environmental Law, (v) polychlorinated biphenyls, (vi) petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, and (vii) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental Laws.

**“Healthcare System”** means a corporation (or other legal entity), or commonly controlled group thereof, that conducts one or more Transplant Programs and has entered into a participation agreement with KODA, LifeCenter, or the Surviving Corporation, as applicable. For purposes of the foregoing, a “commonly controlled group” consists of two or more corporations (or other entities) in which one corporation (or other entity) controls, directly or indirectly, each other corporation (or other entity) in the group.

**“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended, or any successor provision, and the rules and regulations promulgated thereunder, as amended.

**“Indemnified Party”** has the meaning set forth in Section 9.5(a).

**“Integration Period”** means the three (3) year period commencing on the Effective Time.

**“IRS”** means the Internal Revenue Service.

**“KODA”** has the meaning set forth in the Preamble to this Agreement.

**“KODA Benefit Plan”** has the meaning set forth in Section 3.15(a).

**“KODA Cost Reports”** has the meaning set forth in Section 3.10(c).

**“KODA Designees”** mean the individuals who are designated by KODA to serve on the Board of the Surviving Corporation as of the Effective Time.

**“KODA Employment Agreements”** has the meaning set forth in Section 3.16(b).

**“KODA Financial Statements”** means, collectively, the following financial statements of KODA: (i) the audited financial statements as of December 31, 2022, December 31, 2021, and December 31, 2020, including notes thereto and the accompanying independent auditor’s report; and (ii) the unaudited, internally-prepared balance sheet and related statements of revenue and expenses as of December 31, 2023 and monthly following each month-end through the date of this Agreement.

**“KODA Future Interests”** has the meaning set forth in Section 3.21.

**“KODA Intellectual Property”** has the meaning set forth in Section 3.18(a).

**“KODA Leased Real Estate”** means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures, or other interest in real property held by KODA.

**“KODA Leases”** has the meaning set forth in Section 3.12(b).

**“KODA Material Contract”** means any of the following to which KODA is a party: (i) a loan agreement, guarantee, mortgage, security agreement, indenture, deed of trust, contract, loan or credit agreement; (ii) a clinical services agreement, professional services agreement, recovery agreement, or other agreement with any hospital, healthcare entity, physician, or physician group; (iii) an agreement related to the processing of tissue; (iv) a research or clinical trial agreement; (v) a government contract or subcontract; (vi) any agreement that requires exclusivity, restricts the ability of KODA to compete in any line of business, or includes a take-or-pay arrangement; (vii) any other agreement not to be performed within one (1) year or involving over \$25,000; (viii) an agreement or arrangement relating to the employment of any employee or with any independent contractor or consultant of KODA; (ix) an agreement or contract involving any affiliate of KODA; (x) an agreement or contract involving or related to any real property or personal property owned or used by KODA; (xi) an agreement or contract involving the settlement, release, compromise, or waiver of any rights, claims, obligations, duties, or liabilities; (xii) an agreement, contract, or instruments to which KODA is a party or by which encumber any of the assets of KODA; or (xiii) an agreement or contract constituting an amendment, supplement, or modification (whether oral or written) with respect to any of the agreements and contracts specified in (i)-(xii) of this definition.

**“KODA Material Licenses”** has the meaning set forth in Section 3.9.

**“KODA Owned Real Estate”** means all land, together with all buildings, structures, fixtures, and improvements located thereon and all easements, rights of way, and appurtenances relating thereto, owned by KODA.

**“KODA Real Estate”** means the KODA Owned Real Estate and KODA Leased Real Estate.

**“KODA Restricted Funds”** has the meaning set forth in Section 3.21.

**“Knowledge”** means the knowledge actually possessed by a chief executive officer and his/her direct reports and that which such chief executive officer or direct report would reasonably be expected to possess in light of his or her respective position and circumstances.

**“KY Act”** means the Kentucky Revised Nonprofit Corporation Act, as amended.

**“KY Articles of Merger”** has the meaning set forth in Section 2.1.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**“Leases”** means all leases of real property to which KODA or LifeCenter, as the case may be, is a party.

**“Lien”** means any lien, claim, encumbrance, mortgage, deed of trust, security interest, or pledge, real or personal.

**“LifeCenter”** has the meaning set forth in the Preamble to this Agreement.

**“LifeCenter Benefit Plan”** has the meaning set forth in Section 4.15(a).

**“LifeCenter Cost Reports”** has the meaning set forth in Section 4.10(c).

**“LifeCenter Designees”** means the individuals who are designated by LifeCenter to serve on the Board of the Surviving Corporation as of the Effective Time.

**“LifeCenter Employment Agreements”** has the meaning set forth in Section 4.16(b).

**“LifeCenter Financial Statements”** means, collectively, the following financial statements of LifeCenter: (i) the audited financial statements as of December 31, 2022, December 31, 2021, and December 31, 2020, including notes thereto and the accompanying independent auditor’s report; and (ii) the unaudited, internally-prepared balance sheet and related statements of revenue and expenses as of December 31, 2023 and monthly following each month-end through the date of this Agreement.

**“LifeCenter Future Interests”** has the meaning set forth in Section 4.21.

**“LifeCenter Intellectual Property”** has the meaning set forth in Section 4.18(a).

**“LifeCenter Leased Real Estate”** means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures, or other interest in real property held by LifeCenter.

**“LifeCenter Leases”** has the meaning set forth in Section 4.12(b).

**“LifeCenter Material Contract”** means any of the following to which LifeCenter is a party: (i) a loan agreement, guarantee, mortgage or security agreement; (ii) a clinical services agreement, professional services agreement, recovery agreement, or other agreement with any hospital, healthcare entity, physician, or physician group; (iii) an agreement related to the processing of tissue; (iv) a research or clinical trial agreement; (v) a government contract or subcontract; (vi) any agreement that requires exclusivity, restricts the ability of LifeCenter to compete in any line of business, or includes a take-or-pay arrangement; (vii) any other agreement not to be performed within one (1) year or involving over \$25,000; (viii) an agreement or arrangement relating to the employment of any employee or with any independent contractor or consultant of LifeCenter; (ix) an agreement or contract involving any affiliate of LifeCenter; (x) an agreement or contract involving or related to any real property or personal property owned or used by LifeCenter; (xi) an agreement or contract involving the settlement, release, compromise, or waiver of any rights, claims, obligations, duties, or liabilities; (xii) an agreement, contract, or instruments to which

LifeCenter is a party or by which encumber any of the assets of LifeCenter; or (xiii) an agreement or contract constituting an amendment, supplement, or modification (whether oral or written) with respect to any of the agreements and contracts specified in (i)-(xii) of this definition.

**“LifeCenter Material Licenses”** has the meaning set forth in Section 4.9.

**“LifeCenter Owned Real Estate”** means all land, together with all buildings, structures, fixtures, and improvements located thereon and all easements, rights of way, and appurtenances relating thereto, owned by LifeCenter.

**“LifeCenter Restricted Funds”** has the meaning set forth in Section 4.21.

**“Material Adverse Effect”** means with respect to either Party, any change, effect, event, occurrence or fact, whether foreseeable or not foreseeable, that, individually or in the aggregate with all other changes, effects, events, occurrences, or facts, has or is reasonably likely to have a material adverse effect on the condition (financial or otherwise) of the business, operations, results of operations, Assets or liabilities of such Party, other than any such change, effect, event, occurrence or state of facts to the extent resulting from or arising in connection with (i) changes resulting from a change in GAAP, (ii) changes resulting from any act of war or terrorism (or any escalation thereof), (iii) changes, facts, circumstances or conditions that reasonably can be shown to have been caused by acts of the other Party or the announcement or existence of this Agreement or the Transactions contemplated herein, (iv) compliance with the terms of, or the taking of any action required or contemplated by, this Agreement, or the failure to take any action prohibited by this Agreement, (v) changes of legislation, regulations, facts or circumstances generally affecting healthcare industry, (vi) the effect of use and aging on the operating assets of the Parties, (vii) changes generally affecting economic or political conditions or financial markets in the United States or (viii) any actions taken, or failure to take action, to which the other Party has requested or expressly consented to.

**“Medical Advisory Board”** has the meaning set forth in Section 2.2(d).

**“Medical Advisory Board Bylaws”** has the meaning set forth in Section 2.2(d).

**“Merger”** has the meaning set forth in Section 2.1.

**“Merging Corporation”** has the meaning set forth in Section 2.1

**“OH Act”** means the Ohio Nonprofit Corporation Law, as amended.

**“OH Certificate of Merger”** has the meaning set forth in Section 2.1.

**“Outside Date”** means November 15, 2024, or such later date agreed to in writing by the Parties.

**“Permitted Liens”** means any of the following: (i) Liens for Taxes, assessments and governmental charges or levies that (A) are not yet due as of the Effective Time or (B) are being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established to the extent required by GAAP; (ii) mechanic's, carriers', workmen's, warehouseman's, repairmen's, materialmen's or other Liens or security interests incurred in the ordinary course of business consistent with past practice that (A) are not yet due or (B) are being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established to the extent required by GAAP; (iii) a Party's Leases; (iv) defects, imperfections or irregularities in title, easements, covenants or other restrictions, rights of way (unrecorded and of record), encroachments, servitudes, permits, licenses, easements for streets, alleys, highways,

telephone lines, power lines and railways, and any other similar Liens (or other encumbrances of any type), and Laws, regulations, resolutions or ordinances, including without limitation, zoning, building, environmental protection and other similar codes or restrictions, now existing or hereinafter imposed by any judicial or governmental authorities, in each case that do not adversely affect in any material respect the current use of the applicable property leased, owned, used or held for use by a Party; (v) statutory liens of landlords under Leases; (vi) Liens that are released at or prior to the Effective Time; (vii) Liens that have been placed by any developer, landlord or other third party on real property over which a Party has easement rights or on any real property occupied by a Party under any of its Leases; and (viii) Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice.

**“Person”** means an individual, association, corporation, limited liability company, partnership, limited liability partnership, trust, Governmental Authority or any other entity or organization.

**“Personal Property”** means all tangible and intangible personal property owned, leased or used or held for use by a Party in connection with its operations, including all equipment, furniture, fixtures, machinery, vehicles, office furnishings, instruments, leasehold improvements, spare parts, and all rights in all warranties of any manufacturer or vendor with respect thereto.

**“Surviving Corporation”** has the meaning set forth in Section 2.1.

**“Tax”** or **“Taxes”** means (i) all U.S. federal, state, local and all foreign income taxes and other franchise, capital, withholding, unemployment insurance, payroll, employment, social security, gross receipts, sales and use, excise, real, and personal property taxes and all other taxes or similar assessments of any kind whatsoever; (ii) any liability for taxes of any other Person as a transferee or successor by contract or otherwise; and (iii) all interest, penalties and additions imposed with respect to such amounts referred to in clauses (i) and (ii) hereof, whether disputed or not.

**“Transaction”** or **“Transactions”** means the Merger, the amendments to the Articles of Incorporation and Bylaws of the Surviving Corporation, the commitments and arrangements of the Parties hereunder, and the related steps, terms and conditions set forth in or contemplated by this Agreement.

**“Transplant Program”** means a component within a transplant hospital (as defined in 42 CFR § 482.70) that provides transplantation of a particular type of organ.

**“UPMIFA”** means, with respect to KODA, Sections 273.600 through 273.645 of the Kentucky Revised Statutes, or any predecessor or successor statutory scheme, as amended, and, with respect to LifeCenter, Sections 1715.51 through 1715.59 of the Ohio Revised Code, or any predecessor or successor statutory scheme, as amended.

## **Section 1.2. Interpretation**

For purposes of this Agreement, unless otherwise specified:

(a) when a reference is made in this Agreement to a Section, Exhibit, Schedule, Recital or Preamble, such reference is to a Section, Exhibit, Schedule, Recital or Preamble of or to this Agreement unless otherwise indicated;

(b) the words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(c) the terms defined in the singular herein shall have a comparable meaning when used in the plural, and vice versa;

(d) words of one gender include the other gender;

(e) references herein to “days” are to consecutive calendar days unless otherwise specified;

(f) references to a Person are also to its successor and permitted assigns;

(g) “will” means “shall” and vice versa, without distinction;

(h) the word “including” means “including without limitation” and the words “include” and “includes” have corresponding meanings; and

(i) references to a statute, regulation, or other government rule are to it as amended from time to time and, as applicable, are to corresponding provisions of successor governmental rules.

## **ARTICLE II THE TRANSACTIONS AND THE CLOSING**

### **Section 2.1. Merger**

Effective as of the Effective Time and subject to the terms and conditions of this Agreement, LifeCenter (also referred to herein as the “**Merging Corporation**”) will merge with and into KODA (the “**Merger**”). At the Effective Time, KODA (also referred to herein as the “**Surviving Corporation**”) shall continue to exist as a Kentucky nonprofit corporation under the provisions of the KY Act and the separate corporate existence of the Merging Corporation shall cease. Pursuant to the KY Act and the OH Act, and as otherwise provided herein, at the Effective Time, all rights, assets and property of the Merging Corporation shall transfer to, vest in, and devolve on the Surviving Corporation without further act or deed, and all debts, liabilities and obligations of Merging Corporation shall be those of the Surviving Corporation and shall not be released or impaired by the Merger. To accomplish the foregoing, KODA and LifeCenter shall file the following at or prior to Closing, each to be effective as of the Effective Time: (a) Certificate of Merger with the Secretary of State of Ohio, substantially as provided in Exhibit A hereto (the “**OH Certificate of Merger**”); and (b) Articles of Merger with the Secretary of State of Kentucky, substantially as provided in Exhibit B hereto (the “**KY Articles of Merger**”). Notwithstanding the foregoing, in the event that, prior to the Closing, (a) (i) KODA ceases to be an organization described in Section 501(c)(3) of the Code, (ii) KODA ceases to be exempt from federal income taxation under Section 501(a)(1) of the Code, (iii) KODA ceases to be classified as not a private foundation as defined in Section 509(a) of the Code, or (iv) an event or condition has occurred which could reasonably be expected to jeopardize the federal tax-exempt status of KODA and (b) this Agreement is not terminated in accordance with Article VIII, LifeCenter may elect to change the method of effecting the Merger to cause LifeCenter to become the entity into which KODA merges, and, upon such election, LifeCenter may require KODA to enter into one or more amendments to this Agreement in order to effect any such change.

**Section 2.2. Name, Articles of Incorporation, and Bylaws of the Surviving Corporation**

(a) As of the Effective Time, the name of the Surviving Corporation shall be changed to such name as to which the Parties shall agree in writing prior to Closing.

(b) As of the Effective Time, the articles of incorporation of the Surviving Corporation shall be amended and restated substantially as provided in Exhibit C hereto (the “**Second Amended and Restated Articles of Incorporation**”).

(c) As of the Effective Time, the bylaws of the Surviving Corporation shall be amended and restated substantially as provided in Exhibit D hereto (the “**Second Amended and Restated Bylaws**”).

(d) As of the Effective Time, the Surviving Corporation shall have a single medical advisory board that satisfies applicable federal regulatory requirements regarding function and composition (the “**Medical Advisory Board**”). The bylaws of the Medical Advisory Board shall be substantially as provided in Exhibit E (the “**Medical Advisory Board Bylaws**”).

**Section 2.3. Directors, Officers, and Committees of the Surviving Corporation.**

(a) As of the Effective Time, the Board of the Surviving Corporation shall be comprised of the individuals listed on Schedule 2.3(a) hereto. All such individuals will serve as directors of the Surviving Corporation in accordance with the Articles of Incorporation and Bylaws until their respective successors shall have been duly elected or appointed and qualified or until their earlier death, resignation, or removal.

(b) As of the Effective Time, the officers of the Surviving Corporation shall be the individuals listed on Schedule 2.3(b) hereto. All such individuals will serve as officers of the Surviving Corporation in accordance with the Articles of Incorporation and Bylaws until their respective successors shall have been duly elected or appointed and qualified or until their earlier death, resignation, or removal.

(c) As of the Effective Time, the members of the Medical Advisory Board and other standing committees of the Surviving Corporation shall be the individuals listed on Schedule 2.3(c) hereto. All such individuals will serve as members of the respective committees of the Surviving Corporation in accordance with the Bylaws until their respective successors shall have been duly elected or appointed and qualified or until their earlier death, resignation, or removal.

**Section 2.4. Other Corporate Filings**

(a) Promptly following the Closing, the Surviving Corporation shall file with the Secretary of State of Kentucky such documents as are required to provide notification of the Merger and terminate Merging Corporation’s qualification to do business in such state.

(b) Prior to or promptly following the Closing, the Surviving Corporation shall file such documents as are necessary to qualify to conduct business as a foreign corporation in the State of Ohio (the “**Foreign Qualification Filings**”).

**Section 2.5. Combination of Designated Service Areas**

As a result of the Merger, the two present designated service areas (“DSAs”) assigned by CMS to the Parties will be combined into a single DSA of the Surviving Corporation, subject to receipt of all required regulatory approvals related to such combination.

**Section 2.6. Closing; Effective Time**

Subject to the satisfaction or waiver by the appropriate Party of all of the conditions precedent to Closing specified in Article VI hereof, the consummation of the Transactions (“Closing”) shall take place on the later of (a) the Business Day following the date on which all conditions precedent required herein to Closing are satisfied or waived or (b) such other date as the Parties may mutually agree (such date upon which Closing occurs, the “Closing Date”). The Closing shall take place remotely via electronic exchange of documents or at a location agreed upon by the Parties. The Closing with respect to the Parties shall be deemed to have occurred and be effective as between the Parties as of 12:01 a.m. Eastern Time on the calendar day immediately following the Closing Date, or such other date and time as are thereafter established by the Parties (the “Effective Time”).

**Section 2.7. KODA Closing Deliveries**

At or prior to the Closing and unless otherwise waived in writing by LifeCenter, KODA shall deliver the following to LifeCenter, each in form and substance reasonably satisfactory to LifeCenter and duly executed by an authorized officer of KODA, as appropriate:

(a) The OH Certificate of Merger, KY Articles of Merger, and Articles of Incorporation, duly executed and otherwise in compliance with all requirements for filing with the Secretary of State of Ohio or Secretary of State of Kentucky, as applicable, or, if agreed to by the Parties, filed with such agencies to be effective as of the Effective Time;

(b) The Foreign Qualification Filings, duly executed and otherwise in compliance with all requirements for filing with the applicable state agencies;

(c) Certificate of a duly authorized officer of KODA certifying to (i) copies of resolutions duly adopted by the KODA board of directors authorizing and approving the execution and delivery of this Agreement and the consummation of the Transactions, in accordance with the requirements of applicable Law and KODA’s articles of incorporation and bylaws, each as amended from time to time, such resolutions certified as true and in full force and effect as of the Closing Date; and (ii) the incumbency for the officers of KODA executing this Agreement and the other documents required to be executed and delivered by KODA under this Agreement, dated as of the Closing Date;

(d) Certificate of a duly authorized officer of KODA certifying that each representation and warranty of KODA is true and correct in all material respects as of the Closing Date, and that each and all of the terms, covenants and agreements to be complied with or performed by KODA on or before the Closing Date have been complied with and performed in all material respects;

(e) Certificate of existence for KODA from the Secretary of State of Kentucky, dated not more than fifteen (15) days prior to the Closing Date;

(f) Copies of the third-party consents set forth on Schedule 3.8 and Schedule 3.21 (as executed by such third parties);

(g) Letter of Good Standing issued within 30 days of Closing by the Kentucky Department of Revenue;

(h) An Employment Agreement with Barry Massa and the Surviving Corporation, in such form as is acceptable to Barry Massa, KODA, LifeCenter, and the Surviving Corporation and executed by the Surviving Corporation and Barry Massa;

(i) An Employment Agreement with Julie Bergin and the Surviving Corporation, in such form as is acceptable to Julie Bergin, KODA, LifeCenter, and the Surviving Corporation and executed by the Surviving Corporation and Julie Bergin; and

(j) Such other agreements, instruments and documents as reasonably requested by LifeCenter or as LifeCenter otherwise deems reasonably necessary to effect the Transactions.

**Section 2.8. LifeCenter Closing Deliveries**

At or prior to the Closing and unless otherwise waived in writing by KODA, LifeCenter shall deliver the following to KODA, each in form and substance reasonably satisfactory to KODA and duly executed by an authorized officer of LifeCenter, as appropriate:

(a) The OH Certificate of Merger, KY Articles of Merger, and Articles of Incorporation, duly executed and otherwise in compliance with all requirements for filing with the Secretary of State of Ohio or Secretary of State of Kentucky, as applicable, or, if agreed to by the Parties, filed with such agencies to be effective as of the Effective Time;

(b) Certificate of a duly authorized officer of LifeCenter certifying to (i) copies of resolutions duly adopted by the LifeCenter board of directors authorizing and approving the execution and delivery of this Agreement and the consummation of the Transactions, in accordance with the requirements of applicable Law and LifeCenter's articles of incorporation and bylaws, each as amended from time to time, such resolutions certified as true and in full force and effect as of the Closing Date; and (ii) the incumbency for the officers of LifeCenter executing this Agreement and the other documents required to be executed and delivered by LifeCenter under this Agreement, dated as of the Closing Date;

(c) Certificate of a duly authorized officer of LifeCenter certifying that each representation and warranty of LifeCenter is true and correct in all material respects as of the Closing Date, and that each and all of the terms, covenants and agreements to be complied with or performed by LifeCenter on or before the Closing Date have been complied with and performed in all material respects;

(d) Good standing certificate for LifeCenter from the Secretary of State of Ohio, dated not more than fifteen (15) days prior to the Closing Date;

(e) Copies of the third-party consents set forth on Schedule 4.8 and Schedule 4.21 (as executed by such third parties);

(f) Tax Clearance Certificate issued within 30 days of Closing by the Ohio Department of Taxation;

(g) An Employment Agreement with Barry Massa and the Surviving Corporation, in such form as is acceptable to Barry Massa, KODA, LifeCenter, and the Surviving Corporation and executed by the Surviving Corporation and Barry Massa;

(h) An Employment Agreement with Julie Bergin and the Surviving Corporation, in such form as is acceptable to Julie Bergin, KODA, LifeCenter, and the Surviving Corporation and executed by the Surviving Corporation and Julie Bergin; and

(i) Such other agreements, instruments and documents as reasonably requested by KODA or as KODA otherwise deems reasonably necessary to effect the Transactions.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF KODA**

KODA hereby represents and warrants to LifeCenter that the statements contained in this Article III are true, correct, and complete as of the date of this Agreement and as of the Closing Date (except in the case of representations and warranties which expressly relate to a specific date, which representations and warranties will be true, correct, and complete as of such date).

#### **Section 3.1. Corporate Authority**

KODA has full corporate power and authority to execute, deliver, and enter into this Agreement and to carry out the Transactions contemplated hereby.

#### **Section 3.2. Binding Agreement**

All corporate actions required to be taken by KODA to authorize the execution, delivery and performance of this Agreement, all documents executed by KODA which are necessary to give effect to this Agreement, and all Transactions contemplated hereby, have been or will be duly and properly taken or obtained by KODA at or prior to the Closing, and no such action shall have been modified or rescinded and all such actions remain in full force and effect. No other corporate action on the part of KODA is necessary to authorize the execution, delivery and performance of this Agreement, all documents necessary to give effect to this Agreement and all Transactions contemplated hereby. This Agreement has been, and the other documents to be executed and delivered by KODA at Closing will be, duly and validly executed and delivered by KODA and, assuming due and valid execution by LifeCenter, this Agreement and the other documents constitute valid and binding obligations of KODA enforceable in accordance with their terms, subject to applicable bankruptcy, reorganization, insolvency, or other Laws affecting creditors' rights or principles of equity generally from time to time in effect.

#### **Section 3.3. Organization and Good Standing; No Violation**

(a) KODA is a corporation validly existing and in good standing under the Laws of Kentucky and has the requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted. KODA has properly qualified to do business in each jurisdiction outside of the Commonwealth of Kentucky where it is required by its business activities to do so.

(b) True and correct copies of the articles of incorporation and bylaws of KODA have been made available to LifeCenter.

(c) Neither the execution and delivery by KODA of this Agreement nor the consummation of the Transactions contemplated hereby nor compliance with any of the material provisions hereof by KODA will (i) violate, conflict with or result in a breach of any provision of the articles of incorporation, bylaws or other organizational documents of KODA; (ii) assuming the due performance in accordance herewith by LifeCenter, violate any provision of Law to which KODA is subject, or (iii) except as disclosed in Schedule 3.3(c): (A) conflict with or result in a breach or termination of any KODA Material Contract; or (B) require that KODA seek or obtain any approval of, filing or registration with, or the issuance of any permit, license or certification by, or make notice to, any Governmental Authority.

#### **Section 3.4. Tax-Exempt Status**

KODA is an organization described in Section 501(c)(3) of the Code and is exempt from federal income taxation under Section 501(a)(1) of the Code. KODA is not a private foundation as defined in Section 509(a) of the Code. No event or condition has occurred which could reasonably be expected to jeopardize the federal tax-exempt status of KODA. KODA has, to the extent it is legally entitled, applied and received exemption from Taxes (including sales and franchise Tax) from each jurisdiction that imposes Taxes on KODA, and such tax exemptions are set forth on Schedule 3.4. Since the first effective dates of such exemptions, as applicable, (i) such tax-exempt status has not be cancelled, revoked, suspended, or otherwise terminated and (ii) KODA has operated in material compliance with all provisions of the Code, regulations promulgated thereunder, and other applicable laws and Internal Revenue Service rulings with respect to the maintenance of such tax-exempt status.

#### **Section 3.5. Subsidiaries and Interests.**

Except as set forth on Schedule 3.5, KODA does not directly or indirectly own any equity, membership or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity, membership or similar interest in, any corporation, partnership, limited liability company, joint venture or other business association or entity other than publicly traded equities or other equity interests held solely for investment. Except as set forth in Schedule 3.5, each interest referenced thereon is owned by KODA free and clear of all Liens except Permitted Liens, is duly authorized, validly existing and non-assessable, and is not subject to any preemptive or subscription rights.

#### **Section 3.6. Financial Statements, Prepaid Expenses and Indebtedness**

The KODA Financial Statements (a) have been prepared in accordance with the books and records of KODA; (b) fairly present, in all material respects, the financial condition of KODA as of their respective dates and its results of operations for the periods covered thereby; and (c) have been prepared in accordance with GAAP consistently applied, except as set forth in Schedule 3.6. Since December 31, 2022, there have occurred no material adverse changes in the financial condition or business of KODA as reflected in such financial statements. From and after December 31, 2022, KODA has not made any material changes in its accounting methods or practices. Schedule 3.6 contains a listing of any amounts that KODA has prepaid and that may be partially or fully refundable as a result of the Merger (such as for insurance). All Existing KODA Indebtedness is listed on Schedule 3.6.

### **Section 3.7. KODA Material Contracts**

Schedule 3.7 contains a list of all KODA Material Contracts. KODA has provided to LifeCenter complete and correct copies of all the KODA Material Contracts set forth or required to be set forth on Schedule 3.7. Except as set forth on Schedule 3.7: (a) all of the KODA Material Contracts are legal, valid, binding, in full force and effect, and enforceable against KODA and, to KODA's Knowledge, all other parties thereto in accordance with the terms thereof; (b) neither KODA nor, to KODA's Knowledge, any other party to any of the KODA Material Contracts, is in material default under any of KODA Material Contracts nor, to KODA's Knowledge, has any event occurred that, with notice or the passage of time, or both, would give rise to such a material default; (c) KODA has not given or received any correspondence or other written notice with respect to any actual, alleged or potential violation, breach or default under or any demand for renegotiation or termination with respect to any KODA Material Contract; (d) the enforceability of all of the KODA Material Contracts against KODA and each other party thereto will not be affected in any manner by the execution, delivery, or performance of this Agreement; and (e) no KODA Material Contract contains any change of control, notice or other terms or conditions that will become applicable or inapplicable as a result of the consummation of the Transactions.

### **Section 3.8. Required Notices and Consents**

Except as set forth on Schedule 3.8, KODA is not a party to or bound by, nor are any of its Assets subject to, any KODA Material Contract that (a) requires the consent of another to the execution of this Agreement or (b) requires the notice to or consent of another to consummate the Closing of the Transactions set forth in this Agreement.

### **Section 3.9. Licenses and Permits**

Schedule 3.9 sets forth a complete list of all material licenses, permits, certifications, and approvals issued or granted by a Governmental Authority that are necessary to conduct the activities of KODA (the "**KODA Material Licenses**"), each of which is valid and in good standing. KODA has provided to LifeCenter accurate and complete copies of the KODA Material Licenses. KODA has been, for the last three (3) years, in material compliance with the terms of the KODA Material Licenses. There are no provisions in, or agreements relating to, any KODA Material Licenses that preclude or limit KODA from carrying on its business as currently conducted. Except as set forth on Schedule 3.9, there is no pending or, to the Knowledge of KODA, threatened proceeding by or before any Governmental Authority to revoke, cancel, rescind, suspend, restrict, modify, or refuse to renew any KODA Material Licenses and the KODA Material Licenses are now, and as of the Closing shall be, unrestricted, in good standing, and in full force and effect. KODA has not received any written notice or communication from any Governmental Authority regarding any violation of any KODA Material License (other than any surveys or deficiency reports for which KODA has submitted a plan of correction that has been accepted or approved by the applicable Governmental Authority). KODA has delivered to LifeCenter accurate and complete copies of all survey reports, deficiency notices, plans of correction, and related correspondence received by KODA over the last three (3) years in connection with the KODA Material Licenses. Except as set forth on Schedule 3.9, no KODA Material License requires any notice, approval or consent from a Governmental Authority related to the Transactions.

### **Section 3.10. CMS Certification; Cost Reports and Audits**

(a) KODA is duly certified by CMS to operate within its DSA. KODA has previously delivered or made available to LifeCenter true, correct and complete copies of KODA's most recent CMS survey reports, deficiency lists and plans of correction, if any, and a list and brief description

of events in the past three (3) years at KODA that constitute “adverse events” as defined by CMS, if any, and any documentation that was created, prepared and/or produced by KODA to satisfy CMS requirements relating to addressing such “adverse events.” KODA has taken or is taking reasonable steps to correct all deficiencies referenced in this Section 3.10(a).

(b) KODA participates in the Government Programs and has current and valid provider agreements with one or more provider numbers for each such program as are listed on Schedule 3.10(b). Except as set forth in Schedule 3.10(b), KODA is in material compliance with the conditions of participation in the Government Programs.

(c) KODA has timely filed or caused to be timely filed all cost or reimbursement reports that are required, by Law, by contract, or otherwise, to have been filed or made prior to the date hereof, and will timely file or cause to be timely filed all cost or reimbursement reports that are required, by Law, by contract, or otherwise, to have been filed or made prior to the Closing, with respect to the payments to KODA by third-party payors, including, but not limited to, the Government Programs (the “**KODA Cost Reports**”), and all such reports were complete and accurate in all material respects. Except as disclosed on Schedule 3.10(c), KODA is and has been in compliance with filing requirements in all material respects with respect to the KODA Cost Reports due to the Government Programs, and to KODA’s Knowledge, such reports do not claim, and KODA has not received, payment or reimbursement in excess of the amount provided or allowed by applicable Law or any applicable agreement, except where excess reimbursement was noted on the KODA Cost Reports. True and correct copies of all KODA Cost Reports for the three (3) most recent fiscal years will be made available to LifeCenter prior to Closing.

### **Section 3.11. Compliance with Laws**

(a) Except as set forth in Schedule 3.11(a), KODA is not in violation of applicable Law. Except as set forth in Schedule 3.11(a), KODA has not been charged with or given notice of, and to the Knowledge of KODA, KODA is not under investigation with respect to, any violation of, or any unfulfilled obligation to take remedial action under, any applicable Law. The maintenance of financial records, patient records and other documents required to be maintained by KODA is in conformity, in all material respects with applicable Law.

(b) Except as set forth in Schedule 3.11(b), KODA has complied with all applicable Laws and regulations with respect to the payment for services to be reimbursed by funds provided by Government Programs. Neither KODA, nor, to the Knowledge of KODA, any of its officers, directors, employees, agents, or contractors: (i) has been convicted of, formally charged with, or, to the Knowledge of KODA, investigated for any crime or violation or engaged in any conduct for which such Person would reasonably be expected to be excluded, suspended, or debarred from participating, or would be otherwise ineligible to participate, in the Government Programs; (ii) has engaged in any conduct that would reasonably be expected to subject such Person or entity to a civil monetary penalty or criminal penalty under Sections 1128A or 1128B of the Social Security Act or any similar Law; (iii) has been convicted of or formally charged with, or to the Knowledge of KODA, has been investigated for, any violation of Laws related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, or obstruction of an investigation; or (iv) is excluded, suspended, or debarred from participation, or is otherwise ineligible to participate, in any Government Programs.

(c) Except as set forth in Schedule 3.11(c), (i) the operation of KODA is in compliance in all respects with all applicable Environmental Laws; (ii) KODA has obtained all Environmental

Permits required by applicable Environmental Laws for the ownership and operation of KODA and its Assets; (iii) all such Environmental Permits are in effect, and no action to revoke or modify any of such Environmental Permits is pending; (iv) there is not now pending or, to KODA's Knowledge, threatened, any claim, investigation or enforcement action by any Governmental Authority (whether judicial, executive or administrative) concerning the potential liability of KODA under Environmental Laws in connection with the ownership or operation of KODA or its Assets; and (v) to KODA's Knowledge, there has not been a release or threatened release of any Hazardous Substance at, upon, in, under or from any real property owned or operated by KODA at any time which would reasonably be expected to give rise to material liability or remedial obligations under any applicable Environmental Laws.

(d) Except as set forth in Schedule 3.11(d), KODA has complied with all applicable Laws relating to charitable solicitations in each jurisdiction it accepts and/or solicits charitable donations, donors, or otherwise.

(e) Without limiting the generality of the foregoing: (i) neither KODA, nor any of its employees, officers, or directors has committed a violation of federal or state Laws regulating health care fraud, including, but not limited to, the federal Anti-Kickback Law, 42 U.S.C. §1320a-7b; the Stark I and II Laws, 42 U.S.C. §1395nn, as amended; and the False Claims Act, 31 U.S.C. §3729, et seq.; and (ii) KODA is in material compliance with The Patient Protection and Affordable Care Act. Neither KODA, nor any of its employees, officers or directors has been convicted of, charged with, or investigated for, any Medicare, Medicaid, or other state or federal healthcare program related offense, or have engaged in conduct that would constitute a violation of any Laws related to fraud, theft, embezzlement, breach of fiduciary duty, kickback, or bribes.

### **Section 3.12. Owned and Leased Real Properties**

(a) KODA has good and marketable and insurable fee simple title to the KODA Owned Real Estate free and clear of any Liens other than the Permitted Liens. Schedule 3.12(a) contains a true and complete list by address and legal description of the KODA Owned Real Estate. KODA has not (i) leased nor granted any Person the right to use or occupy all or any part of the KODA Owned Real Estate; (ii) granted any Person an option, right of first offer, or right of first refusal to purchase such KODA Owned Real Estate or any portion thereof or interest therein; nor (iii) received written notice of any pending, and to the Knowledge of KODA threatened, condemnation proceeding affecting any KODA Owned Real Estate or any portion thereof or interest therein. KODA is not a party to any agreement or option to purchase any real property or interest therein.

(b) Schedule 3.12(b) contains a true and complete list of all agreements (including all amendments, extensions, renewals, guaranties, and other agreements with respect thereto) of the KODA Leased Real Estate (including the date and name of the parties and a description of such premises) (the "**KODA Leases**"). KODA has delivered to LifeCenter a true and complete copy of each such KODA Lease. Except as set forth on Schedule 3.12(b), with respect to each of the KODA Leases: (i) such KODA Lease is legal, valid, binding, enforceable, and in full force and effect; (ii) KODA is not, and to the Knowledge of KODA, any other party to the KODA Lease, is not in breach or default under such KODA Lease, and no event has occurred or circumstance exists which, with or without notice, lapse of time, or both, would constitute a breach or default under such KODA Lease; (iii) KODA's possession and quiet enjoyment of the KODA Leased Real Estate under such KODA Lease has not been disturbed, and to the Knowledge of KODA, there are no disputes with respect to such KODA Lease; and (iv) there are no Liens on the estate created by such KODA

Lease other than Permitted Liens. Except as set forth on Schedule 3.12(b), KODA has not assigned, pledged, mortgaged, hypothecated, or otherwise transferred any KODA Lease or any interest therein nor has KODA subleased, licensed, or otherwise granted any Person a right to use or occupy such KODA Leased Real Estate or any portion thereof. KODA has provided to LifeCenter complete and accurate copies of all of KODA Leases together with all amendments, modifications, and supplemental agreements thereto.

(c) All buildings and other improvements located on any KODA Real Estate (including, without limitation, all water, sewer, gas, electrical, and HVAC systems servicing the same) are in good repair and operating condition in all material respects and are suitable for the purposes for which they are used. Except as set forth on Schedule 3.12(c), there are no incomplete or ongoing construction projects affecting KODA Real Estate and there have been no recent construction projects on or affecting the KODA Real Estate within six (6) months prior to the date hereof that have not been completed and paid for in full.

### **Section 3.13. Personal Property**

All of KODA's Personal Property is in good operating condition and repair, except for ordinary wear and tear. As of the Closing, all of KODA's Personal Property will be free and clear of Liens, other than the Permitted Liens. No Person other than KODA owns any personal property situated on the real property leased by KODA (as described in Schedule 3.12(b)), except for (a) items leased by KODA or improvements to items leased by KODA pursuant to a lease agreement identified on Schedule 3.7, and (b) personal property of KODA's employees or visitors.

### **Section 3.14. Legal Proceedings**

Except as set forth on Schedule 3.14, there are no claims, proceedings, or investigations pending or, to the Knowledge of KODA, threatened in writing against KODA relating to or affecting the operation of KODA, or use of any of its Assets, before any court or governmental body (whether judicial, executive or administrative). KODA is not subject to any judgment, order, ruling, decree or other governmental restriction specifically (as distinct from generically) applicable to it or its Assets, which would have a Material Adverse Effect on KODA. Except as disclosed on Schedule 3.14, neither KODA nor any of its Assets are subject to any corporate integrity agreement or other similar corrective or remedial plan entered into with any Governmental Authority or other third party.

### **Section 3.15. Employee Benefits**

(a) Schedule 3.15(a) sets forth a complete and accurate list of each: (i) "employee benefit plan" (as defined in section 3(3) of ERISA), whether or not subject to ERISA, (ii) "nonqualified deferred compensation plan" (within the meaning of Section 409A of the Code), and (iii) each other bonus, stock purchase, stock ownership, stock option, equity-based, incentive, retirement, deferred compensation, severance, termination, employment, consulting, health, medical, dental, life insurance, disability, vacation, paid time off, fringe benefit, or other compensation plan, program, contract, or arrangement, in each case, maintained, contributed to, or required to be contributed to by KODA or any ERISA Affiliate or with respect to which KODA has or reasonably could have any liability (each of these, a "**KODA Benefit Plan**," and collectively, the "**KODA Benefit Plans**"). A true and complete copy of each KODA Benefit Plan (and all amendments thereto), and, as applicable, a copy of (i) the three most recent IRS Form 5500s filed with respect to each such KODA Benefit Plan (including all schedules thereto), (ii) each current summary plan description and summary of material modifications, (iii) the three most recent

summary annual reports, actuarial reports, financial statements, and trustee reports, (iv) all funding, trust, investment management, and insurance contracts and reports, and (v) all material correspondence within the past three (3) years with the IRS, Department of Labor, or any other Governmental Authority with respect to any KODA Benefit Plan have been provided to LifeCenter. With respect to each KODA Benefit Plan that is unwritten, KODA has provided LifeCenter with a written description thereof.

(b) No KODA Benefit Plan is subject to Title IV of ERISA. Except as disclosed on Schedule 3.15(b), no KODA Benefit Plan is (i) a defined benefit pension plan, (ii) subject to Part 3 of Title I of ERISA or section 412 of the Code, (iii) a multiemployer plan (within the meaning of Section 3(37) of ERISA), or (iv) intended to qualify under section 401(a) of the Code. Neither KODA nor any ERISA Affiliate has any liability (contingent or otherwise) relating to withdrawal or partial withdrawal from a multiemployer plan (within the meaning of Section 3(37) of ERISA).

(c) Except as described in Schedule 3.15(c), (i) each of the KODA Benefit Plans has been established, maintained, and administered in compliance, in all material respects, with its terms and with the applicable provisions of ERISA, the Code and all other applicable Laws; and (ii) each KODA Benefit Plan that is intended to be a 403(b) plan complies in all material respects with the rules applicable to such plans (including, without limitation, maintaining a written plan document, complying with the universal availability requirements, and filing all required returns and reports). There are no pending actions, audits, or investigations by any Governmental Authority involving any KODA Benefit Plan, nor are there any threatened or pending claims (except for individual claims for benefits payable in the normal operation of the KODA Benefit Plans), suits, or proceedings involving any KODA Benefit Plan.

(d) All contributions to and all payments from any KODA Benefit Plan that may have been required in accordance with the terms of such KODA Benefit Plan or any related document have been timely made. All contributions to any KODA Benefit Plan that are attributable to the period ending at the Effective Time have either been made or accrued and reflected on the KODA Financial Statements.

(e) Neither KODA, any ERISA Affiliate, nor, to the Knowledge of KODA, any fiduciary, trustee, or administrator of any KODA Benefit Plan, has engaged in or, in connection with the Transactions, will engage in any transaction with respect to any KODA Benefit Plan that could subject any such KODA Benefit Plan or any fiduciary, trustee, or administrator thereof, KODA, or any ERISA Affiliate to a tax, penalty, or liability for a "prohibited transaction" under Section 406 of ERISA or Section 4975 of the Code.

(f) Except as described in Schedule 3.15(f), no KODA Benefit Plan provides benefits, including, without limitation, death or medical benefits, beyond termination of service or retirement other than (i) coverage mandated by COBRA or any similar applicable state Law or (ii) death or retirement benefits under a KODA Benefit Plan intended to be a 403(b) plan, and neither KODA nor any ERISA Affiliate has made a written or oral representation promising the same. Schedule 3.15(f) sets forth a true, complete and correct list of all liabilities of KODA to provide "continuation coverage" to former employees of KODA under COBRA and similar state Law. KODA has no current obligations to make any severance payments to any former employees.

(g) Each KODA Benefit Plan that constitutes a "non-qualified deferred compensation plan" within the meaning of Sections 409A and 457 of the Code complies in both form and operation with the applicable requirements of Sections 409A and 457 of the Code (and the rules,

notices, and regulations promulgated thereunder). KODA has no obligation to gross up, indemnify or otherwise reimburse any current or former employee for any taxes (or potential taxes) imposed (or potentially imposed) due to noncompliance with Section 409A or 457 of the Code (and the rules, notices, and regulations promulgated thereunder).

(h) KODA and each ERISA Affiliate has at all relevant times properly classified their employees as “full-time employees” (as such term is defined in Section 4980H of the Code and the regulations issued thereunder) and complied in all material respects with the related Patient Protection and Affordable Care Act of 2010 reporting requirements under Sections 6055 and 6056 of the Code. Neither KODA nor any ERISA Affiliate is or could be subject to any material penalty under Section 4980H of the Code.

(i) Except as set forth on Schedule 3.15(i), KODA’s execution of and performance of the Transactions will not constitute an event under any KODA Benefit Plan that will (either alone or in combination with any other event) result in any payment (whether as severance pay or otherwise), acceleration, vesting, or increase in compensation or benefits with respect to any current or former employee, volunteer, director, or independent contractor of KODA.

(j) Neither KODA nor any ERISA Affiliate currently or within the preceding six (6) calendar years has contributed to or has had any obligation to contribute to any multiemployer plan (within the meaning of Section 3(37) of ERISA).

(k) Each KODA Benefit Plan may be amended, terminated, or otherwise discontinued as of the Effective Time in accordance with its terms without any liability to KODA or its ERISA Affiliates. None of the KODA Benefit Plans is operated under, or subject to, the Laws of any jurisdiction outside of the United States.

### **Section 3.16. Labor and Employment**

(a) Schedule 3.16 contains a complete and accurate list (as of the date set forth on the list) of all employees of KODA, their current salary or wage rates, bonus and other compensation, benefit arrangements, accrued paid time off, period of service, exempt or non-exempt status under the Fair Labor Standards Act and any applicable state wage and hour Laws, department and a job title or other summary of the responsibilities of such employees. Schedule 3.16 also indicates whether such employees are part-time, full-time, per diem or on a leave of absence and, if so, the type of leave. Except as otherwise disclosed to LifeCenter, KODA has properly classified individuals providing services to KODA as independent contractors or employees, as the case may be, and there has not been in the five (5) years prior to the Closing Date, and there is not pending or, to the Knowledge of KODA, threatened, any proceeding that has been asserted or instituted against KODA by any Governmental Authority or any other Person relating to the treatment of a non-exempt employee as exempt, or to the legal status or classification of an individual classified by KODA as a non-employee (such as an independent contractor, a leased employee, a consultant or special consultant).

(b) Except as set forth on Schedule 3.16, KODA is not a party to (i) any written employment agreement or (ii) any agreement, oral or written, that provides for a specified term of employment or that contains any severance or termination pay obligations with any employee (collectively, the “**KODA Employment Agreements**”).

(c) Since January 1, 2021, KODA has been and is currently in compliance with all applicable Laws which relate to employment and to the operation of its business including all applicable Laws which relate to terms and conditions of employment, worker classification, Tax withholding, equal employment opportunity, discrimination and harassment (including sexual harassment), reasonable accommodations, employee representation, employee leave issues, unemployment insurance, fair employment and human rights practices, protected leaves, meal and rest periods, privacy, workers' compensation, employee record keeping, immigration status, visa and work permit requirements for non-citizen employees, employee occupational health and safety, wages (including overtime wages), compensation, pay equity, and hours of work.

(d) To the Knowledge of KODA, KODA is not delinquent in payments to any of its employees for any wages, salaries, overtime pay, commissions, bonuses or other direct compensation for any services performed for it or any other amounts required to be reimbursed to such employees (including accrued paid time off and other benefits) or in the payment to the appropriate Governmental Authority of all required Taxes, insurance, social security and withholding thereon. KODA has made all required payments to their respective unemployment compensation reserve accounts with the appropriate Governmental Authority of the states or other jurisdictions where it is required to maintain such accounts. To KODA's Knowledge, KODA is not liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security, or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business consistent with past practice), consultants and independent contractors. KODA has withheld all amounts required by Law or by agreement to be withheld from the wages, salaries and other payments to employees, independent contractors or consultants and is not liable for any arrears of wages or any Tax or any penalty or interest for failure to comply with any of the foregoing.

(e) Except as set forth on Schedule 3.16, (i) KODA is not bound by any collective bargaining agreement with respect to any of its employees, (ii) there is no labor strike, labor dispute, or work stoppage or lockout pending or, to KODA's Knowledge, threatened in writing against or affecting KODA, (iii) to KODA's Knowledge, no union organization campaign is in progress with respect to any of the employees of KODA, and (iv) there is no unfair labor practice, charge, or complaint pending or, to KODA's Knowledge, threatened in writing against KODA.

(f) For each employee within the United States: (i) KODA has not received notice or other communication from any Governmental Authority or other Person regarding any violation or alleged violation of any applicable Law relating to hiring, recruiting, employing of (or continuing to employ) anyone not authorized to work in the United States; and (ii) KODA has in its files a Form I-9 that is validly and properly completed in accordance with applicable Law for each employee with respect to whom such form is required by Law.

### **Section 3.17. Insurance**

KODA maintains, and has maintained, without interruption, at all times during the past three (3) years, self-insurance or policies or binders of insurance covering such risks and events, including personal injury, property damage, malpractice and general liability, unemployment compensation, and worker's compensation, so as to provide commercially reasonable insurance coverage for all the Assets and operations of KODA. Schedule 3.17 contains a list of all such insurance maintained by KODA with respect to its Assets and operations as of the Execution Date, which coverage, or substantially equivalent coverage, KODA covenants and agrees to keep in full force and effect through and including the Effective Time. True and correct policies of all such insurance policies have been made available to LifeCenter. Except as

disclosed on Schedule 3.17, there are no outstanding claims under any insurance policy maintained by KODA.

### **Section 3.18. Intellectual Property**

(a) Schedule 3.18 sets forth (i) a true, complete, and correct list of all registered trademarks, service marks, and copyrights (setting forth, as applicable, the item, the registration or application number, the registration or application date, and the jurisdiction in which such item is registered or pending); (ii) a true, complete and correct list of all registered trade names, corporate names, domain names and fictitious names under which KODA is operating; and (iii) a true, complete and correct list of any trademark or service mark license agreements, copyright license agreements, or other intellectual property license agreements to which KODA is a party (collectively, "**KODA Intellectual Property**"). KODA owns all right, title and interest in and to the KODA Intellectual Property, free and clear of any Liens, or has the right to use the KODA Intellectual Property, and has not licensed any third parties to use the KODA Intellectual Property.

(b) None of the KODA Intellectual Property is the subject of any litigation or action challenging its extent, validity, enforceability, or ownership. KODA has not received any notice, claim or allegation that the KODA Intellectual Property violates or infringes the rights of any third party, and to KODA's Knowledge, there is no basis for any such notice, claim, or allegation.

### **Section 3.19. Solvency**

KODA is not insolvent and will not be rendered insolvent as a result of any of the Transactions contemplated by this Agreement. For purposes hereof, the term "solvency" means that: (a) KODA is able to pay its debts or obligations in the ordinary course as they mature; and (b) KODA has capital sufficient to carry on its business.

### **Section 3.20. Taxes**

(a) Schedule 3.20 set forth each jurisdiction where KODA is subject to Tax. No claim has ever been made in writing by any taxing authority in a jurisdiction where KODA does not file Tax returns that KODA or any of its subsidiaries is or may be subject to Tax in that jurisdiction.

(b) Except as set forth in Schedule 3.20 attached hereto, all federal, state, county and other Tax returns, reports, declarations of every nature, and payments with respect thereto (including, without limitation, income, employment, payroll, excise, property, sales and use taxes, unemployment contributions), required to be filed or paid by or on behalf of, or with respect to, KODA and its Assets have been duly and timely filed and/or paid, or will be filed and paid (within the time periods required by law) and there does not currently exist any dispute with any taxing authority as to Taxes of any nature which would specifically affect KODA or its Assets. All such Tax returns were complete and correct in all respects. KODA is not currently the beneficiary of any extension of time within which to file any Tax return, and KODA has not waived any statute of limitation with respect to any Tax or agreed to any extension of time with respect to a Tax assessment or deficiency. KODA is not delinquent in payment of any Tax, assessment, or other governmental charge, including, but not limited to, real estate Taxes and assessments of the real property owned by KODA.

(c) KODA has withheld or paid, if due, all Taxes required by applicable Laws to have been withheld and paid.

(d) Except as set forth in Schedule 3.20, neither KODA nor its Assets are bound by any agreements with any taxing authority, and there is no unassessed Tax deficiency proposed or, to the Knowledge of KODA, threatened against KODA or its Assets, and no action, proceeding or audit of any of KODA's returns or reports by any Governmental Authority is pending or, to the Knowledge of KODA, threatened by any Governmental Authority for assessment, reassessment or collection of any Taxes or assessments affecting KODA or its Assets or operations. KODA has not applied for any ruling from any Governmental Authority with respect to Taxes.

(e) There are no Liens for Taxes upon the Assets owned or held by KODA.

(f) There are no joint ventures, partnerships, limited liability companies, or other arrangements or contracts to which KODA is a party that could be treated as a partnership for Tax purposes.

(g) KODA is not a party to any agreement, contract, arrangement or plan that has resulted, or could result, individually or in the aggregate, in the payment of "excess parachute payments" within the meaning of Section 280G of the Code or an "excess benefit transaction" within the meaning of Section 4958 of the Code.

(h) Except as set forth on Schedule 3.20, neither KODA nor any "controlled entity" with respect to KODA, as such term is defined in Section 512(b)(13)(A) of the Code, is engaged in any "unrelated trade or business," as such term is defined in Section 513(a) of the Code and the regulations promulgated thereunder. Except as set forth on Schedule 3.20, all of the unrelated trades or business set forth on Schedule 3.20 are excluded from the tax imposed pursuant to Section 511 of the Code on account of one or more provisions of Section 512 of the Code through Section 514 of the Code, such provision(s) also being set forth next to the corresponding unrelated trade or business on Schedule 3.20. No act, event, omission, or other occurrence or non-occurrence, whether alone or in the aggregate, has occurred, or is reasonably likely to occur, that is reasonably likely to (i) cause any trade or business not currently set forth on Schedule 3.20 to become an "unrelated trade or business," as such term is defined in Section 513(a) of the Code and the regulations promulgated thereunder, or (ii) cause any unrelated trade or business currently set forth on Schedule 3.20 to cease being excluded from the tax imposed pursuant to Section 511 of the Code on account of one or more provisions of Section 512 of the Code through Section 514 of the Code or otherwise being subject to such tax.

### **Section 3.21. Restricted Funds**

Schedule 3.21 contains a true and complete description of (a) all donor trusts, funds, segregated accounts and other monies or properties that either (i) are required to be held by KODA in a fiduciary capacity under applicable Law; (ii) are required to be held by a third party in a fiduciary capacity for the benefit of KODA under applicable Law; or (iii) would be subject to Section 273.620 of the Kentucky Revised Statutes in connection with any proposed release or modification of restrictions on management, investment, or purpose set forth in the underlying gift instrument (collectively, the "**KODA Restricted Funds**"); and (b) to KODA's Knowledge, all devises, gifts and bequests of future interests for the benefit of KODA (collectively, the "**KODA Future Interests**"). To the extent that the KODA Restricted Funds are held by KODA in a fiduciary capacity, KODA has managed the KODA Restricted Funds in full conformity with applicable fiduciary duties and standards. To the Knowledge of KODA, no act, event, omission, or other occurrence or non-occurrence, whether alone or in the aggregate, has occurred, or is reasonably likely to occur, that resulted in, or would be reasonably likely to result in, a violation of UPMIFA by KODA. Furthermore, KODA has properly segregated or otherwise separately accounted for all funds making up the KODA Restricted Funds. Except as set forth in Schedule 3.21, the consummation of the Transactions does not require any notice to or consent of a third party to continue the beneficial interest of

the Surviving Corporation in the KODA Restricted Funds or KODA Future Interests following the Effective Time.

**Section 3.22. Absence of Undisclosed Liabilities**

To KODA's Knowledge, except as disclosed elsewhere herein or as set forth on Schedule 3.22 hereto, KODA does not have any liability or obligation of any nature (including, without limitation, liens, encumbrances, mortgages, deeds of trust, security interests, pledges or any other claims or charges, whether absolute, contingent, unasserted, asserted or otherwise), and there are no material liabilities or contingent liabilities that are not reflected in the KODA Financial Statements incurred in the ordinary course of business and that are not material individually or in the aggregate.

**Section 3.23. Absence of Adverse Facts, Circumstances and Changes**

Except as disclosed elsewhere herein or in the Schedules, or as set forth on Schedule 3.23 hereto, to KODA's Knowledge, no facts or circumstances exist which would reasonably be expected to have a Material Adverse Effect on KODA.

**Section 3.24. Brokers, Finders and Fees**

Neither KODA, nor any officer or director thereof, has engaged any finder or broker in connection with the Transactions contemplated hereunder.

**Section 3.25. Title, Condition and Sufficiency of Assets**

Except as set forth in Schedule 3.25, in the ninety (90) days prior to the date hereof, KODA has not transferred any assets out of, or from, KODA except in the ordinary course of business. KODA has good and valid (and, in the case of owned KODA Real Estate, good and marketable fee simple) title to all assets used by KODA, free and clear of any Liens. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles, and other items of tangible personal property of KODA are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles, and other items of tangible personal property is in need of maintenance or repairs except for ordinary routine maintenance and repairs that are not material in nature or cost. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles, and other items of tangible personal property currently owned or leased by KODA, together with all other properties and assets of KODA, are sufficient for the continued conduct of the Surviving Corporation's business after Closing in substantially the same manner as KODA conducted prior to Closing and constitute all of the rights, property and assets necessary to conduct the business of KODA as currently conducted. No KODA asset, buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles, and other items of tangible personal property used in connection with the business of KODA is owned, leased, possessed, titled to, or controlled by any other third party.

**Section 3.26. Privacy; Data Protection**

The computer hardware, servers, networks, platforms, peripherals, data communication lines, and other information technology equipment and related systems, including any outsourced systems and processes, that are owned or used by KODA ("KODA Company Systems") are reasonably sufficient for the immediate needs of KODA's business. Except as set forth on Schedule 3.26, there has been no unauthorized access, use, intrusion, or breach of security, or material failure, breakdown, performance reduction, or other adverse event affecting any KODA Company Systems, that has caused or could

reasonably be expected to cause any: (i) disruption of or interruption in or to the use of such KODA Company Systems or the conduct of KODA's business; or (ii) material loss, destruction, damage, or harm of or to KODA or its operations, personnel, property, reputation, or other assets. Except as set forth in Schedule 3.26, there has been no access, or disclosure or misuse, by any third party of any protected health information (as such term is defined by HIPAA) held by, or on behalf of, KODA unless such third party was authorized by KODA to access, receive, or otherwise use such protected health information. KODA has taken all reasonable actions, consistent with applicable industry best practices and applicable Law, to protect the integrity and security of KODA Company Systems and the data and other information stored or processed thereon. KODA maintains commercially reasonable backup and data recovery procedures and practices.

**Section 3.27. No Other Material Information**

None of the representations or warranties in this Article III nor any of the exhibits or Disclosure Schedules attached hereto, nor any of the certificate, instruments, agreement, or otherwise delivered pursuant to this Agreement, contain any untrue statement of a material fact or omit a material fact necessary to make each statement contained herein or therein, in light of the circumstances in which they were made, not misleading.

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF LIFECENTER**

LifeCenter hereby represents and warrants to KODA that the statements contained in this Article IV are true, correct, and complete as of the date of this Agreement and as of the Closing Date (except in the case of representations and warranties which expressly relate to a specific date, which representations and warranties will be true, correct, and complete as of such date).

**Section 4.1. Corporate Authority**

LifeCenter has full corporate power and authority to execute, deliver, and enter into this Agreement and to carry out the Transactions contemplated hereby.

**Section 4.2. Binding Agreement**

All corporate actions required to be taken by LifeCenter to authorize the execution, delivery and performance of this Agreement, all documents executed by LifeCenter which are necessary to give effect to this Agreement, and all Transactions contemplated hereby, have been or will be duly and properly taken or obtained by LifeCenter at or prior to the Closing, and no such action shall have been modified or rescinded and all such actions remain in full force and effect. No other corporate action on the part of LifeCenter is necessary to authorize the execution, delivery and performance of this Agreement, all documents necessary to give effect to this Agreement and all Transactions contemplated hereby. This Agreement has been, and the other documents to be executed and delivered by LifeCenter at Closing will be, duly and validly executed and delivered by LifeCenter and, assuming due and valid execution by KODA, this Agreement and the other documents constitute valid and binding obligations of LifeCenter enforceable in accordance with their terms, subject to applicable bankruptcy, reorganization, insolvency, or other Laws affecting creditors' rights or principles of equity generally from time to time in effect.

#### **Section 4.3. Organization and Good Standing; No Violation**

(a) LifeCenter is a corporation validly existing and in good standing under the Laws of Ohio and has the requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted. LifeCenter has properly qualified to do business in each jurisdiction outside of the State of Ohio where it is required by its business activities to do so.

(b) True and correct copies of the articles of incorporation and bylaws of LifeCenter have been made available to KODA.

(c) Neither the execution and delivery by LifeCenter of this Agreement nor the consummation of the Transactions contemplated hereby nor compliance with any of the material provisions hereof by LifeCenter will (i) violate, conflict with or result in a breach of any provision of the articles of incorporation, bylaws or other organizational documents of LifeCenter; (ii) assuming the due performance in accordance herewith by KODA, violate any provision of Law to which LifeCenter is subject, or (iii) except as disclosed in Schedule 4.3(c): (A) conflict with or result in a breach or termination of any LifeCenter Material Contract; or (B) require that LifeCenter seek or obtain any approval of, filing or registration with, or the issuance of any permit, license or certification by, or make notice to, any Governmental Authority.

#### **Section 4.4. Tax-Exempt Status**

LifeCenter is an organization described in Section 501(c)(3) of the Code and is exempt from federal income taxation under Section 501(a)(1) of the Code. LifeCenter is not a private foundation as defined in Section 509(a) of the Code. To the Knowledge of LifeCenter, no event or condition has occurred which could reasonably be expected to jeopardize the federal tax-exempt status of LifeCenter. LifeCenter has, to the extent it is legally entitled, applied and received exemption from Taxes (including sales and franchise Tax) from each jurisdiction that imposes Taxes on LifeCenter, and such tax exemptions are set forth on Schedule 4.4. Since the first effective dates of such exemptions, as applicable, (i) such tax-exempt status has not be cancelled, revoked, suspended, or otherwise terminated and (ii) LifeCenter has operated in material compliance with all provisions of the Code, regulations promulgated thereunder, and other applicable laws and Internal Revenue Service rulings with respect to the maintenance of such tax-exempt status.

#### **Section 4.5. Subsidiaries and Interests.**

Except as set forth on Schedule 4.5, LifeCenter does not directly or indirectly own any equity, membership or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity, membership or similar interest in, any corporation, partnership, limited liability company, joint venture or other business association or entity other than publicly traded equities or other equity interests held solely for investment. Except as set forth in Schedule 4.5, each interest referenced thereon is owned by LifeCenter free and clear of all Liens except Permitted Liens, is duly authorized, validly existing and non-assessable, and is not subject to any preemptive or subscription rights.

#### **Section 4.6. Financial Statements, Prepaid Expenses and Indebtedness**

The LifeCenter Financial Statements (a) have been prepared in accordance with the books and records of LifeCenter; (b) fairly present, in all material respects, the financial condition of LifeCenter as of their respective dates and its results of operations for the periods covered thereby; and (c) have been prepared in accordance with GAAP consistently applied, except as set forth in Schedule 4.6. Since

December 31, 2023, there have occurred no material adverse changes in the financial condition or business of LifeCenter as reflected in such financial statements. From and after December 31, 2023, LifeCenter has not made any material changes in its accounting methods or practices. Schedule 4.6 contains a listing of any amounts that LifeCenter has prepaid and that may be partially or fully refundable as a result of the Merger (such as for insurance). All Existing LifeCenter Indebtedness is listed on Schedule 4.6.

#### **Section 4.7. LifeCenter Material Contracts**

Schedule 4.7 contains a list of all LifeCenter Material Contracts. LifeCenter has provided to KODA complete and correct copies of all the LifeCenter Material Contracts set forth or required to be set forth on Schedule 4.7. Except as set forth on Schedule 4.7: (a) all of the LifeCenter Material Contracts are legal, valid, binding, in full force and effect, and enforceable against LifeCenter and, to LifeCenter's Knowledge, all other parties thereto in accordance with the terms thereof; (b) neither LifeCenter nor, to LifeCenter's Knowledge, any other party to any of the LifeCenter Material Contracts, is in material default under any of LifeCenter Material Contracts nor, to LifeCenter's Knowledge, has any event occurred that, with notice or the passage of time, or both, would give rise to such a material default; (c) LifeCenter has not given or received any correspondence or other written notice with respect to any actual, alleged or potential violation, breach or default under or any demand for renegotiation or termination with respect to any LifeCenter Material Contract; (d) the enforceability of all of the LifeCenter Material Contracts against LifeCenter and each other party thereto will not be affected in any manner by the execution, delivery, or performance of this Agreement; and (e) no LifeCenter Material Contract contains any change of control, notice or other terms or conditions that will become applicable or inapplicable as a result of the consummation of the Transactions.

#### **Section 4.8. Required Notices and Consents**

Except as set forth on Schedule 4.8, LifeCenter is not a party to or bound by, nor are any of its Assets subject to, any LifeCenter Material Contract that (a) requires the consent of another to the execution of this Agreement or (b) requires the notice to or consent of another to consummate the Closing of the Transactions set forth in this Agreement.

#### **Section 4.9. Licenses and Permits**

Schedule 4.9 sets forth a complete list of all material licenses, permits, certifications, and approvals issued or granted by a Governmental Authority that are necessary to conduct the activities of LifeCenter (the "**LifeCenter Material Licenses**"), each of which is valid and in good standing. LifeCenter has provided to KODA accurate and complete copies of the LifeCenter Material Licenses. LifeCenter has been, for the last three (3) years, in material compliance with the terms of the LifeCenter Material Licenses. There are no provisions in, or agreements relating to, any LifeCenter Material Licenses that preclude or limit LifeCenter from carrying on its business as currently conducted. Except as set forth on Schedule 4.9, there is no pending or, to the Knowledge of LifeCenter, threatened proceeding by or before any Governmental Authority to revoke, cancel, rescind, suspend, restrict, modify, or refuse to renew any LifeCenter Material Licenses and the LifeCenter Material Licenses are now, and as of the Closing shall be, unrestricted, in good standing, and in full force and effect. LifeCenter has not received any written notice or communication from any Governmental Authority regarding any violation of any LifeCenter Material License (other than any surveys or deficiency reports for which LifeCenter has submitted a plan of correction that has been accepted or approved by the applicable Governmental Authority). LifeCenter has delivered to KODA accurate and complete copies of all survey reports, deficiency notices, plans of correction, and related correspondence received by LifeCenter over the last three (3) years in connection with the LifeCenter

Material Licenses. Except as set forth on Schedule 4.9, no LifeCenter Material License requires any notice, approval or consent from a Governmental Authority related to the Transactions.

**Section 4.10. CMS Certification; Cost Reports and Audits**

(a) LifeCenter is duly certified by CMS to operate within its DSA. Except as set forth on Schedule 4.10(a), LifeCenter has previously delivered or made available to KODA true, correct and complete copies of LifeCenter's most recent CMS survey reports, deficiency lists and plans of correction, if any, and a list and brief description of events in the past three (3) years at LifeCenter that constitute "adverse events" as defined by CMS, if any, and any documentation that was created, prepared and/or produced by LifeCenter to satisfy CMS requirements relating to addressing such "adverse events." LifeCenter has taken or is taking reasonable steps to correct all deficiencies referenced in this Section 4.10(a).

(b) LifeCenter participates in the Government Programs, and has current and valid provider agreements with one or more provider numbers for each such program as are listed on Schedule 4.10(b). Except as set forth in Schedule 4.10(b), LifeCenter is in material compliance with the conditions of participation in the Government Programs.

(c) LifeCenter has timely filed or caused to be timely filed all cost or reimbursement reports that are required, by Law, by contract, or otherwise, to have been filed or made prior to the date hereof, and will timely file or cause to be timely filed all cost or reimbursement reports that are required, by Law, by contract, or otherwise, to have been filed or made prior to the Closing, with respect to the payments to LifeCenter by third-party payors, including but not limited to, the Government Programs (the "**LifeCenter Cost Reports**"), and, to LifeCenter's Knowledge, all such reports were complete and accurate in all material respects. Except as disclosed on Schedule 4.10(c), LifeCenter is and has been in compliance with filing requirements in all material respects with respect to the LifeCenter Cost Reports due to the Government Programs and, to LifeCenter's Knowledge, such reports do not claim, and LifeCenter has not received, payment or reimbursement in excess of the amount provided or allowed by applicable Law or any applicable agreement, except where excess reimbursement was noted on the LifeCenter Cost Reports. True and correct copies of all LifeCenter Cost Reports for the three (3) most recent fiscal years will be made available to KODA prior to Closing.

**Section 4.11. Compliance with Laws**

(a) Except as set forth in Schedule 4.11(a), LifeCenter is not in violation of applicable Law so as to cause a Material Adverse Effect on LifeCenter. Except as set forth in Schedule 4.11(a), LifeCenter has not been charged with or given notice of, and to the Knowledge of LifeCenter, LifeCenter is not under investigation with respect to, any violation of, or any unfulfilled obligation to take remedial action under, any applicable Law. The maintenance of financial records, patient records and other documents required to be maintained by LifeCenter is in conformity, in all material respects with applicable Law.

(b) Except as set forth in Schedule 4.11(b), LifeCenter has materially complied with all applicable Laws and regulations with respect to the payment for services to be reimbursed by funds provided by Government Programs. Neither LifeCenter, nor, to the Knowledge of LifeCenter, any of its officers, directors, employees, agents, or contractors: (i) has been convicted of, formally charged with, or, to the Knowledge of LifeCenter, investigated for any crime or violation or engaged in any conduct for which such Person would reasonably be expected to be

excluded, suspended, or debarred from participating, or would be otherwise ineligible to participate, in the Government Programs; (ii) has engaged in any conduct that would reasonably be expected to subject such Person or entity to a civil monetary penalty or criminal penalty under Sections 1128A or 1128B of the Social Security Act or any similar Law; (iii) has been convicted of or formally charged with, or to the Knowledge of LifeCenter, has been investigated for, any violation of Laws related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, or obstruction of an investigation; or (iv) is excluded, suspended, or debarred from participation, or is otherwise ineligible to participate, in any Government Programs.

(c) Except as set forth in Schedule 4.11(c), (i) the operation of LifeCenter is in compliance in all material respects with all applicable Environmental Laws; (ii) LifeCenter has obtained all Environmental Permits required by applicable Environmental Laws for the ownership and operation of LifeCenter and its Assets; (iii) all such Environmental Permits are in effect and no action to revoke or modify any of such Environmental Permits is pending; (iv) there is not now pending or, to LifeCenter's Knowledge, threatened, any claim, investigation or enforcement action by any Governmental Authority (whether judicial, executive or administrative) concerning the potential liability of LifeCenter under Environmental Laws in connection with the ownership or operation of LifeCenter or its Assets; and (v) to LifeCenter's Knowledge, there has not been a release or threatened release of any Hazardous Substance at, upon, in, under or from any real property owned or operated by LifeCenter at any time which would reasonably be expected to give rise to material liability or remedial obligations under any applicable Environmental Laws. Notwithstanding any other provisions in this Agreement, except for Section 4.6 (Financial Statements), Section 4.9 (Licenses; Permits), Section 4.12 (Owned and Leased Real Properties), Section 4.22 (Absence of Undisclosed Liabilities), and Section 4.23 (Absence of Adverse Facts, Circumstances and Changes), this Section 4.11(c) sets forth LifeCenter's sole and exclusive representations and warranties with respect to Environmental Laws, Hazardous Substances and other environmental matters.

(d) Except as set forth in Schedule 4.11(d), LifeCenter has complied with all applicable Laws relating to charitable solicitations in each jurisdiction it accepts and/or solicits charitable donations, donors, or otherwise.

(e) Without limiting the generality of the foregoing: (i) neither LifeCenter, nor any of its employees, officers, or directors has committed a violation of federal or state laws regulating health care fraud, including, but not limited to, the federal Anti-Kickback Law, 42 U.S.C. §1320a-7b; the Stark I and II Laws, 42 U.S.C. §1395nn, as amended; and the False Claims Act, 31 U.S.C. §3729, et seq.; and (ii) LifeCenter is in material compliance with The Patient Protection and Affordable Care Act. Neither LifeCenter, nor any of its employees, officers or directors has been convicted of, charged with, or investigated for, any Medicare, Medicaid, or other state or federal healthcare program related offense, or have engaged in conduct that would constitute a violation of any Laws related to fraud, theft, embezzlement, breach of fiduciary duty, kickback, or bribes.

#### **Section 4.12. Owned and Leased Real Properties**

(a) There is no LifeCenter Owned Real Estate.

(b) Schedule 4.12(b) contains a true and complete list of all agreements (including all amendments, extensions, renewals, guaranties, and other agreements with respect thereto) as of the date hereof for the LifeCenter Leased Real Estate (including the date and name of the parties and a description of premises) (the "**LifeCenter Leases**"). LifeCenter has delivered to KODA a true and

complete copy of each such LifeCenter Lease. Except as set forth on Schedule 4.12(b), with respect to each of the LifeCenter Leases: (i) such LifeCenter Lease is legal, valid, binding, enforceable, and in full force and effect; (ii) LifeCenter is not, and to the Knowledge of LifeCenter, any other party to the LifeCenter Lease, is not in breach or default under such LifeCenter Lease, and no event has occurred or circumstance exists which, with or without notice, lapse of time, or both, would constitute a breach or default under such LifeCenter Lease; (iii) LifeCenter's possession and quiet enjoyment of the LifeCenter Leased Real Estate under such LifeCenter Lease has not been disturbed, and to the Knowledge of LifeCenter, there are no disputes with respect to such LifeCenter Lease; and (iv) there are no Liens on the estate created by such LifeCenter Lease other than Permitted Liens. Except as set forth on Schedule 4.12(b), LifeCenter has not assigned, pledged, mortgaged, hypothecated, or otherwise transferred any LifeCenter Lease or any interest therein nor has LifeCenter subleased, licensed, or otherwise granted any Person a right to use or occupy such LifeCenter Leased Real Estate or any portion thereof. LifeCenter has provided to KODA complete and accurate copies of all of LifeCenter Leases together with all amendments, modifications, and supplemental agreements thereto.

(c) All buildings and other improvements located on any LifeCenter Leased Real Estate (including, without limitation, all water, sewer, gas, electrical, and HVAC systems servicing the same) are in good repair and operating condition in all material respects and are suitable for the purposes for which they are used. Except as set forth on Schedule 4.12(c), there are no incomplete or ongoing construction projects affecting LifeCenter Leased Real Estate and there have been no recent construction projects on or affecting the LifeCenter Leased Real Estate within six (6) months prior to the date hereof that have not been completed and paid for in full.

#### **Section 4.13. Personal Property**

All of LifeCenter's Personal Property is in good operating condition and repair, except for ordinary wear and tear. As of the Closing, all of LifeCenter's Personal Property will be free and clear of Liens, other than the Permitted Liens. No Person other than LifeCenter owns any personal property situated on the real property leased by LifeCenter (as described in Schedule 4.12(b)), except for (a) items leased by LifeCenter or improvements to items leased by LifeCenter pursuant to a lease agreement identified on Schedule 4.7, and (b) personal property of LifeCenter's employees or visitors.

#### **Section 4.14. Legal Proceedings**

Except as set forth on Schedule 4.14 or as otherwise disclosed to KODA in a separate writing which references this Section 4.14, there are no material claims, proceedings, or investigations pending or, to the Knowledge of LifeCenter, threatened against LifeCenter relating to or affecting the operation of LifeCenter, or use of any of its Assets, before any court or governmental body (whether judicial, executive or administrative). LifeCenter is not subject to any judgment, order, ruling, decree or other governmental restriction specifically (as distinct from generically) applicable to it or its Assets, which would have a Material Adverse Effect on LifeCenter. Except as disclosed on Schedule 4.14, neither LifeCenter nor any of its Assets are subject to any corporate integrity agreement or other similar corrective or remedial plan entered into with any Governmental Authority or other third party. No pending litigation has created a Lien against LifeCenter's Assets. Litigation, claims, actions, suits, proceedings or investigations involving solely claims for money damages will not be deemed material for purposes of this Section 4.14 unless the potential liability to LifeCenter exceeds \$100,000.

#### **Section 4.15. Employee Benefits**

(a) Schedule 4.15(a) sets forth a complete and accurate list of each: (i) “employee benefit plan” (as defined in section 3(3) of ERISA), whether or not subject to ERISA, (ii) “nonqualified deferred compensation plan” (within the meaning of Section 409A of the Code), and (iii) each other bonus, stock purchase, stock ownership, stock option, equity-based, incentive, retirement, deferred compensation, severance, termination, employment, consulting, health, medical, dental, life insurance, disability, vacation, paid time off, fringe benefit, or other compensation plan, program, contract, or arrangement, in each case, maintained, contributed to, or required to be contributed to by LifeCenter or any ERISA Affiliate or with respect to which LifeCenter has or reasonably could have any liability (each of these, a “**LifeCenter Benefit Plan**,” and collectively, the “**LifeCenter Benefit Plans**”). A true and complete copy of each LifeCenter Benefit Plan (and all amendments thereto), and, as applicable, a copy of (i) the three most recent IRS Form 5500s filed with respect to each such LifeCenter Benefit Plan (including all schedules thereto), (ii) each current summary plan description and summary of material modifications, (iii) the three most recent summary annual reports, actuarial reports, financial statements, and trustee reports, (iv) all funding, trust, investment management, and insurance contracts and reports, and (v) all material correspondence within the past three (3) years with the IRS, Department of Labor, or any other Governmental Authority with respect to any LifeCenter Benefit Plan have been provided to KODA. With respect to each LifeCenter Benefit Plan that is unwritten, LifeCenter has provided KODA with a written description thereof.

(b) No LifeCenter Benefit Plan is subject to Title IV of ERISA. Except as disclosed on Schedule 4.15(b), no LifeCenter Benefit Plan is (i) a defined benefit pension plan, (ii) subject to Part 3 of Title I of ERISA or section 412 of the Code, (iii) a multiemployer plan (within the meaning of Section 3(37) of ERISA), or (iv) intended to qualify under section 401(a) of the Code. Neither LifeCenter nor any ERISA Affiliate has any liability (contingent or otherwise) relating to withdrawal or partial withdrawal from a multiemployer plan (within the meaning of Section 3(37) of ERISA).

(c) Except as described in Schedule 4.15(c), (i) each of the LifeCenter Benefit Plans has been established, maintained, and administered in compliance, in all material respects, with its terms and with the applicable provisions of ERISA, the Code and all other applicable Laws; and (ii) each LifeCenter Benefit Plan that is intended to be a 403(b) plan complies in all material respects with the rules applicable to such plans (including, without limitation, maintaining a written plan document, complying with the universal availability requirements, and filing all required returns and reports). There are no pending actions, audits, or investigations by any Governmental Authority involving any LifeCenter Benefit Plan, nor are there any threatened or pending claims (except for individual claims for benefits payable in the normal operation of the LifeCenter Benefit Plans), suits, or proceedings involving any LifeCenter Benefit Plan.

(d) All contributions to and all payments from any LifeCenter Benefit Plan that may have been required in accordance with the terms of such LifeCenter Benefit Plan or any related document have been timely made. All contributions to any LifeCenter Benefit Plan that are attributable to the period ending at the Effective Time have either been made or accrued and reflected on the LifeCenter Financial Statements.

(e) Neither LifeCenter, any ERISA Affiliate, nor, to the Knowledge of LifeCenter, any fiduciary, trustee, or administrator of any LifeCenter Benefit Plan, has engaged in or, in connection with the Transactions, will engage in any transaction with respect to any LifeCenter

Benefit Plan that could subject any such LifeCenter Benefit Plan or any fiduciary, trustee, or administrator thereof, LifeCenter, or any ERISA Affiliate to a tax, penalty, or liability for a "prohibited transaction" under Section 406 of ERISA or Section 4975 of the Code.

(f) Except as described in Schedule 4.15(f), no LifeCenter Benefit Plan provides benefits, including, without limitation, death or medical benefits, beyond termination of service or retirement other than (i) coverage mandated by COBRA or any similar applicable state Law or (ii) death or retirement benefits under a LifeCenter Benefit Plan intended to be a 403(b) plan, and neither LifeCenter nor any ERISA Affiliate has made a written or oral representation promising the same. Schedule 4.15(f) sets forth a true, complete and correct list of all liabilities of LifeCenter to provide "continuation coverage" to former employees of LifeCenter under COBRA and similar state Law. LifeCenter has no current obligations to make any severance payments to any former employees.

(g) Each LifeCenter Benefit Plan that constitutes a "non-qualified deferred compensation plan" within the meaning of Sections 409A and 457 of the Code complies in both form and operation with the applicable requirements of Sections 409A and 457 of the Code (and the rules, notices, and regulations promulgated thereunder). LifeCenter has no obligation to gross up, indemnify or otherwise reimburse any current or former employee for any taxes (or potential taxes) imposed (or potentially imposed) due to noncompliance with Section 409A or 457 of the Code (and the rules, notices, and regulations promulgated thereunder).

(h) LifeCenter and each ERISA Affiliate has at all relevant times properly classified their employees as "full-time employees" (as such term is defined in Section 4980H of the Code and the regulations issued thereunder) and complied in all material respects with the related Patient Protection and Affordable Care Act of 2010 reporting requirements under Sections 6055 and 6056 of the Code. Neither LifeCenter nor any ERISA Affiliate is or could be subject to any material penalty under Section 4980H of the Code.

(i) Except as set forth on Schedule 4.15(i), LifeCenter's execution of and performance of the Transactions will not constitute an event under any LifeCenter Benefit Plan that will (either alone or in combination with any other event) result in any payment (whether as severance pay or otherwise), acceleration, vesting, or increase in compensation or benefits with respect to any current or former employee, volunteer, director, or independent contractor of LifeCenter.

(j) Neither LifeCenter nor any ERISA Affiliate currently or within the preceding six (6) calendar years has contributed to or has had any obligation to contribute to any multiemployer plan (within the meaning of Section 3(37) of ERISA).

(k) Each LifeCenter Benefit Plan may be amended, terminated, or otherwise discontinued as of the Effective Time in accordance with its terms without any liability to LifeCenter or its ERISA Affiliates. None of the LifeCenter Benefit Plans is operated under, or subject to, the Laws of any jurisdiction outside of the United States.

#### **Section 4.16. Labor and Employment**

(a) Schedule 4.16 contains a complete and accurate list (as of the date set forth on the list) of all employees of LifeCenter, their current salary or wage rates, bonus and other compensation, benefit arrangements, accrued paid time off, period of service, exempt or non-exempt status under the Fair Labor Standards Act and any applicable state wage and hour Laws,

department and a job title or other summary of the responsibilities of such employees. Schedule 4.16 also indicates whether such employees are part-time, full-time, per diem or on a leave of absence and, if so, the type of leave. Except as otherwise disclosed to KODA, LifeCenter has properly classified individuals providing services to LifeCenter as independent contractors or employees, as the case may be, there has not been in the five (5) years prior to the Closing Date, and there is not pending or, to the Knowledge of LifeCenter, threatened, any proceeding that has been asserted or instituted against LifeCenter by any Governmental Authority or any other Person relating to the treatment of a non-exempt employee as exempt, or to the legal status or classification of an individual classified by LifeCenter as a non-employee (such as an independent contractor, a leased employee, a consultant or special consultant).

(b) Except as set forth on Schedule 4.16, LifeCenter is not a party to (i) any written employment agreement or (ii) any agreement, oral or written, that provides for a specified term of employment or that contains any severance or termination pay obligations with any employee (collectively, the “**LifeCenter Employment Agreements**”).

(c) Since January 1, 2021, LifeCenter has been and is currently in material compliance with all applicable Laws which relate to employment and to the operation of its business including all applicable Laws which relate to terms and conditions of employment, worker classification, Tax withholding, equal employment opportunity, discrimination and harassment (including sexual harassment), reasonable accommodations, employee representation, employee leave issues, unemployment insurance, fair employment and human rights practices, protected leaves, meal and rest periods, privacy, workers’ compensation, employee record keeping, immigration status, visa and work permit requirements for non-citizen employees, employee occupational health and safety, wages (including overtime wages), compensation, pay equity, and hours of work.

(d) To the Knowledge of LifeCenter, LifeCenter is not delinquent in payments to any of its employees for any wages, salaries, overtime pay, commissions, bonuses or other direct compensation for any services performed for it or any other amounts required to be reimbursed to such employees (including accrued paid time off and other benefits) or in the payment to the appropriate Governmental Authority of all required Taxes, insurance, social security and withholding thereon. LifeCenter has made all required payments to their respective unemployment compensation reserve accounts with the appropriate Governmental Authority of the states or other jurisdictions where it is required to maintain such accounts. To LifeCenter’s Knowledge, LifeCenter is not liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security, or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business consistent with past practice), consultants and independent contractors. LifeCenter has withheld all amounts required by Law or by agreement to be withheld from the wages, salaries and other payments to employees, independent contractors or consultants and is not liable for any arrears of wages or any Tax or any penalty or interest for failure to comply with any of the foregoing.

(e) Except as set forth on Schedule 4.16, (i) LifeCenter is not bound by any collective bargaining agreement with respect to any of its employees, (ii) there is no labor strike, labor dispute, or work stoppage or lockout pending or, to LifeCenter’s Knowledge, threatened in writing against or affecting LifeCenter, (iii) to LifeCenter’s Knowledge, no union organization campaign is in progress with respect to any of the employees of LifeCenter, and (iv) there is no unfair labor practice, charge, or complaint pending or, to LifeCenter’s Knowledge, threatened in writing against LifeCenter.

(f) For each employee within the United States: (i) LifeCenter has not received notice or other communication from any Governmental Authority or other Person regarding any violation or alleged violation of any applicable Law relating to hiring, recruiting, employing of (or continuing to employ) anyone not authorized to work in the United States; and (ii) LifeCenter has in its files a Form I-9 that is validly and properly completed in accordance with applicable Law for each employee with respect to whom such form is required by Law.

#### **Section 4.17. Insurance**

LifeCenter maintains, and has maintained, without interruption, at all times during the past three (3) years, self-insurance or policies or binders of insurance covering such risks and events, including personal injury, property damage, malpractice and general liability, unemployment compensation, and worker's compensation, so as to provide commercially reasonable insurance coverage for all the Assets and operations of LifeCenter. Schedule 4.17 contains a list of all such insurance maintained by LifeCenter with respect to its Assets and operations as of the Execution Date, which coverage, or substantially equivalent coverage, LifeCenter covenants and agrees to keep in full force and effect through and including the Effective Time. True and correct policies of all such insurance policies have been made available to KODA. Except as disclosed on Schedule 4.17, there are no outstanding claims under any insurance policy maintained by LifeCenter.

#### **Section 4.18. Intellectual Property**

(a) Schedule 4.18 sets forth (i) a true, complete, and correct list of all registered trademarks, service marks, and copyrights (setting forth, as applicable, the item, the registration or application number, the registration or application date, and the jurisdiction in which such item is registered or pending); (ii) a true, complete and correct list of all registered trade names, corporate names, domain names and fictitious names under which LifeCenter is operating; and (iii) a true, complete and correct list of any trademark or service mark license agreements, copyright license agreements, or other intellectual property license agreements to which LifeCenter is a party (collectively, "**LifeCenter Intellectual Property**"). LifeCenter owns all right, title and interest in and to the LifeCenter Intellectual Property, free and clear of any Liens, or has the right to use the LifeCenter Intellectual Property, and has not licensed any third parties to use the LifeCenter Intellectual Property.

(b) None of the LifeCenter Intellectual Property is the subject of any litigation or action challenging its extent, validity, enforceability, or ownership. LifeCenter has not received any notice, claim or allegation that the LifeCenter Intellectual Property violates or infringes the rights of any third party, and to LifeCenter's Knowledge, there is no basis for any such notice, claim, or allegation.

#### **Section 4.19. Solvency**

LifeCenter is not insolvent and will not be rendered insolvent as a result of any of the Transactions contemplated by this Agreement. For purposes hereof, the term "solvency" means that: (a) LifeCenter is able to pay its debts or obligations in the ordinary course as they mature; and (b) LifeCenter has capital sufficient to carry on its business.

#### **Section 4.20. Taxes**

(a) Schedule 4.20 set forth each jurisdiction where LifeCenter is subject to Tax. No claim has ever been made in writing by any taxing authority in a jurisdiction where LifeCenter does not file Tax returns that LifeCenter or any of its subsidiaries is or may be subject to Tax in that jurisdiction.

(b) Except as set forth in Schedule 4.20 attached hereto, all federal, state, county and other Tax returns, reports, declarations of every nature, and payments with respect thereto (including, without limitation, income, employment, payroll, excise, property, sales and use taxes, unemployment contributions), required to be filed or paid by or on behalf of, or with respect to, LifeCenter and its Assets have been duly and timely filed and/or paid, or will be filed and paid (within the time periods required by law) and there does not currently exist any dispute with any taxing authority as to Taxes of any nature which would specifically affect LifeCenter or its Assets. All such Tax returns were complete and correct in all respects. LifeCenter is not currently the beneficiary of any extension of time within which to file any Tax return, and LifeCenter has not waived any statute of limitation with respect to any Tax or agreed to any extension of time with respect to a Tax assessment or deficiency. LifeCenter is not delinquent in payment of any Tax, assessment, or other governmental charge, including, but not limited to, real estate Taxes and assessments of the real property owned by LifeCenter.

(c) Except as set forth in Schedule 4.20, LifeCenter has withheld or paid, if due, all Taxes required by applicable Laws to have been withheld and paid.

(d) Except as set forth in Schedule 4.20, neither LifeCenter nor its Assets are bound by any agreements with any taxing authority, and there is no unassessed Tax deficiency proposed or, to the Knowledge of LifeCenter, threatened against LifeCenter or its Assets, and no action, proceeding or audit of any of LifeCenter's returns or reports by any Governmental Authority is pending or, to the Knowledge of LifeCenter, threatened by any Governmental Authority for assessment, reassessment or collection of any Taxes or assessments affecting LifeCenter or its Assets or operations. LifeCenter has not applied for any ruling from any Governmental Authority with respect to Taxes.

(e) There are no Liens for Taxes upon the Assets owned or held by LifeCenter.

(f) There are no joint ventures, partnerships, limited liability companies, or other arrangements or contracts to which LifeCenter is a party that could be treated as a partnership for Tax purposes.

(g) LifeCenter is not a party to any agreement, contract, arrangement or plan that has resulted, or could result, individually or in the aggregate, in the payment of "excess parachute payments" within the meaning of Section 280G of the Code or an "excess benefit transaction" within the meaning of Section 4958 of the Code.

(h) Except as set forth on Schedule 4.20, neither LifeCenter nor any "controlled entity" with respect to LifeCenter, as such term is defined in Section 512(b)(13)(A) of the Code, is engaged in any "unrelated trade or business," as such term is defined in Section 513(a) of the Code and the regulations promulgated thereunder. Except as set forth on Schedule 4.20, all of the unrelated trades or business set forth on Schedule 4.20 are excluded from the tax imposed pursuant to Section 511 of the Code on account of one or more provisions of Section 512 of the Code through Section 514 of the Code, such provision(s) also being set forth next to the corresponding unrelated trade or business on Schedule 3.20. No act, event, omission, or other occurrence or non-occurrence, whether alone or in the aggregate, has occurred, or is reasonably likely to occur, that is reasonably likely to (i) cause any trade or business not currently set forth

on Schedule 4.20 to become an “unrelated trade or business,” as such term is defined in Section 513(a) of the Code and the regulations promulgated thereunder, or (ii) cause any unrelated trade or business currently set forth on Schedule 4.20 to cease being excluded from the tax imposed pursuant to Section 511 of the Code on account of one or more provisions of Section 512 of the Code through Section 514 of the Code or otherwise being subject to such tax.

#### **Section 4.21. Restricted Funds**

Schedule 4.21 contains a true and complete description of (a) all donor trusts, funds, segregated accounts and other monies or properties that either (i) are required to be held by LifeCenter in a fiduciary capacity under applicable Law; (ii) are required to be held by a third party in a fiduciary capacity for the benefit of LifeCenter under applicable Law; or (iii) would be subject to Section 1715.55 of the Ohio Revised Code in connection with any proposed release or modification of restrictions on management, investment, or purpose set forth in the underlying gift instrument (collectively, the “**LifeCenter Restricted Funds**”); and (b) to LifeCenter’s Knowledge, all devises, gifts and bequests of future interests for the benefit of LifeCenter (collectively, the “**LifeCenter Future Interests**”). To the extent that the LifeCenter Restricted Funds are held by LifeCenter in a fiduciary capacity, LifeCenter has managed the LifeCenter Restricted Funds in full conformity with applicable fiduciary duties and standards. To the Knowledge of LifeCenter, no act, event, omission, or other occurrence or non-occurrence, whether alone or in the aggregate, has occurred, or is reasonably likely to occur, that resulted in, or would be reasonably likely to result in, a violation of UPMIFA by LifeCenter. Furthermore, LifeCenter has properly segregated or otherwise separately accounted for all funds making up the LifeCenter Restricted Funds. Except as set forth in Schedule 4.21, the consummation of the Transactions does not require any notice to or consent of a third party to continue the beneficial interest of the Surviving Corporation in the LifeCenter Restricted Funds or LifeCenter Future Interests following the Effective Time.

#### **Section 4.22. Absence of Undisclosed Liabilities**

To LifeCenter’s Knowledge, except as disclosed elsewhere herein or as set forth on Schedule 4.22 hereto, LifeCenter does not have any liability or obligation of any nature (including, without limitation, liens, encumbrances, mortgages, deeds of trust, security interests, pledges or any other claims or charges, whether absolute, contingent, unasserted, asserted or otherwise), and there are no material liabilities or contingent liabilities that are not reflected in the LifeCenter Financial Statements.

#### **Section 4.23. Absence of Adverse Facts, Circumstances and Changes**

Except as disclosed elsewhere herein or in the Schedules, or as set forth on Schedule 4.23 hereto, to LifeCenter’s Knowledge, no facts or circumstances exist which would reasonably be expected to have a Material Adverse Effect on LifeCenter.

#### **Section 4.24. Brokers, Finders and Fees**

Neither LifeCenter, nor any officer or director thereof, has engaged any finder or broker in connection with the Transactions contemplated hereunder.

#### **Section 4.25. Title, Condition and Sufficiency of Assets**

Except as set forth in Schedule 4.25, in the ninety (90) days prior to the date hereof, LifeCenter has not transferred any assets out of, or from, LifeCenter except in the ordinary course of business. LifeCenter has good and valid (and, in the case of owned LifeCenter Leased Real Estate, good and marketable fee

simple) title to all assets used by LifeCenter, free and clear of any Liens. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles, and other items of tangible personal property of LifeCenter are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles, and other items of tangible personal property is in need of maintenance or repairs except for ordinary routine maintenance and repairs that are not material in nature or cost. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles, and other items of tangible personal property currently owned or leased by LifeCenter, together with all other properties and assets of LifeCenter, are sufficient for the continued conduct of the Surviving Corporation's business after Closing in substantially the same manner as LifeCenter conducted prior to Closing and constitute all of the rights, property and assets necessary to conduct the business of LifeCenter as currently conducted. Except as set forth in Schedule 4.25, no LifeCenter asset, buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles, and other items of tangible personal property used in connection with the business of LifeCenter is owned, leased, possessed, titled to, or controlled by any other third party.

#### **Section 4.26. Privacy; Data Protection**

The computer hardware, servers, networks, platforms, peripherals, data communication lines, and other information technology equipment and related systems, including any outsourced systems and processes, that are owned or used by LifeCenter ("**LifeCenter Company Systems**") are reasonably sufficient for the immediate needs of LifeCenter's business. There has been no unauthorized access, use, intrusion, or breach of security, or material failure, breakdown, performance reduction, or other adverse event affecting any LifeCenter Company Systems, that has caused or could reasonably be expected to cause any: (i) disruption of or interruption in or to the use of such LifeCenter Company Systems or the conduct of LifeCenter's business; or (ii) material loss, destruction, damage, or harm of or to LifeCenter or its operations, personnel, property, reputation, or other assets. There has been no access, or disclosure or misuse, by any third party of any protected health information (as such term is defined by HIPAA) held by, or on behalf of, LifeCenter unless such third party was authorized by LifeCenter to access, receive, or otherwise use such protected health information. LifeCenter has taken all reasonable actions, consistent with applicable industry best practices and applicable Law, to protect the integrity and security of LifeCenter Company Systems and the data and other information stored or processed thereon. LifeCenter maintains commercially reasonable backup and data recovery procedures and practices.

#### **Section 4.27. No Other Material Information**

None of the representations or warranties in this Article IV nor any of the exhibits or Disclosure Schedules attached hereto, nor any of the certificate, instruments, agreement, or otherwise delivered pursuant to this Agreement, contain any untrue statement of a material fact or omit a material fact necessary to make each statement contained herein or therein, in light of the circumstances in which they were made, not misleading.

### **ARTICLE V PRE-CLOSING COVENANTS OF THE PARTIES**

#### **Section 5.1. Access**

From the date of this Agreement through the Effective Time, subject to the Confidentiality Agreement, each Party shall give to the other Party and to its advisors, legal counsel, independent accountants, and other representatives, after reasonable advance telephonic or e-mail notice, full and complete access during normal business hours to all properties, documents, contracts, employees, records,

and other information, and will furnish copies of such documents (certified, if so requested) and with such information with respect to such Party as the other Party from time to time may reasonably request.

#### **Section 5.2. Conduct of Operations**

From the date of this Agreement through the Effective Time, except as consented to in writing by the other Party, each Party shall continue the operation of its nonprofit organization in compliance with all applicable Laws and in the ordinary course, and shall maintain its Assets, properties, and rights in at least as good order and condition as exists on the date of this Agreement, ordinary wear and tear and insurable loss excepted. Each Party shall use commercially reasonable efforts to maintain and preserve its organization intact and maintain its relationships with donors, suppliers, donor hospitals, transplant centers, tissue processors, and others having relations of similar character or import with such Party consistent with past practice and the intent of this Agreement.

#### **Section 5.3. Required Notice**

From the date of this Agreement through the Effective Time, each Party shall promptly give notice to the other Party of the occurrence of any event, or the failure of any event to occur, that (a) would result in a failure by such Party to comply with any covenant, condition or agreement contained herein, regardless of whether such covenant, condition, or agreement is to be fulfilled prior to, on, or after the Closing Date; (b) if known publicly, would be reasonably likely to damage the reputation of such Party; or (c) would then cause, or through the passage of time would be reasonably likely to cause, any representation or warranty of the Party to be untrue in any material respect. The content of any notice or update delivered by that Party prior to the Closing pursuant to this Section shall not be deemed to modify the applicable representations and warranties for purposes of determining whether the conditions precedent in Article VI are satisfied.

#### **Section 5.4. Governmental and Third-Party Approvals**

Each Party shall reasonably cooperate with the other Party and its representatives and attorneys: (a) in obtaining all consents, approvals, authorizations, clearances and licenses required or appropriate to carry out the Transactions on the Closing Date consistent with the terms of this Agreement (including, without limitation, those of Governmental Authorities), and (b) in the preparation of any document or other material which may be required or requested by any Governmental Authority as a predicate to or result of the Transactions contemplated in this Agreement. Within 60 days of the date hereof, the Parties will make all governmental and regulatory filings required by Form 576 to be made in order to consummate the Transaction on the Closing Date. As soon as practicable, the Parties will make all other governmental and regulatory filings required to be made in order to consummate the Transaction on the Closing Date. No Party shall consent to any voluntary delay of the Closing at the behest of any Governmental Authority or other third party without the consent of the other Party.

#### **Section 5.5. Efforts to Close**

The Parties shall use commercially reasonable efforts to proceed toward the Closing and to satisfy the conditions precedent to the Closing set forth in Article VI, consistent with other terms contained herein. Each Party shall notify the other Party as soon as practicable of any event or matter that comes to the attention of such Party that may reasonably be expected to prevent or materially delay such conditions from being satisfied. Each Party hereto agrees to, and will cause its affiliates, employees, officers, directors, representatives, and agents to, make best efforts to avoid, eliminate, and resolve any and all impediments under any Law or trade regulation law that may be asserted by any Governmental Authority or any other

Person with respect to the Transaction contemplated by this Agreement and to obtain all consents, approvals, and waivers under any Law that may be required by any Governmental Authority to enable the Parties to close the Transaction as promptly as practicable. Each Party shall cooperate fully with the other Party in promptly seeking to obtain all such consents, approvals, and waivers. The Parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, approvals, and waivers.

#### **Section 5.6. Additional Financial Information**

Promptly following the end of each month, each Party shall provide to the other Party monthly internally-prepared financial statements of the type described in Section 3.6 or Section 4.6, as applicable, for the period after the date hereof and through the Closing Date.

#### **Section 5.7. Negative Covenants**

Except as set forth in Schedule 5.7, from the date of this Agreement through the Effective Time, and except as otherwise provided herein, neither Party shall, without the prior written consent of the other Party: (a) enter into or renew any KODA Material Contract or LifeCenter Material Contract, as applicable; (b) amend or terminate any contract or commitment, or incur or agree to incur any liability, except in the ordinary course consistent with past practice; (c) increase the compensation or benefits payable or to become payable to, enter into one or more bonus or severance agreements with, or commit to the payment of discretionary year-end bonuses or related expenditures to, any employee, officer, director, or independent contractor, other than any increases or payments that are budgeted or in the ordinary course of business; (d) enter into, amend, or terminate any KODA Benefit Plan or LifeCenter Benefit Plan, as applicable (other than amendments required by law); (e) create, assume or permit to exist any new debt, mortgage, pledge, or other Lien or encumbrance, other than a Permitted Lien, upon any of its Assets, whether now owned or hereafter acquired; (f) accelerate payments on any debt instrument or other contractual obligation; (g) spend down excess unrestricted reserve funds (except as specifically accounted for in the current budget of the applicable Party and consistent with past practice); (h) make or commit to any unbudgeted expenditure or series of related unbudgeted expenditures in excess of one hundred fifty thousand dollars (\$150,000); or (i) take any action, or fail to take any action, that could reasonably be expected to (i) cause such Party's tax-exempt status to be cancelled, revoked, suspended, or otherwise terminated, (ii) cause such Party's classification under Section 509 of the Code to be a foundation, or (iii) result in the imposition of tax on such Party under Section 4958 of the Code.

#### **Section 5.8. Exclusivity**

From the date of this Agreement through the Effective Time, each Party shall not, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding a Transaction Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Transaction Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding a Transaction Proposal. For purposes hereof, "**Transaction Proposal**" shall mean any inquiry, proposal or offer from any Person (other than the Parties herein) concerning any affiliation, merger, acquisition, consolidation, asset sale, member substitution, or similar transaction. Notwithstanding the foregoing, if CMS requires either Party to enter into, or discuss a Transaction Proposal with another organ procurement organization, such transaction or discussion shall not violate this Section 5.8.

Each Party agrees to immediately notify the other Party if such Party receives any indications of interest, requests for information, or offers from any third party in respect of a Transaction Proposal, or any correspondence from CMS relating to the Transaction or this Agreement, and will communicate to the other

Party in reasonable detail the terms of any such indication, request, offer, or correspondence and will provide the other Party with copies of all written communications relating to any such indication, request, offer, or correspondence.

## **ARTICLE VI MUTUAL CONDITIONS PRECEDENT TO OBLIGATIONS TO CLOSE**

The obligations of the Parties hereunder shall be subject to the satisfaction, as of the Closing Date, of the following conditions (any of which may be waived, in whole or in part, by one or both Parties, as applicable, unless otherwise specified):

### **Section 6.1. Representations and Warranties True and Correct; Performance of Covenants**

The representations and warranties of the Parties contained in this Agreement shall be true in all material respects when made and as of the Closing Date. Each of the terms, covenants, and conditions of this Agreement to be complied with or performed by the Parties on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all material respects.

### **Section 6.2. Signing and Delivery of Instruments**

Each Party shall have duly executed and delivered all documents, instruments, certificates and other items required pursuant to Section 2.7 or Section 2.8, as applicable, and all other applicable provisions of this Agreement.

### **Section 6.3. Absence of Legal Proceedings**

No action, arbitration, suit, proceeding, claim, inquiry, or investigation shall be pending or threatened before or by any Governmental Authority (a) challenging any of the Transactions or otherwise seeking damages arising out of the Transactions, or (b) seeking to restrain or prevent the carrying out of the Transactions or to prohibit or limit the ability of the Surviving Corporation to operate or control the Assets, property, or business of the Surviving Corporation (including such Assets, property, and business acquired pursuant to the Merger) after the Effective Time.

### **Section 6.4. Governmental Approvals and Notices**

The Parties shall have sent timely notices to and/or obtained all the consents, licenses, permits, waivers and authorizations from Governmental Authorities listed on Schedule 6.4, which may include reasonable assurances that any such material licenses, permits and authorizations not actually issued as of the Closing will be issued following Closing (which may include oral assurances from appropriate governmental agencies or bodies).

### **Section 6.5. Adverse Change**

From the date of this Agreement, there shall not have occurred with respect to either Party any Material Adverse Effect.

### **Section 6.6. Actions Regarding Benefit Plans**

The Parties shall have taken such actions as are necessary to effectuate any amendments to or terminations of their respective benefit plans (namely, KODA Benefit Plan and LifeCenter Benefit Plan)

pursuant to the mutual agreement of the Parties regarding the application of such benefit plans from and after the Effective Time.

**Section 6.7. Executive Team**

The Parties shall have agreed in writing on the individuals who will serve as the executive team of the Surviving Corporation. For these purposes, the “executive team” shall mean the CEO and his/her direct reports. In collaboration with each other, the current Chief Executive Officer of KODA and Executive Director of LifeCenter will establish a leadership structure for the new organization. Personnel within the current organizations wishing to continue employment within the combined organization will indicate their interest in a role(s) that aligns with their current position or is otherwise available and for which they are qualified. Some positions may have more than one qualified candidate, and the selection will occur after completion of a selection process led by the Chief Executive Officer of KODA and Executive Director of LifeCenter. Leadership positions identified for the Surviving Corporation will not be posted for internal or external applicants until after all current members of leadership are processed for selection.

**Section 6.8. Business Plan**

KODA and LifeCenter will have agreed upon, and their respective boards of directors will have approved, an initial consolidated business and financial plan for the Surviving Corporation, which shall include the first annual budget, the financial plan and the strategic plan for the Surviving Corporation.

**Section 6.9. Branding**

The Parties shall have agreed upon a form of naming and branding plan, as described in Section 7.3 hereof.

**Section 6.10. Corporate Policies**

The Parties will have agreed upon the forms of the governance policies and other corporate policies listed on Schedule 6.11 hereto (as such Schedule may be updated by mutual agreement of the Parties prior to Closing) and will have taken all necessary steps for such policies and charters to be in effect at the Effective Time.

**ARTICLE VII  
POST-CLOSING COVENANTS**

**Section 7.1. Governance**

The governance structures that will be in effect with respect to the Surviving Corporation from and after the Effective Time and described in the Bylaws are set forth in this Section 7.1, subject to the following:

(a) The initial Board of Directors of the Surviving Corporation (the “**Board**”) will consist of 24 directors, which shall include 12 of the current KODA directors as of the Effective Time (the “**KODA Designees**”) and 12 of the current LifeCenter directors as of the Effective Time (the “**LifeCenter Designees**”).

(b) The initial Chief Executive Officer of the Surviving Corporation shall be Barry Massa; the initial President and Chief Operating Officer of the Surviving Corporation shall be Julie Bergin. The Surviving Corporation shall enter into employment agreements at Closing with both

Barry Massa and Julie Bergin with respect to those positions on terms and conditions that are acceptable to Barry Massa, Julie Bergin, KODA, and LifeCenter.

(c) The initial Secretary of the Surviving Corporation shall be a designee appointed by either KODA or LifeCenter, and the initial Treasurer of the Surviving Corporation shall be a designee appointed by the Party whose designee was not appointed to be the initial Secretary of the Surviving Corporation.

(d) The initial Chairperson of the Surviving Corporation shall be Kathleen Exline; the initial Vice Chairperson of the Surviving Corporation shall be Deborah Hayes.

## **Section 7.2. Employees**

With respect to each individual who is an employee of KODA or LifeCenter immediately prior to the Closing and who remains employed by the Surviving Corporation following the Closing (each, a “**Continuing Employee**” and collectively, the “**Continuing Employees**”):

(a) All Continuing Employees will be transitioned to a uniform salary structure, benefit programs, human resources policy, payroll, pay structures, and pay practices as of the Effective Time or, if such transition cannot be fully effected at the Effective Time, then within six (6) months following the Effective Time and no later than June 30, 2025, subject to satisfaction of requirements under ERISA or other applicable Law.

(b) The Surviving Corporation will review Continuing Employees’ compensation, and will make commercially reasonable efforts to adjust Continuing Employees’ compensation in accordance with their job titles and responsibilities, subject to appropriate market adjust, if any. The Surviving Corporation will recognize Continuing Employees’ existing levels of service and seniority for all purposes under each plan, program, policy, agreement or arrangement (including vacation, paid time-off and severance arrangements) to the same extent that such service was recognized under a similar plan, program, policy, agreement or arrangement of KODA or LifeCenter, as applicable, except that no such prior service credit will be required or provided to the extent that (i) it results in a duplication of benefits, (ii) is applied to any retirement plan, other than for eligibility and vesting purposes, or (iii) such service was not recognized under the corresponding KODA Benefit Plan or LifeCenter Benefit Plan.

(c) From and after the Effective Time, in the event that any Continuing Employees in good standing have their employment terminated as a result of the integration of operations, such Continuing Employees will be offered severance packages under the severance policies and practices applicable to such employees at the time of displacement. Such employees shall be permitted to apply for other open positions with the Surviving Corporation and will be offered an open position within the Surviving Corporation commensurate with such person’s skills and experience.

(d) Intentionally Omitted.

(e) Provided that they are disclosed to the applicable Party as part of due diligence, and subject to such due diligence review, the Surviving Corporation will honor existing written employment or retention contracts of KODA and LifeCenter listed on Schedule 7.3(e) for their stated terms. Any amendments that may be appropriate to transition such contracted employees to

the unified salary structure, incentive structure, employee benefit plans, and deferred compensation arrangements will be subject to mutual agreement prior to Closing.

(f) Expressly subject to paragraph (e) of this Section 7.2, no term of this Agreement shall be deemed to create any contract with any Continuing Employee, any former employee of KODA, LifeCenter, or any other Person, or to give any Continuing Employee the right to be retained in the employment of the Surviving Corporation, or to interfere with the Surviving Corporation's right to terminate employment of any Continuing Employee at any time. Except as otherwise provided in this Section 7.2 and subject to compliance with applicable Law and the Parties' obligations herein, nothing in this Agreement shall diminish the Surviving Corporation's rights to change or terminate its policies regarding salaries/wages, benefits and other employment matters at any time or from time to time. Nothing contained in this Section 7.2 shall constitute an amendment to any employee benefit plan maintained or sponsored by the Parties.

### **Section 7.3. Branding**

After the Closing, the Surviving Corporation will use a single name, logo, and related branding on all facilities and in all communications, including advertisements, websites and other electronic media. The Parties will work collaboratively and with a consultant prior to Closing to create and agree upon a naming and branding plan to be implemented following the Closing. The details of such plan shall be agreed upon by the Parties prior to Closing and set forth in Schedule 7.3.

### **Section 7.4. Benchmarks**

The Surviving Corporation will operate in accordance with the following benchmarks: CMS donation and transplantation rate and the measurements established in the final rule published December 2, 2020 (located at 85 Federal Register 77898); Scientific Registry of Transplant Recipients; United Network of Organ Sharing data releases; and applicable requirements of relevant industry associations.

### **Section 7.5. Locations**

(a) From and after the Effective Time, the principal office of the Surviving Corporation will be located at 10301 Linn Station Road, Louisville, Kentucky 40223. It is contemplated that all current locations for the Parties will remain open and operational following the Closing of the Transaction, including: Cincinnati, Ohio; Louisville, Lexington, and Pikeville, Kentucky; and Huntington, West Virginia.

(b) The Parties acknowledge and agree that KODA is in the process of a construction project located at 10160 Linn Station Road in Louisville, Kentucky (the "**Construction Project**") and that the Construction Project will not be altered, disrupted or delayed as a result of, or in connection with, the proposed Transaction. The Surviving Corporation shall ensure that the Construction Project, if not completed by the date of Closing, will continue post-Closing until it is completed.

### **Section 7.6. Endowed and Restricted Funds**

(a) From and after the Effective Time, the Surviving Corporation shall continue to use all donor-restricted funds of the Parties, including the KODA Restricted Funds and the LifeCenter Restricted Funds, in conformity with such funds' respective restrictions and the intent of such funds' donor(s), consistent with applicable Law.

(b) All other endowed and temporarily restricted funds held by the Parties as of the Closing Date shall remain in effect and any applicable restrictions shall continue to be honored pursuant to applicable law, subject to the ability of the Surviving Corporation to seek the release or modification of any such restriction in accordance with UPMIFA or other applicable law.

**Section 7.7. Information Technology**

The Surviving Corporation will integrate the KODA and LifeCenter clinical and business information system platforms as soon as operationally possible, currently estimated to be no later than one (1) year following the Closing. Prior to the Closing, KODA and LifeCenter will develop a plan for the integration.

**Section 7.8. Form 990 and Other Tax Filings**

After the Effective Time, the Surviving Corporation will arrange for the filing of a final Form 990 and other necessary federal and state tax business filings for Merging Corporation for the final fiscal year of Merging Corporation ending on the Closing Date, as well as any such filings for the 2023 fiscal year that have not yet been filed prior to the Closing Date. The LifeCenter Designees shall have the right to review and comment on any such filings prior to such filings being made; *provided, however*, that in the event between a dispute between the Surviving Corporation and the LifeCenter Designees with respect to any issue with respect to such filings, the LifeCenter Designees shall control.

**Section 7.9. Post-Closing Regulatory and Third Party Notices**

After the Effective Time, the Surviving Corporation will arrange for the timely provision of notice of the Transactions to the Governmental Authorities and third parties identified on Schedule 7.9 hereto.

**Section 7.10. Employee Integration Compensation Plan**

(a) KODA has adopted the integration compensation plan set forth in Schedule 7.10(a) in connection with this Transaction.

(b) LifeCenter has adopted the integration compensation plan set forth in Schedule 7.10(b) in connection with this Transaction.

**ARTICLE VIII  
TERMINATION**

**Section 8.1. Termination Prior to Closing**

This Agreement may be terminated at any time prior to Closing:

(a) by mutual written consent of the Parties;

(b) by KODA if a material breach of this Agreement has been committed by LifeCenter and such breach has not been (i) waived in writing by KODA or (ii) cured by LifeCenter to the satisfaction of KODA within thirty (30) days after service by KODA upon LifeCenter of a written notice which describes the nature of such breach; provided, that reasonable extensions of time shall be given if LifeCenter is diligently pursuing cure and the Closing is not delayed beyond the Outside Date;

(c) by LifeCenter if a material breach of this Agreement has been committed by KODA and such breach has not been (i) waived in writing by LifeCenter or (ii) cured by KODA to the satisfaction of LifeCenter within thirty (30) days after service by LifeCenter upon KODA of a written notice which describes the nature of such breach; provided, that reasonable extensions of time shall be given if KODA is diligently pursuing cure and the Closing is not delayed beyond the Outside Date;

(d) by KODA if any of the material conditions in Article VI have not been met as of the Outside Date or if meeting any such material condition in Article VI is or becomes impossible and KODA has not waived such condition in writing on or before the Outside Date, as applicable (provided, that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure or delay of KODA to comply with its obligations under this Agreement or (ii) LifeCenter's failure to provide its closing deliveries by the Outside Date as a result of KODA not being ready, willing and able to close the Transaction by the Outside Date), effective upon written notice to LifeCenter; or

(e) by LifeCenter if any of the material conditions in Article VI have not been met as of the Outside Date or if meeting any material condition in Article VI is or becomes impossible and LifeCenter has not waived such condition in writing on or before the Outside Date (provided, that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure or delay of LifeCenter to comply with its obligations under this Agreement or (ii) KODA's failure to provide its closing deliveries by the Outside Date as a result of LifeCenter not being ready, willing and able to close the Transaction by the Outside Date), effective upon written notice to KODA.

In the event that a Party seeks to terminate this Agreement pursuant to (d) or (e) (as applicable), the other Party may unilaterally, within such Party's sole discretion, extend the Outside Date by fifteen (15) days upon prior written notice to the Party seeking to terminate the Agreement so long as such other Party has not taken any action or failed to take any action that resulted, directly or indirectly, in the failure of such material condition in Article VI for purposes of trying to satisfy such material condition in Article VI; *provided, however*, that if after the lapse of such fifteen (15) day period, the other Party has not been successful in satisfying such material condition in Article VI, then the Party who was seeking to terminate the Agreement may terminate this Agreement immediately by providing written notice to the other Party.

## **Section 8.2. Effect of Termination**

If this Agreement is terminated pursuant to Section 8.1, (a) all further obligations of the Parties under this Agreement shall terminate, except that the obligations in Section 10.8 (with respect to confidentiality but not publicity) and Section 10.10 (expenses and attorneys' fees) shall survive, (b) each Party shall pay the costs and expenses incurred by it in connection with this Agreement, except as provided in Section 10.10, and (c) nothing shall prevent any Party hereto from pursuing any of its legal or equitable rights or remedies that may be available to any such Party against any other Party, including damages determined to be reasonably foreseeable; provided, that no Party shall be entitled to obtain special, indirect or punitive damages.

**ARTICLE IX**  
**BENEFICIARIES, REMEDIES, SURVIVAL, AND INDEMNIFICATION**

**Section 9.1. Third-Party Beneficiaries**

Nothing referred to or expressed in this Agreement is intended by the Parties, nor shall this Agreement be deemed, to confer any legal or equitable right or remedy, claim or benefit on any Person not a Party to this Agreement, as third-party beneficiary or otherwise. No other Person other than the Parties to this Agreement shall be a third-party beneficiary of this Agreement; provided that following the Closing: (a) the KODA Designees, acting as a majority and not individually, shall have the full standing and legal authority to enforce the rights of KODA under this Agreement and the Transactions; and (b) the LifeCenter Designees, acting as a majority and not individually, shall have full the full standing and legal authority to enforce the rights of LifeCenter under this Agreement and the Transactions. The Parties further acknowledge and agree that any such attempted enforcement action if made in good faith, whether pursued in a court of law, equity or otherwise and whether or not successful, shall not constitute a breach or violation of the fiduciary obligations of any such director to the Surviving Corporation, and further that the KODA Designees or LifeCenter Designees, as applicable, may meet separately from the full Surviving Corporation Board to discuss their respective enforcement rights or other rights or obligations under this Agreement.

**Section 9.2. Remedies Following the Closing**

(a) Nature of Remedies. A Party's remedies for a breach or failure by the other Party or the Surviving Corporation to adequately perform the respective duties and obligations imposed by this Agreement shall be limited to specific performance, as actual performance of the Parties' agreements will best advance the mutual objectives and missions of each of the Parties. Remedies for a breach or failure by the other Party or the Surviving Corporation to adequately perform the respective duties and obligations imposed by this Agreement shall not include monetary damages, liquidated damages, remote or speculative damages, lost profits, or (except in the case of fraud or willful misconduct) punitive damages or punishments or penalties of any kind, nor shall they include for any reason whatsoever the rescission or unwinding of the Transactions described in this Agreement or any change to this Agreement.

(b) Procedures Exclusive. Each of the Parties agrees that the procedures set forth in this Section 9.2 shall be the sole and exclusive procedures for resolving disputes arising under the Agreement or regarding the Transactions, and each of the Parties expressly waives any and all other claims, rights or causes of action they may have, now or in the future, whether by statute or common law respecting such disputes. Notwithstanding the foregoing, however, no Party shall be precluded from seeking assistance from any governmental unit to enforce compliance with any applicable Law, rule, regulation, legal obligation or public policy, including without limitation, any Laws respecting the proper use or disposition of nonprofit assets.

(c) Dispute Resolution Process. Each of the Parties agree that, following the Closing Date, the KODA Designees, on behalf of KODA, or the LifeCenter Designees, on behalf of LifeCenter, will pursue remedies under this Agreement only for material breach of this Agreement and only in accordance with the following four-step process:

(i) The complaining Party will deliver to the other Party a brief statement of the nature of the dispute (the "**Dispute Notice**"). Representatives selected by the KODA Designees, on behalf of KODA, and by the LifeCenter Designees, on behalf of LifeCenter,

will first meet among themselves in a good faith effort to correct or otherwise resolve the dispute.

(ii) Failing correction or resolution at that level within thirty (30) days after the Dispute Notice, the KODA Designees and LifeCenter Designees will either agree on a mediator or cause the appointment of a mediator by the American Arbitration Association ("AAA") for the purpose of facilitating a resolution of their dispute within forty-five (45) days.

(iii) If a mediation is unsuccessful after ninety (90) days following the Dispute Notice, a binding arbitration under the AAA's Commercial Dispute Resolution Rules may, upon written authorization of the applicable governing body, be initiated by the KODA Designees or the LifeCenter Designees before three arbitrators; one of whom shall be appointed by the KODA Designees, one of whom shall be appointed by the LifeCenter Designees, and a third of whom shall be appointed by consent of the Parties to the arbitration or, absent consent, by the AAA. The third arbitrator shall be a disinterested and independent individual who shall be a practicing lawyer with experience representing institutions engaged in the provision of medical services. The arbitration shall be held in Jefferson County, Kentucky. The arbitration will be conducted in a "final offer arbitration" format (i.e., "baseball-style arbitration"). Each party shall submit to the arbitrator and exchange with each other in advance of the hearing their last, best offers. The arbitrator shall be limited to awarding only one or the other of the two offers submitted. The arbitrator must, as its award, select and award one of the parties' offers and may not award any other offer.

(iv) Absent an order of the arbitrators for good cause shown, any dispute submitted hereunder shall be decided within three months from the date on which arbitration proceedings are commenced.

(v) The Surviving Corporation shall make funds available to the KODA Designees and/or LifeCenter Designees, as applicable, to pay their respective legal fees and related costs and expenses incurred in connection with the dispute resolution process described in this Section 9.2; provided, however, that the total amount of funds to be made available to the KODA Designees or KODA Designees, as the case may be, shall not exceed (A) \$100,000 for the mediation phase, and (B) \$400,000 for the arbitration phase, if any.

### **Section 9.3. Powers of the Arbitrators**

Subject to the limitations and directions prescribed in Section 9.2(c) and this Section 9.3, the arbitrators (by majority vote) may provide the same range of remedies which could be provided by a court of general jurisdiction in Commonwealth of Kentucky including declaratory judgments, orders for specific performance, compensatory damages and injunctive relief.

(a) Compliance with Awards. Awards issued by a majority of the arbitrators shall be final and binding. The parties to the arbitration shall fully comply with awards within thirty (30) days or, where performance is not feasible within thirty (30) days, as soon thereafter as the arbitrators shall determine. The arbitrators issuing any award shall retain jurisdiction to provide supplemental relief (including attorneys' fees and costs) to the prevailing party to the arbitration for non-compliance with any award(s). Should non-compliance continue after an initial

supplementary ruling of the arbitrators, the Party seeking compliance may pursue in any appropriate legal forum all further remedies (including attorneys' fees and costs) as may be necessary to enforce the arbitration award(s) and to provide compensatory or other legal or equitable relief for such non-compliance.

(b) Governance Rights During Alleged Breach. The utilization of the dispute resolution process shall not result in any change or modification to, but only interpretation and enforcement of, the covenants and agreements set forth in this Agreement concerning governance and operations. An arbitration award issued in accordance with Section 9.3 may not negate and unwind governance rights set forth in this Agreement nor unwind or terminate this Agreement; provided, that the arbitrators shall have the authority, consistent with this Agreement, to interpret and enforce the rights and obligations of the Parties hereunder.

(c) Enforcement of Agreement. The dispute resolution process shall interpret, enforce and apply the terms of this Agreement and shall not modify or negate them, unless such terms are contrary to prevailing Law.

(d) Injunctive Relief. Notwithstanding the foregoing, a Party may resort immediately to a court of competent jurisdiction, without exhausting the dispute resolution process outlined above if (a) an action for injunctive or other equitable relief is necessary to prevent imminent harm to such Party or such Party would suffer a harm that is not readily compensable in monetary damages, and (b) the complaining Party has provided at least two (2) Business Days written notice to the other Party stating the basis for its seeking such relief and the receiving Party has not responded in a manner that removes the threat of such harm.

#### **Section 9.4. Survival**

(a) The representations and warranties contained herein and in any certificate or other writing delivered pursuant hereto shall not survive the Effective Time. This Section 9.4 shall not limit the enforcement of any covenant or agreement of the Parties which by its terms contemplates performance after the Effective Time.

(b) All covenants or agreements contained in this Agreement that contemplate performance thereof following the Closing Date will survive for the period so contemplated by such covenant or agreement whether specified by a number of years or by reference to a specified external event or circumstance, and they may be enforced during or with respect to the period of their duration.

(c) All other covenants which do not contain a specified time period following Closing for their performance will expire two (2) years following the Closing Date.

#### **Section 9.5. Indemnification and Insurance**

(a) The Parties agree that the Surviving Corporation shall indemnify, defend and hold harmless, to the fullest extent permitted by Law, the current and former respective trustees, directors, officers or employees of KODA and LifeCenter (each, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") from and against any and all disputes, liabilities, losses, claims, judgments, damages, costs, expenses (including, but not limited to, all reasonable legal expenses and costs of defense incurred in investigating, preparing or defending against any threatened or commenced action, suit or proceeding) to which, jointly or severally, they may

become subject related to or as a result of the Transactions or the decision of the applicable Party to pursue the Transactions contemplated by this Agreement, or any breach of this Agreement by a Party or failure by a Party to adequately perform its obligations hereunder, except to the extent that such actions were caused by the Indemnified Party's fraud or willful misconduct.

(b) Following the Closing, the Surviving Corporation shall cause to be maintained in effect for the benefit of the current and former trustees, directors and officers of KODA and LifeCenter, policies of directors' and officers' liability insurance no less protective of them than those maintained by either Party prior to Closing. Upon termination of any such policies placed by the Surviving Corporation, which provide coverage on an occurrence basis and include coverage for claims arising from facts or events which occurred at or prior to the Closing of the Transaction, the Surviving Corporation shall obtain "tail" coverage for all prior periods from the incumbent insurance carrier(s), which shall be paid in full at Closing.

## **ARTICLE X MISCELLANEOUS**

### **Section 10.1. Further Assurances; Cooperation**

The Parties agree that they will execute and deliver or cause to be executed and delivered all further instruments and documents and perform such acts as may be reasonably necessary or appropriate to cause the satisfactory completion and consummation of the Merger and the Transactions. The Parties further agree to take or cause to be taken any further or other actions as the Surviving Corporation may reasonably deem necessary or desirable to vest in, to perfect in, or to conform of record or otherwise to the Surviving Corporation title to and possession of all the property, rights, privileges, powers, and franchises referred to in this Agreement, and otherwise to carry out the intent and purposes of this Agreement.

### **Section 10.2. Assignment; Successors and Assigns**

Neither this Agreement, nor any right, remedy, obligation, or liability arising hereunder or by reason hereof, nor any of the documents executed in connection herewith, may be assigned by either Party without the prior written consent of the other Party. Notwithstanding the previous sentence, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

### **Section 10.3. Governing Law**

This Agreement shall be governed by and construed and enforced in accordance with the Laws of the Commonwealth of Kentucky without regard to conflicts of law principles that would require the application of any other Law.

### **Section 10.4. Amendments**

This Agreement may not be amended other than by written instrument signed by each Party hereto and captioned "Amendment to Merger Agreement" or similar caption/title.

### **Section 10.5. Exhibits and Schedules**

All Exhibits and Schedules referred to in this Agreement shall be attached hereto and incorporated herein by reference. The Exhibits and Schedules delivered with this Agreement are complete as of the date hereof, and will be updated by the Parties in intervals of sixty (60) days, and again within ten (10) days

prior to Closing, for any developments, including those required by changes in Law or regulation, occurring after the date hereof and prior to the Closing; provided, however, that all such updates shall be reasonably acceptable to the other Party. Any matter disclosed in this Agreement with reference to any Section of this Agreement shall be deemed a disclosure in respect of all Sections to which it is reasonably apparent that such disclosure may apply.

**Section 10.6. Notices**

Any notice, demand or communication required, permitted, or desired to be given hereunder shall be in writing and deemed effectively given when personally delivered, when received by electronic means (including e-mail) or overnight courier, or three (3) calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

- (a) if to KODA, addressed to:

Kentucky Organ Donor Affiliates  
10301 Linn Station Road  
Louisville, KY 40223  
Attn: Julie Bergin, President Chief Executive Officer

with copies to:

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
100 Light Street  
19th Floor  
Baltimore, MD 21202  
Attn: Melodie Hengerer, esq.

- (b) if to LifeCenter, addressed to:

LifeCenter Organ Donor Network  
615 Elsinore Place  
Suite 400  
Cincinnati, OH 45202  
Attn: Barry C. Massa, Executive Director

with copies to:

Dinsmore & Shohl LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, OH 45202  
Attn: Jennifer O. Mitchell, esq.

or at such other address as one Party may designate by notice hereunder to the other Parties.

**Section 10.7. Headings**

The Section and other headings contained in this Agreement and in the Exhibits and Schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify,

modify or otherwise affect in any way the meaning or interpretation of this Agreement or the Exhibits and Schedules hereto.

**Section 10.8. Confidentiality and Publicity**

Between the date hereof and the Closing Date, the Parties shall hold in confidence the information contained in this Agreement, and all information related to this Agreement that is not otherwise known to the public shall be held by each Party hereto as confidential and proprietary information and shall not be disclosed without the prior written consent of the other Party, except as necessary to fulfill fiduciary duties, comply with Law, or complete the Transactions. Accordingly, KODA and LifeCenter shall not discuss with, or provide nonpublic information to, any third party (except for such Party's attorneys, accountants, advisors, directors, officers and employees, and other consultants and professional advisors) concerning this Transaction, except: (a) as required in governmental filings or communications, or judicial, administrative or arbitration proceedings, (b) pursuant to public announcements made with the prior written approval of KODA and LifeCenter, (c) as third-party disclosures are necessary to obtain third-party consents or otherwise are practically necessary to complete the Transaction, or (d) as otherwise agreed by the Parties. The rights of the Parties under this Section 10.8 shall be in addition and not in substitution for the rights of either Party under the Confidentiality Agreement, which shall remain in effect.

**Section 10.9. Construction**

This Agreement shall be construed according to its fair meaning and without regard to any presumption or rule requiring construction against the Party drafting or proposing any provision hereof.

**Section 10.10. Expenses**

Except as otherwise provided in this Agreement, each Party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the Transactions contemplated by, and the performance of or compliance with any condition or covenant set forth in, this Agreement, including without limitation, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives, incidental to the preparation and carrying out of this Agreement, whether or not the Transactions contemplated hereby are consummated (unless otherwise specified).

**Section 10.11. Entire Agreement**

This Agreement, the Exhibits and Schedules, and the documents referred to in this Agreement, including the Confidentiality Agreement, contain the entire understanding between the Parties with respect to the Transactions contemplated hereby and supersede all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the Parties regarding the subject matter hereof, including, without limitation, the Letter of Intent, dated November 5, 2021, by and between KODA and LifeCenter.

**Section 10.12. Waivers**

Any term, covenant or condition of this Agreement may be waived at any time by the Party which is entitled to the benefit thereof but only by a written notice signed by the Party expressly waiving such term or condition. The failure to enforce this Agreement at a given time or in a given instance shall not be deemed a waiver thereof. The subsequent acceptance of performance hereunder by a Party shall not be deemed to be a waiver of any preceding delay or breach by any other Party of any term, covenant or condition of this Agreement, other than the failure of such other Party to perform the particular duties

previously so accepted, regardless of the accepting Party's knowledge of such delay or preceding breach at the time of acceptance of such performance. The waiver of any term, covenant or condition in a given instance shall not be construed as a waiver of the same or some other occasion or of any other term, covenant or condition of this Agreement.

**Section 10.13. Severability**

If any term, provision, condition or covenant of this Agreement or the application thereof to any Party or circumstance shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to Persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by Law, to the extent it may reasonably be given such effect apart from the invalidated or unenforceable terms.

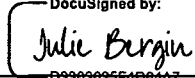
**Section 10.14. Counterparts**

This Agreement may be executed in any number of counterparts, including by facsimile or electronic signature, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same Agreement.

[Remainder of page intentionally left blank; signature page follows.]

**IN WITNESS WHEREOF**, the Parties have executed this Merger Agreement effective as of the day and year first written above.

**KENTUCKY ORGAN DONOR AFFILIATES, INC.**

By:   
Name: Julie Bergin  
Title: President & Chief Executive Officer

**LIFECENTER ORGAN DONATION NETWORK**


By: \_\_\_\_\_  
Name: Barry Massa  
Title: Executive Director

**IN WITNESS WHEREOF**, the Parties have executed this Merger Agreement effective as of the day and year first written above.

**KENTUCKY ORGAN DONOR AFFILIATES, INC.**

By: \_\_\_\_\_  
Name: Julie Bergin  
Title: President & Chief Executive Officer

**LIFECENTER ORGAN DONATION NETWORK**

By:  \_\_\_\_\_  
Name: Barry Massa  
Title: Executive Director

**EXHIBIT A**

**OH Certificate of Merger**

[ATTACHED]



Telephone: 877.767.3453

[OhioSoS.gov](http://OhioSoS.gov) | [business@OhioSoS.gov](mailto:business@OhioSoS.gov)File online or for more information: [OhioBusinessCentral.gov](http://OhioBusinessCentral.gov)

## Filing Form Cover Letter

Please return the approval certificate to:

Name *(Individual or Business Name)*:

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

To the Attention of *(if necessary)*:

Linda Lee Howard

Address: 1600 West End Avenue, Suite 2000

City: Nashville

State: Tennessee

ZIP Code: 37203

Phone Number: 615-726-7315

E-mail Address: [llhoward@bakerdonelson.com](mailto:llhoward@bakerdonelson.com)

☐ Check here if you would like to receive important notices via email from the Ohio Secretary of State's office regarding Business Services.

☐ Check here if you would like to be signed up for our Filing Notification System for the business entity being created or updated by filing this form. This is a free service provided to notify you via email when any document is filed on your business record.

Please make checks or money orders payable to: "Ohio Secretary of State"

Type of Service Being Requested: (PLEASE CHECK **ONE** BOX BELOW)

☐ **Regular Service:** Only the filing fee listed on page one of the form is required and the filing will be processed in approximately 3-7 business days. The processing time may vary based on the volume of filings received by our office.

☐ **Expedite Service 1:** By including an Expedite fee of \$100.00, **in addition** to the regular filing fee on page one of the form, the filing will be processed within 2 business days after it is received by our office.

☐ **Expedite Service 2:** By including an Expedite fee of \$200.00, **in addition** to the regular filing fee on page one of the form, the filing will be processed within 1 business day after it is received by our office. **This service is only available to walk-in customers who hand deliver the document to the Client Service Center.**

☐ **Expedite Service 3:** By including an Expedite fee of \$300.00, **in addition** to the regular filing fee on page one of the form, the filing will be processed within 4 hours after it is received by our office, if received by 1:00 p.m. **This service is only available to walk-in customers who hand deliver the document to the Client Service Center.**

☒ **Preclearance Filing:** A filing form, to be submitted at a later date for processing, may be submitted to be examined for the purpose of advising as to the acceptability of the proposed filing for a fee of \$50.00. The Preclearance will be complete within 1-2 business days.



Telephone: 877.767.3453  
Central Ohio: 614.466.3910  
[OhioSoS.gov](http://OhioSoS.gov)  
[business@OhioSoS.gov](mailto:business@OhioSoS.gov)  
File online or for more information: [OhioBusinessCentral.gov](http://OhioBusinessCentral.gov)

Mail this form to one of the following:  
Regular Filing (non expedite)  
P.O. Box 1329  
Columbus, OH 43216  
Expedite Filing (Two business day processing time.  
Requires an additional \$100.00)  
P.O. Box 1390  
Columbus, OH 43216

For screen readers, follow instructions located at this path.

## Certificate of Merger

To be used when at least one constituent entity is an Ohio entity.

Filing Fee: \$99

(154-MER)

Forms Must Be Typed

In accordance with the requirements of Ohio law, the undersigned corporations, banks, savings banks, savings and loan associations, limited liability companies, partnerships, limited partnerships and/or limited liability partnerships, desiring to effect a merger, set forth the following facts

**I. (Surviving) Entity**

A. Name of Entity Surviving the Merger

Kentucky Organ Donor Affiliates, Inc.

B. Name Change: As a result of this merger, the name of the surviving entity has changed to the following

[MERGECO.]

(Complete only if name of surviving entity is changing through the merger)

C. The surviving entity is a (Please check the appropriate box and fill in the appropriate blanks)

1. ☐ Domestic (Ohio entity) ☒ Foreign (Non-Ohio Entity)

Kentucky

Jurisdiction of formation

2. Charter/Registration/License Number

(If licensed in Ohio as domestic or foreign)

3. ☐ For-Profit Corporation  
☒ Nonprofit Corporation  
☐ Limited Liability Company  
☐ Partnership  
☐ Limited Partnership  
☐ Limited Liability Partnership  
☐ Unincorporated Nonprofit Association

## II. CONSTITUENT ENTITY

Provide the name, Ohio charter/license/registration number, type of entity, jurisdiction of formation, for each entity merging out of existence. (If this is insufficient space to reflect all merging entities, please attach a separate sheet listing the additional merging entities).

Entity Name	Ohio Charter/License/ Registration Number	Jurisdiction of Formation	Type of Entity
LifeCenter Organ Donor Network	578287	Hamilton County	Nonprofit

## III. MERGER AGREEMENT ON FILE

The name and mailing address of the person or entity from whom/which eligible persons may obtain a copy of the merger agreement upon written request

[MERGECO.]		
Name		
10291 Linn Station Road		
Mailing Address		
Louisville	Kentucky	40223
City	State	Zip Code

## IV. EFFECTIVE DATE OF MERGER

This merger is to be effective on  (The date specified must be on or after the date of the filing. If no date is specified, the date of filing will be the effective date of the merger).

## V. MERGER AUTHORIZED

Each constituent entity has complied with the laws under which it exists and the laws permit the merger. The agreement of merger is authorized on behalf of each constituent entity and each person who signed the certificate on behalf of each entity is authorized to do so.

**VI. STATEMENT OF MERGER**

Upon filing this Certificate of Merger, or upon such later date as specified herein, the merging entity/entities listed herein shall merge into the listed surviving entity.

**VII. STATUTORY AGENT - To be filed ONLY if the surviving entity is a foreign entity not licensed in Ohio.**

If the surviving entity is a foreign entity **NOT** licensed to transact business in Ohio, provide the name and address of a statutory agent upon whom any process, notice or demand may be served.

Barry C. Massa

Name of Statutory Agent

615 Elsinore Place, Suite 400

Mailing Address

Cincinnati

City

OH

State

45202

ZIP Code

**VIII. AMENDMENTS**

If a domestic corporation, limited liability company or limited partnership survives the merger, any amendments to the entity's articles of incorporation, articles of organization, or certificate of limited partnership of the surviving domestic entity shall be filed with the certificate of merger.

☐ Amendments are attached

☐ No Amendments

**If you are amending the total number of shares, please complete this box so the appropriate filing fee is charged.**

Total number of shares previously listed in the Articles or other Amendments with the Ohio Secretary of State:

With the submission of this amendment, NEW total number of shares:

**IX. REQUIREMENTS OF CORPORATIONS MERGING OUT OF EXISTENCE**

If a domestic corporation or foreign corporation licensed to transact business in Ohio is a constituent entity and the surviving entity is not a domestic corporation or foreign corporation to be licensed in Ohio, the certificate of merger must be accompanied by the affidavits, receipts, certificates, or other evidence required by division (H) of section 1701.86 division (G) of section 1702.47 of the Revised Code with respect to each domestic constituent corporation, and/or by the affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code with respect to each foreign constituent corporation licensed to transact business in Ohio.

**X. QUALIFICATION OR LICENSE OF FOREIGN SURVIVING ENTITY**

A surviving foreign entity that wishes to qualify in Ohio as part of the merger must file an additional form, as listed below, but no additional filing fee is required.

Foreign Qualifying Corporation - Form 530A or B and Certificate of Good Standing

Foreign Notice (if qualifying entity is a foreign bank, savings bank, or savings and loan association) - Form 552

Foreign Qualifying Limited Liability Company - Form 617

Foreign Qualifying Limited Partnership - Form 531B

Foreign Qualifying Limited Liability Partnership - Form 537 and Evidence of Existence in Jurisdiction of Formation

The undersigned constituent entities (constituent entities include all merging and surviving entities) have caused this certificate of merger to be signed by their duly authorized officers, partners and representatives.

Kentucky Organ Donor Affiliates, Inc.

Name of entity

By:

Signature

Its:

Title

LifeCenter Organ Donor Network

Name of entity

By:

Signature

Its:

Title

Name of entity

By:

Signature

Its:

Title

**An authorized representative of each constituent corporation, partnership, or entity must sign the merger certificate (ORC 1701.81(A), 1702.43 (A), 1706.712(A), 1776.70(A), 1782.433(A)). this includes all merging and surviving entities.**

Complete the information in this section.

## AFFIDAVIT

In lieu of dissolution releases from various governmental authorities.

Name of Corporation

The undersigned, being first duly sworn, declares that on the dates indicated below, each of the named state governmental agencies was advised IN WRITING of the scheduled date of filing of the Certificate and was advised IN WRITING of the acknowledgement by the corporation of the applicability of the provisions of section 1701.95 of the ORC.

<b>Agency</b> Ohio Bureau of Workers' Compensation 30 W. Spring Street Columbus, Ohio 43215  * Only required for domestic for-profit corporations	<b>Date Notified</b> (MM/DD/YYYY) <input type="text"/>	<b>Agency</b> Ohio Job & Family Services Status and Liability Section Data Correspondence Control Fax: 614-752-4811 Phone: 614-466-2319  <b>Overnight Address:</b> P.O. Box 182413 Columbus, OH 43218-2413	<b>Date Notified</b> (MM/DD/YYYY) <input type="text"/>  <b>Regular Address:</b> P.O. Box 182413 Columbus, OH 43218-2413
<b>Agency</b> Ohio Department of Taxation Taxpayer Services/Tax Release Unit P.O. Box 182382 Columbus, OH 43218-2382 Dissolution@tax.state.oh.us  * Complete this date notified field only if the corporation is a domestic non-profit corporation or foreign corporation. * Note: Domestic for-profit corporations must submit with this filing a Certificate of Tax Clearance issued by the Ohio Department of Taxation.	<b>Date Notified</b> (MM/DD/YYYY) <input type="text"/>	<input type="checkbox"/> The corporation is not required to pay or the department of taxation has not assessed any personal property tax.	

**Note:** This affidavit must be signed by the person executing the certificate or by an officer of the corporation.

Signature

Title

Name

Mailing Address

City

State

ZIP Code

State of

County of

Sworn to or affirmed and subscribed before me by

Name of person making oath or affirmation

NOTARY SEAL

on this date

Today's Date (MM/DD/YYYY)

Notary Public's Signature

Expiration Date of Notary's Commission (MM/DD/YYYY)

## AFFIDAVIT OF PERSONAL PROPERTY

State of

County of

Name of Officer

Title of Officer

of

Name of Corporation

and that this affidavit is made in compliance with Ohio Revised Code Section

That above-named corporation: (Check one (1) of the following)

☐ Has no personal property in any county in Ohio

☐ Is the type required to pay personal property taxes to state authorities only

☐ Has personal property in the following county (ies)

County

County

County

Signature

Title

Sworn to or affirmed and subscribed before me by

*Name of person making oath or affirmation*

on this date

*Today's Date (MM/DD/YYYY)*

NOTARY SEAL

*Notary Public's Signature*

*Expiration Date of Notary's Commission (MM/DD/YYYY)*

## **Instructions for Certificate of Merger**

This form should be used to file a certificate of merger following the adoption of an agreement of merger.

### **Surviving Entity Information**

Please provide the following information for the "surviving entity" (the entity that remains active following the merger): (1) entity name; (2) a new name if the surviving entity's name changed as a result of the merger; (3) entity type (for e.g., whether the surviving entity is a corporation, limited liability company, etc.); (4) charter/registration/license number (if any); and (5) jurisdiction of formation (foreign entities only).

### **Constituent Entity Information**

Please provide the following information for the "constituent entities": (1) entity name; (2) entity type; (3) charter/registration/license number (as appropriate); and (4) jurisdiction of formation (foreign entities only).

### **Address for Merger Agreement Requests**

Pursuant to Ohio Revised Code §§1701.81, 1702.43, 1776.70 and 1782.433 (as applicable), a mailing address is required for the person or entity that is to provide, in response to any written request made by a shareholder, partner, or other equity holder of a constituent entity, a copy of the agreement of merger.

### **Effective Date of Merger**

Please provide the effective date of the merger. The date may be **on or after** the date of filing the certificate of merger. If a date is not provided or the date provided is prior to the date of filing, our office will assign the date of filing as the effective date.

### **Statements Required By Law**

Pursuant to Ohio Revised Code Sections §§1701.81, 1702.43, 1706.712, 1766.70 and 1782.433 (as applicable), by submitting the certificate of merger through an authorized representative, each constituent entity states the following: (1) the constituent entity will merge with one or more constituent entities into a specified surviving entity; (2) the constituent entity has complied with all of the laws under which it exists; (3) the laws under which the constituent entity exists permit the merger; (4) the merger is authorized on behalf of the constituent entity; and (5) the authorized representative is authorized to sign the certificate of merger on behalf of the constituent entity.

### **Appointment of Statutory Agent for Foreign, Unlicensed Surviving Entity**

This section must be completed if the surviving entity is a foreign entity not licensed to transact business in Ohio, please provide the name and address of the statutory agent upon whom any process, notice, or demand may be served. The statutory agent must be one of the following: (1) A natural person who is a resident of this state; or (2) A domestic or foreign corporation, nonprofit corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited partnership association, professional association, business trust, or unincorporated nonprofit association that has a business address in this state. If the agent is a business entity then the agent must meet the requirements of Title XVII of the Revised Code to transact business or exercise privileges in Ohio.

## **Amendments**

In the case of a merger into a domestic corporation, limited liability company, or limited partnership, any amendments to the articles of incorporation, articles of organization or certificate of limited partnership of the surviving entity shall be filed with the certificate of merger. Please check the appropriate box to indicate whether amendments are attached to the certificate of merger.

## **Requirements of Corporations (Domestic or Foreign) Merging Out of Existence**

If a foreign or domestic corporation licensed in Ohio is a constituent entity in the merger and the surviving entity is not a foreign or domestic corporation to be licensed in Ohio, Ohio Revised Code §§1701.81 requires that additional information be submitted with the certificate.

A domestic corporation must provide the affidavits, receipts, certificates or other evidence required by Ohio Revised Code §§1701.86(H). A foreign corporation must submit the affidavits, receipts, certificates or other evidence required by Ohio Revised Code §§1703.17 (C) or (D).

The required affidavits are attached to this form for your convenience.

## **Qualifying Foreign Entities Additional Filing Requirements**

All surviving foreign entities that are qualifying to do business in Ohio must attach the appropriate formation document to this form. The filing fee for that form is not required. The appropriate forms are listed below

Foreign Qualifying Corporation Form 530A or B

Foreign Notice (if qualifying entity is a foreign bank, savings bank, or savings and loan association) Form 552

Foreign Qualifying Limited Liability Company Form 617

Foreign Qualifying Limited Partnership Form 531B

Foreign Qualifying Limited Liability Partnership Form 537

## **Additional Provisions**

If the space provided on this form is insufficient, please submit any additional information on single-sided, 8 ½ x 11 sheet(s) of paper.

## **Signature(s)**

After completing all information on the filing form, please make sure that the form is signed by the representatives authorized to sign the certificate on behalf of each constituent entity. Pursuant to Ohio Revised Code Sections §§1701.81, 1702.43, 1706.712, 1776.70 and 1782.433 (as applicable), please provide the office held or the capacity in which the representative is acting by signing the certificate merger. Constituent entities are defined as those entities existing prior to the merger and the surviving entity.

**\*\*Note: Our office cannot file or record a document that contains a social security number or tax identification number. Please do not enter a social security number or tax identification number, in any format, on this form.**

**EXHIBIT B**

**KY Articles of Merger**

[ATTACHED]

**ARTICLES OF MERGER OF  
LIFECENTER ORGAN DONOR NETWORK,  
AN OHIO NONPROFIT CORPORATION  
WITH AND INTO  
KENTUCKY ORGAN DONOR AFFILIATES, INC.,  
A KENTUCKY NONPROFIT CORPORATION**

Pursuant to KRS 273.161 to 273.390, the undersigned entities adopt, as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), the following Articles of Merger for the purpose of merging into a single corporation:

1. Kentucky Organ Donor Affiliates, Inc., a Kentucky nonprofit corporation, is the surviving corporation in the merger (the “Surviving Entity”). Following the merger, the name of the Surviving Entity will be [MergeCo., Inc.].
2. LifeCenter Organ Donor Network, an Ohio nonprofit corporation, is the merging corporation in the merger (the “Merging Entity”).
3. An Agreement and Plan of Merger (the “Plan of Merger”) has been approved and executed by each constituent party to the merger in accordance with KRS 273.283. Neither of the constituent parties to the merger has members. Thus, the Plan of Merger was adopted by a majority of directors in office of the Surviving Entity at a meeting on [DATE] and by a majority of directors in office of the Merging Entity at a meeting on [DATE]. Such Plan of Merger is attached hereto as Exhibit A and made part hereof by reference as if fully set forth herein.
4. Pursuant to the Plan of Merger, the Amended and Restated Articles of Incorporation of the Surviving Entity have been amended and restated to reflect, amongst other items, the new name of the Surviving Entity, in substantially the same form as attached hereto as Exhibit B and made part hereof by reference as if fully set forth herein (the “Second Amended and Restated Articles”).
5. The foregoing Articles of Merger shall be effective upon filing with the Secretary of State of the Commonwealth of Kentucky.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the undersigned have caused this document to be executed as of the Effective Date.

**KENTUCKY ORGAN DONOR  
AFFILIATES, INC.,**  
a Kentucky nonprofit corporation

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

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

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

**LIFECENTER ORGAN DONOR  
NETWORK,**  
an Ohio nonprofit corporation

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

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

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

**Exhibit A**  
**Plan of Merger**

[TO BE ATTACHED]

**AGREEMENT AND PLAN OF MERGER OF  
LIFECENTER ORGAN DONOR NETWORK,  
AN OHIO NONPROFIT CORPORATION  
WITH AND INTO  
KENTUCKY ORGAN DONOR AFFILIATES, INC.,  
A KENTUCKY NONPROFIT CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER (this “Plan of Merger”) dated the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), by and between Kentucky Organ Donor Affiliates, Inc., a Kentucky nonprofit corporation (“Surviving Entity”), and LifeCenter Organ Donor Network, an Ohio nonprofit corporation (“Merging Entity”).

**WHEREAS**, the Board of Directors of Surviving Entity and the Board of Directors of Merging Entity have determined that it is advisable, desirable and in the best interests of Surviving Entity and Merging Entity, respectively, to enter into this Plan of Merger, pursuant to which Merging Entity will merge with and into Surviving Entity; and

**WHEREAS**, the Board of Directors of Surviving Entity and the Board of Directors of Merging Entity have consented to, approved and adopted this Plan of Merger, and have authorized its execution.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

**ARTICLE I  
TERMS AND CONDITIONS OF MERGER**

1.1. Entities Participating in the Merger. The names of the merging entities are Kentucky Organ Donor Affiliates, Inc., a Kentucky nonprofit corporation, and LifeCenter Organ Donor Network, an Ohio nonprofit corporation. The surviving entity will be Kentucky Organ Donor Affiliates, Inc., a Kentucky nonprofit corporation.

1.2. Merger. Upon the terms and subject to the conditions set forth in this Plan of Merger, and in accordance with Sections 273.277 and 273.293<sup>1</sup> of the Kentucky Revised Nonprofit Act (the “Act”), Merging Entity shall be merged with and into Surviving Entity (the “Merger”) effective as of the Effective Time.

1.3. Approvals. This Plan of Merger was duly authorized and approved by the Board of Directors of Surviving Entity and the Board of Directors of Merging Entity in accordance with Section 273.283 of the Act and their respective bylaws.

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<sup>1</sup> KRS Section 273.277 is the authorizing statute for the merger of two domestic entities, whereas Section 273.293 is the authorizing statute for merging both domestic and foreign entities, which would be the appropriate citation in this case. *BD: While KRS Section 273.293 authorizes merger between domestic and foreign entities, the procedure for such merger under KY law (e.g., the Plan of Merger) is set forth in KRS Section 273.277. We recommend including both citations to capture this nuance.*

1.4. Effective Time.

(a) Subject to the provisions of this Plan of Merger, on the date hereof, the parties shall duly prepare, execute and file articles of merger (the "Articles of Merger") complying with Section 273.287 of the Act with the Secretary of State of the Commonwealth of Kentucky with respect to the Merger. The Merger shall become effective upon the filing of the Articles of Merger (the "Effective Time").

(b) The Merger shall have the effects set forth in the Act, including without limitation, Section 273.291 of the Act. Without limiting the generality of the foregoing, from the Effective Time, (i) all the properties, rights, privileges, immunities, and powers and franchises of Merging Entity shall vest in Surviving Entity, and (ii) all debts, liabilities, obligations and duties of Merging Entity shall become the debts, liabilities, obligations and duties of Surviving Entity.

## **ARTICLE II GOVERNING DOCUMENTS**

2.1. Articles of Incorporation. The Amended and Restated Articles of Incorporation of Surviving Entity shall be amended and restated as of the Effective Time, in substantially the same form as attached hereto as Exhibit A made part hereof by reference as if fully set forth herein (the "Second Amended and Restated Articles"). The Second Amended and Restated Articles shall be the Articles of Incorporation of Surviving Entity until thereafter amended and/or restated as provided therein or by the Act.

2.2. Bylaws. The Second Amended and Restated Bylaws of Surviving Entity (the "Bylaws"), shall be effective as of the Effective Time and shall be the Bylaws of Surviving Entity until thereafter amended as provided therein or by the Act.

2.3. Directors and Officers. The directors and officers of Surviving Entity shall be elected pursuant to the Bylaws, as amended.

## **ARTICLE III GENERAL PROVISIONS**

3.1. Successors and Assigns. This Plan of Merger shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

3.2. No Third-Party Beneficiaries. This Plan of Merger is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Plan of Merger.

3.3. Headings. The headings in this Plan of Merger are for reference only and shall not affect the interpretation of this Plan of Merger.

3.4. Severability. If any term or provision of this Plan of Merger is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Plan of Merger or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Plan of Merger so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

3.5. Governing Law. This Plan of Merger shall be governed by and construed in accordance with the internal laws of the Commonwealth of Kentucky without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Kentucky or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Kentucky.

3.6. Counterparts. This Plan of Merger may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Plan of Merger delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Plan of Merger.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the undersigned have caused this document to be executed as of the Effective Date.

**KENTUCKY ORGAN DONOR  
AFFILIATES, INC.,**  
a Kentucky nonprofit corporation

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

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

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

**LIFECENTER ORGAN DONOR  
NETWORK,**  
an Ohio nonprofit corporation

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

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

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

**Exhibit A**  
**Second Amended and Restated Articles of Incorporation**

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
[MERGECO., INC.]**

[MergeCo., Inc.], a Kentucky nonprofit corporation (the “Corporation”), in accordance with the provisions of KRS 273.273 and that certain Agreement and Plan of Merger effective as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Plan of Merger”), hereby adopts, effective as of \_\_\_\_\_, 2024 (the “Effective Date”), these Second Amended and Restated Articles of Incorporation (these “Articles”) for the purpose of amending and restating in their entirety the Corporation’s Articles of Incorporation and all amendments thereto.

**ARTICLE I**

**Amendment and Restatement**

These Articles were adopted as required by law and in accordance with the Amended and Restated Bylaws of the Corporation (the “Bylaws”), by a vote of two-thirds (2/3) of the Board of Directors of the Corporation (the “Board of Directors”) at a meeting held on \_\_\_\_\_, 2024, at which a quorum was present. These Articles supersede the original Articles of Incorporation and all amendments thereto.

**ARTICLE II**

**Name**

The name of the Corporation is [MergeCo., Inc.].

**ARTICLE III**

**Mission, Purposes and Powers**

2.1 The mission of the Corporation is to pursue charitable missions, which includes providing enhanced performance and service in the following areas: (i) public education on donation; (ii) authorization of organ and tissue donors; (iii) donor management; (iv) organ allocation and utilization; (v) recovery, preservation and logistics of recovered organs and tissues; (vi) processing opportunities for donated tissue; (vii) call center operations; and (viii) family services during and after donation.

2.2 The Corporation is organized exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future federal tax laws or regulations of the Internal Revenue Service (the “Code”).

2.3 In furtherance of such purposes, the Corporation shall have the powers allowed to corporations under Chapter 273 of the Kentucky Revised Statutes and shall transact any and all lawful business for which non-profit corporations may be incorporated under the laws of the

Commonwealth of Kentucky, to the extent that such business may be conducted by organizations that qualify as exempt organizations under Section 501(a) of the Code as described in Section 501(c)(3) of the Code.

2.4 No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to any private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of purposes set forth herein. No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office, including the publishing or distribution of statements on behalf of any such candidate. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code.

#### ARTICLE IV

##### Members

The Corporation shall have no members.

#### ARTICLE V

##### Bylaws

The Bylaws shall regulate the internal affairs of the Corporation except as otherwise set forth herein.

#### ARTICLE VI

##### Medical Advisory Board

The Corporation shall have a Medical Advisory Board (the "Medical Advisory Board"). The authority and responsibilities of the Medical Advisory Board as well as the number, tenure and qualifications of the members of the Medical Advisory Board shall be determined in accordance with the Bylaws and the Medical Advisory Board's Bylaws.

#### ARTICLE VII

##### Limitation of Liability of Director

No director on the Board of Directors (each, a "Director") shall be personally liable to the Corporation for monetary damages for breach of his or her duties as a Director except for liability:

- (a) for any transaction in which the Director's personal financial interest is in conflict with the financial interests of the Corporation;

(b) for acts and omissions not in good faith or which involve intentional misconduct or are known to the Director to be a violation of law; or

(c) for any transaction from which the Director derives an improper personal benefit.

Any repeal or modification of this Article shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

## ARTICLE VIII

### Indemnification

The Directors, members of the Medical Advisory Board, officers, and other agents of the Corporation shall be entitled to indemnification in accordance with the provisions of the Bylaws.

## ARTICLE IX

### Dissolution

Upon the dissolution or liquidation of the Corporation, the Board of Directors shall, after paying and making provision for the payment of all of the liabilities of the Corporation, transfer all of the property and assets of any nature of the Corporation to such organization or organizations organized and operated exclusively for charitable, educational and scientific purposes as shall at the time be qualified as an organization exempt from tax under Section 501(c)(3) of the Code and as the Board of Directors shall determine. Any assets not so disposed of in accordance with the above procedure shall be disposed of by the District Court of Jefferson County, Kentucky, exclusively for one or more of such exempt purposes or to such organization or organizations organized and operated exclusively for one or more of the exempt purposes of the corporation described herein and then qualified under Section 501(c)(3) of the Code, as such court shall determine.

## ARTICLE X

### Amendment

No amendment of these Articles shall be effective without the approval of two-thirds (2/3) of the Board of Directors in accordance with the provisions of the Bylaws and applicable law of the Commonwealth of Kentucky.

*[Signature Page Follows]*

**FINAL FORM**

IN WITNESS WHEREOF, the foregoing Second Amended and Restated Articles of Incorporation of [MERGE CO., Inc.] are adopted as of the Effective Date.

**[MERGECO., INC.]**

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

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

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

**EXHIBIT C**

**Second Amended and Restated Articles of Incorporation of  
the Surviving Corporation**

[ATTACHED]

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
[MERGECO., INC.]**

[MergeCo., Inc.], a Kentucky nonprofit corporation (the “Corporation”), in accordance with the provisions of KRS 273.273 and that certain Agreement and Plan of Merger effective as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Plan of Merger”), hereby adopts, effective as of \_\_\_\_\_, 2024 (the “Effective Date”), these Second Amended and Restated Articles of Incorporation (these “Articles”) for the purpose of amending and restating in their entirety the Corporation’s Articles of Incorporation and all amendments thereto.

**ARTICLE I**

**Amendment and Restatement**

These Articles were adopted as required by law and in accordance with the Amended and Restated Bylaws of the Corporation (the “Bylaws”), by a vote of two-thirds (2/3) of the Board of Directors of the Corporation (the “Board of Directors”) at a meeting held on \_\_\_\_\_, 2024, at which a quorum was present. These Articles supersede the original Articles of Incorporation and all amendments thereto.

**ARTICLE II**

**Name**

The name of the Corporation is [MergeCo., Inc.].

**ARTICLE III**

**Mission, Purposes and Powers**

2.1 The mission of the Corporation is to pursue charitable missions, which includes providing enhanced performance and service in the following areas: (i) public education on donation; (ii) authorization of organ and tissue donors; (iii) donor management; (iv) organ allocation and utilization; (v) recovery, preservation and logistics of recovered organs and tissues; (vi) processing opportunities for donated tissue; (vii) call center operations; and (viii) family services during and after donation.

2.2 The Corporation is organized exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future federal tax laws or regulations of the Internal Revenue Service (the “Code”).

2.3 In furtherance of such purposes, the Corporation shall have the powers allowed to corporations under Chapter 273 of the Kentucky Revised Statutes and shall transact any and all lawful business for which non-profit corporations may be incorporated under the laws of the

Commonwealth of Kentucky, to the extent that such business may be conducted by organizations that qualify as exempt organizations under Section 501(a) of the Code as described in Section 501(c)(3) of the Code.

2.4 No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to any private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of purposes set forth herein. No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office, including the publishing or distribution of statements on behalf of any such candidate. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code.

#### ARTICLE IV

##### Members

The Corporation shall have no members.

#### ARTICLE V

##### Bylaws

The Bylaws shall regulate the internal affairs of the Corporation except as otherwise set forth herein.

#### ARTICLE VI

##### Medical Advisory Board

The Corporation shall have a Medical Advisory Board (the "Medical Advisory Board"). The authority and responsibilities of the Medical Advisory Board as well as the number, tenure and qualifications of the members of the Medical Advisory Board shall be determined in accordance with the Bylaws and the Medical Advisory Board's Bylaws.

#### ARTICLE VII

##### Limitation of Liability of Director

No director on the Board of Directors (each, a "Director") shall be personally liable to the Corporation for monetary damages for breach of his or her duties as a Director except for liability:

- (a) for any transaction in which the Director's personal financial interest is in conflict with the financial interests of the Corporation;

(b) for acts and omissions not in good faith or which involve intentional misconduct or are known to the Director to be a violation of law; or

(c) for any transaction from which the Director derives an improper personal benefit.

Any repeal or modification of this Article shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

## ARTICLE VIII

### Indemnification

The Directors, members of the Medical Advisory Board, officers, and other agents of the Corporation shall be entitled to indemnification in accordance with the provisions of the Bylaws.

## ARTICLE IX

### Dissolution

Upon the dissolution or liquidation of the Corporation, the Board of Directors shall, after paying and making provision for the payment of all of the liabilities of the Corporation, transfer all of the property and assets of any nature of the Corporation to such organization or organizations organized and operated exclusively for charitable, educational and scientific purposes as shall at the time be qualified as an organization exempt from tax under Section 501(c)(3) of the Code and as the Board of Directors shall determine. Any assets not so disposed of in accordance with the above procedure shall be disposed of by the District Court of Jefferson County, Kentucky, exclusively for one or more of such exempt purposes or to such organization or organizations organized and operated exclusively for one or more of the exempt purposes of the corporation described herein and then qualified under Section 501(c)(3) of the Code, as such court shall determine.

## ARTICLE X

### Amendment

No amendment of these Articles shall be effective without the approval of two-thirds (2/3) of the Board of Directors in accordance with the provisions of the Bylaws and applicable law of the Commonwealth of Kentucky.

*[Signature Page Follows]*

**FINAL FORM**

IN WITNESS WHEREOF, the foregoing Second Amended and Restated Articles of Incorporation of [MERGE CO., Inc.] are adopted as of the Effective Date.

**[MERGECO., INC.]**

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

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

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

**EXHIBIT D**

**Second Amended and Restated Bylaws of  
the Surviving Corporation**

[ATTACHED]

**SECOND AMENDED AND RESTATED BYLAWS  
OF  
[MERGECO, INC.]**

Effective as of [DATE]

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**SECOND AMENDED AND RESTATED BYLAWS  
OF  
[MERGECO, INC.]  
(the “Corporation”)**

**PREAMBLE**

These Second Amended and Restated Bylaws (these “Bylaws”) were adopted in connection with the merger of LifeCenter Organ Donor Network and Kentucky Organ Donor Affiliates, Inc., which became effective on [DATE] (the “Merger Effective Time”), pursuant to that certain Merger Agreement, by and between LifeCenter Organ Donor Network and Kentucky Organ Donor Affiliates, Inc., dated [March \_\_\_, 2024] (the “Merger Agreement”). These Bylaws are intended to reflect the governance structure and related covenants described in the Merger Agreement.

**ARTICLE I  
OFFICES**

**SECTION 1. PRINCIPAL OFFICE.** The principal office of the Corporation is located in Louisville, Jefferson County, Kentucky. The Corporation may change its principal office, or establish additional offices, within or without the Commonwealth of Kentucky, as the Corporation may decide.

**SECTION 2. REGISTERED OFFICE.** The registered office of the Corporation shall be located in Louisville, Jefferson County, Kentucky. The Corporation may change its registered office from time to time, as the Corporation may decide.

**ARTICLE II  
NONPROFIT PURPOSES AND DEFINITIONS**

**SECTION 1. IRC SECTION 501(C)(3) PURPOSES.** The Corporation is organized and operated exclusively for charitable and educational purposes within the meaning of sections 170(c)(2)(b), 501(c)(3), 2055(a)(2), and 2522(a)(2) of the Internal Revenue Code of 1986, as amended (the “Code”).

**SECTION 2. SPECIFIC OBJECTIVES AND PURPOSES.** The Corporation shall be the Organ Procurement Organization (“OPO”) designated by the Department of Health and Human Services for [all counties in combined DSA] (“Service Area”) and shall fulfill the requirements necessary to be the designated OPO for such Service Area. It shall recover, preserve, transport, and allocate organs and tissues. In furtherance of its purpose, the Corporation shall perform such services as are required by federal statute and as otherwise may be consistent with its purpose.

The Corporation shall serve the people of its Service Area by providing service in the following areas: (i) public education on donation, (ii) authorization of organ and tissue donors, (iii) donor management, (iv) organ allocation and utilization, (v) recovery, preservation and logistics of recovered organs and tissues, (vi) processing opportunities for donated tissue, (vii) call center operations, and (viii) family services during and after donation.

**SECTION 3. DEFINITIONS.** The following terms shall have the meanings set forth below:

(a) “Healthcare System” shall mean a corporation (or other legal entity), or commonly controlled group thereof, that conducts one or more Transplant Programs and has entered into a

participation agreement with the Corporation. For purposes of the foregoing, a "commonly controlled group" consists of two or more corporations (or other entities) in which one corporation (or other entity) controls, directly or indirectly, each other corporation (or other entity) in the group.

(b) "Integration Period" shall mean the fifteen (15) month period commencing as of the Merger Effective Time.

(c) "KODA Designees" shall mean the individuals who are designated by legacy Kentucky Organ Donor Affiliates, Inc. to serve on the Board as of the Merger Effective Time; provided that upon the conclusion of the Integration Period, there shall be no distinction between KODA Designees and LifeCenter Designees on the Board and the use of "KODA Designee" as a defined term shall cease.

(d) "LifeCenter Designees" shall mean the individuals who are designated by legacy LifeCenter Organ Donor Network to serve on the Board as of the Merger Effective Time; provided that upon the conclusion of the Integration Period, there shall be no distinction between LifeCenter Designees and KODA Designees on the Board and the use of "LifeCenter Designee" as a defined term shall cease.

(e) "Majority Vote" shall mean (i) during the Integration Period, the vote of a majority of the voting KODA Designees and a majority of the voting LifeCenter Designees present at the meeting at which a quorum is present, and (ii) after the Integration Period, the vote of a majority of the voting directors present at the meeting at which a quorum is present.

(f) "Supermajority Vote" shall mean (i) during the Integration Period, the vote of at least two-thirds (2/3) of the voting KODA Designees currently in office and at least two-thirds (2/3) of the voting LifeCenter Designees currently in office, and (ii) after the Integration Period, the vote of at least two-thirds (2/3) of the voting directors currently in office.

(g) "Transplant Program" shall mean a component within a transplant hospital (as defined in 42 CFR § 482.70) that provides transplantation of a particular type of organ.

### **ARTICLE III BOARD OF DIRECTORS**

**SECTION 1. NO MEMBERS.** The Corporation shall not have members or shareholders. The Board shall take all actions that are permitted or required to be taken by members of a nonprofit corporation.

**SECTION 2. GENERAL POWERS.** The business and affairs of the Corporation shall be managed under the direction of the Board of Directors (the "Board"). Without limiting the authority and responsibility of the Board, the overall governance structure of the Corporation, as set forth in these Bylaws, contemplates that the Board, at its discretion, will direct the authority to committees to review, develop, and recommend policies and procedures relating to the various activities of the Corporation. Such committees may be composed of directors (who shall owe a primary fiduciary duty to the Corporation) and non-directors (who shall be required to act in the best interest of the Corporation). The Board shall receive the recommendations of the various committees and shall consider and act upon them in accordance with its statutory and regulatory responsibilities.

**SECTION 3. QUALIFICATIONS, NOMINATION, AND ELECTION.** The Board will elect directors as follows:

(a) **Integration Period.** During the Integration Period, the Board shall consist of an equal number of KODA Designees and LifeCenter Designees. The KODA Designees shall nominate and approve KODA Designees by a majority vote of the KODA Designees, and the LifeCenter Designees shall nominate and approve LifeCenter Designees by a majority vote of the LifeCenter Designees. After the Integration Period, this Article III, Section 3(a) shall not be of any effect, and the remainder of Article III, Section 3(b)-(d) shall apply with respect to the qualification, nomination, and election of directors to the Board.

(b) **Qualifications.** Individuals who meet the eligibility criteria set forth in Article III Section 4 of these Bylaws may be elected to the Board.

(c) **Nomination.** Any director, officer, or other interested party may propose a candidate to the Board. The Board will refer the candidate to the Nominating and Governance Committee, which will review the candidate and, if it so determines, present the candidate to the full Board for consideration.

(d) **Election.** Nominees receiving a Majority Vote will be elected to the Board. Elections of directors will be held at the Corporation's annual meeting or at any other meeting to fill a vacancy.

#### **SECTION 4. ELIGIBILITY CRITERIA.**

(a) **Requirements.** Each director must satisfy the following pre-requisites to service:

(i) Exhibits a strong commitment to the Corporation's mission, vision, and values;

(ii) Displays a willingness and availability to attend and actively participate in all Board meetings and applicable committee meetings, as well as orientation and training sessions;

(iii) Exhibits integrity and has no insurmountable conflicts of interest; and

(iv) Has a clear criminal and other background checks with no history of or current Medicare sanctions.

(b) After the Integration Period, all directors, including those filling vacancies, must be nominated by the Nominating and Governance Committee.

**SECTION 5. INDEPENDENT DIRECTOR.** A director shall be considered independent if he or she:

(a) is not an employee of the Corporation;

(b) does not have and is not professionally affiliated with an entity that has one or more personal service contracts with the Corporation including, without limitation, contracts for legal or accounting services;

(c) is not affiliated (e.g., as a director, officer, employee, or medical staff member) with a transplant center or transplant program within the service area of the Corporation; provided,

however that affiliation with a donor hospital (and not a transplant center) shall be independent unless otherwise determined by the Board;

(d) is not a director, officer, shareholder, or executive employee of a business entity that received from, or paid to the Corporation, during either of the preceding two years, five percent or more of either the Corporation's or the business entity's consolidated gross revenues;

(e) has no other relationships or special circumstances that could reasonably be anticipated to affect such person's independent judgment as a director of the Corporation; and

(f) is not affiliated (e.g., as a director, officer, employee, or medical staff member) with a transplant center or transplant program within the Service Area of the Corporation.

Notwithstanding the existence of any of the foregoing relationships, a person may still be considered an independent director if, in the judgment of the Board, such relationship(s) is/are not significant and do(es) not rise to a level that could reasonably be believed to affect such person's judgment in executing the duties of a director. Conversely, notwithstanding the strict absence of the foregoing relationships, a person may still be considered to be a non-independent director if, in the judgment of the Board, the person has other significant relationships that could reasonably be believed to affect such person's judgement in exercising the duties of a director.

**SECTION 6. EFFECT OF DESIGNATION AS INDEPENDENT.** The designation of a director as an independent director is to be used primarily as an eligibility criterion for appointment to certain committees and offices and as a measure of compliance with the composition requirements related to the Board. In all other respects, independent directors and non-independent directors shall have identical voting rights, duties, and responsibilities.

## **SECTION 7. COMPOSITION OF THE BOARD.**

(a) **Number of Voting Directors; Independence.** During the Integration Period, the Board shall consist of no more than twenty-four (24) voting directors. After the Integration Period, the Board shall consist of no fewer than twelve (12) and no more than eighteen (18) voting directors, the actual number to be determined from time to time by the Board. At least a majority of the Board must be independent subject to the Transplant Center's right to appoint one (1) director on the Board. Other than the Transplant Center Directors, the remaining directors must be independent. The Board shall be selected to comply with any minimal requirements of composition and diversity imposed by Federal or State statutes or regulations applicable to the Corporation. During the Integration Period, the Board shall consist of an equal number of KODA Designees and LifeCenter Designees.

(b) **Term.** Directors, other than Transplant Center Directors (whose terms shall be determined in accordance with Article III Section 7(c)) and ex-officio directors (whose terms shall be determined by the office pursuant to which the ex-officio director serves), shall serve three-year staggered terms, with a limit of three (3) consecutive full three (3) year terms expiring on December 31 of the applicable calendar year. Directors may be re-elected for additional terms thereafter, but only after remaining off the Board for at least one (1) year. Directors shall be divided into three (3) classes (designated as either Class 1, Class 2, or Class 3) with approximately the same number of directors in each class, and the term of one (1) such class shall expire in each year. Notwithstanding the foregoing or anything in these Bylaws to the contrary, the initial term for directors who are Class 1 Directors shall expire on December 31, 2025, and such initial term shall not count as one of the Class 1 Directors three (3) consecutive terms; the initial term for directors who are Class 2

Directors shall expire on December 31, 2026, and such initial term shall not count as one of the Class 2 Directors three (3) consecutive terms; and the initial term for directors who are Class 3 Directors shall expire on December 31, 2027. Notwithstanding the foregoing, a director who is serving as Chair or Vice Chair of the Board, but who is otherwise at the conclusion of his/her third consecutive full term as a director, may nevertheless continue to serve as a director until the conclusion of his/her term as Chair or Vice Chair, as applicable. A director whose term has expired shall continue to serve as a director until his or her successor is duly elected in accordance with these Bylaws. In exceptional circumstances (e.g., death, disability or departure of a director, a special need to retain the director through the completion of a substantial project, financing or other transaction, etc.), the Board may extend the term of any director, other than Transplant Center Directors, for one (1) additional year.

(c) **Transplant Center Directors.** After the Integration Period, each transplant center may have up to one (1) director on the Board (each, a “**Transplant Center Director**”), who shall be selected by such transplant centers in their sole discretion. In the event that a Transplant Center Director is not ratified by the independent directors, the applicable transplant center shall be notified and requested to select another individual to serve as that program’s Transplant Center Director. The following individuals shall be considered to be Transplant Center Directors: (i) employees of or (ii) clinicians in a Healthcare System offering one (1) or more Transplant Programs. Transplant Center Directors shall serve three (3) year, staggered terms, without a limit on consecutive terms.

(d) **Chief Executive Officer and President.** The Chief Executive Officer and the President of the Corporation shall each be an ex-officio non-voting member of the Board.

(e) **Medical Advisory Board Chair.** The Chair(s) of the Medical Advisory Board shall be a permanent invitee to the Board and shall serve as the Medical Advisory Board’s liaison to the Board. The Chair(s) may participate in board meetings, but shall not be a director, shall not vote, shall not be included in executive sessions unless invited, and shall not count towards quorum requirements. No member of the Medical Advisory Board may serve as a director on the Board.

(f) **Emeritus Directors.** The Board may, from time to time, appoint as a non-voting Emeritus Director, a person or persons recognized in the community for their interest in or contributions to the work of the Corporation or who by training, knowledge, and experience will assist the Corporation to accomplish its mission. The Board may invite an Emeritus Director to attend any meeting convened by the Corporation. The Emeritus Director may, but is not required to, attend any meeting to which the Emeritus Director is invited. An Emeritus Director shall be appointed for term of three (3) years and may serve any number of successive terms at the pleasure of the Board. The term of an Emeritus Director may be terminated at any time if the Board determines that the appointment no longer serves the best interests of the Corporation.

**SECTION 8. VACANCY, REMOVAL, AND RESIGNATION.** Vacancy, removal, and resignation shall be as follows:

(a) **Integration Period.** During the Integration Period, (i) the KODA Designees may remove any KODA Designee by a vote of two-thirds (2/3) of all KODA Designees in office, excluding the director who is being considered for removal, whenever, in their judgment, the best interests of the Corporation will be served by such removal, and (ii) the LifeCenter Designees may remove any LifeCenter Designee by a vote of two-thirds (2/3) of all LifeCenter Designees in office, excluding the director who is being considered for removal, whenever, in their judgment, the best interests of the Corporation will be served by such removal.

(b) **Vacancy.** After the Integration Period, any vacancy occurring on the Board may be filled by the majority vote of the remaining directors that are then in office, and each director so appointed shall serve for the unexpired portion of the term of the director being replaced. Such unexpired term shall not be counted toward the term limits set forth in Section 7(b) or 7(c) above with respect to the director elected to fill such vacancy.

(c) **Removal.** After the Integration Period, any director may be removed for cause by Supermajority Vote, excluding the director who is being considered for removal, whenever, in their judgment, the best interests of the Corporation will be served by such removal; provided, however, that no director shall be removed from office at any meeting unless the notice of the meeting provided in accordance with these Bylaws shall have stated that such action would be considered at the meeting, including the name(s) of the affected director.

(d) **Resignation.** Any director may resign by presenting a letter of resignation (i) to the Chair, Chief Executive Officer, or President, or (ii) if the resigning directors are the Chair, Chief Executive Officer and President, to the other directors.

**SECTION 9. REGULAR MEETINGS.** The Board shall hold regular meetings, no less than two (2) times per year, at a date, time, and place designated by the Board. In the absence of the designation of a place, regular and special meetings of the Board shall be held at the principal business office of the Corporation, or on a virtual platform if needed. The last regular meeting of each year shall be the annual meeting, at which the election of officers and directors shall take place, and the next year's budget shall be acted upon. Notice of the annual meeting and such other regular meetings as the Board may hold shall be provided at least seven (7) days in advance of the meeting. If circumstances require a change of date to a previously scheduled annual meeting or regular meetings of the Board, a notice of the date change shall be provided to directors not less than three (3) business days in advance of the new meeting date. Notices under this Section 9 need not state the business to be transacted at or the purpose of such meeting.

**SECTION 10. SPECIAL MEETINGS.** Special meetings of the Board may be called by or at the request of the Chair (or, in his/her absence, the Vice Chair), or any six (6) directors. Notice of any special meeting, including the purpose or purposes for which such meeting is being called, shall be provided at least five (5) business days in advance; provided, however, that in extraordinary circumstances, as determined by the Chair (or, in his/her absence, the Vice Chair), as much notice shall be given as the circumstances make feasible.

**SECTION 11. WAIVER OF NOTICE.** Any director may waive notice of any meeting. Waiver may be accomplished in either of the following ways:

(a) before or after the meeting, delivery by the director of a written waiver or a waiver by electronic transmission that is filed with the records of the meeting; or

(b) attendance at the meeting except when the director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

**SECTION 12. QUORUM.** A majority of the voting members of the Board shall constitute a quorum for the transaction of business at any meeting. Once a quorum is determined, the directors present may continue to transact business until adjournment, even if the departure of one or more directors leaves less than a quorum present. Members of the Board (or any committee of the Board) may participate in a meeting by means of conference telephone, video conferencing, or other electronic communications

whereby all persons participating in the meeting can hear each other. Such electronic participation shall constitute presence in person at such meeting.

**SECTION 13. MANNER OF ACTING.** Except as otherwise provided in these Bylaws, each voting member of the Board, or of any committee or subcommittee, may cast one vote only, and a Majority Vote shall be the act of the Board; provided, however, that the following actions shall require approval by a Supermajority Vote:

- (a) Removal of a director, subject to Section 8(c) of this Article III;
- (b) Removal of a member of the Medical Advisory Board;
- (c) Removal of the Chair, Vice Chair, Secretary, Treasurer, or Chief Executive Officer, subject to Article V, Section 4 hereof;
- (d) Amendment of the Articles of Incorporation of the Corporation or these Bylaws, subject to Article XI hereof;
- (e) The incurrence of debt or guarantee of indebtedness, or the pledge or mortgage of assets to secure the same, with a principal balance owed by the Corporation of more than \$250,000;
- (f) A merger of the Corporation, the sale or other transfer of substantially all of the assets or governance control of the Corporation to another entity, and the acquisition of substantially all of the assets or governance control of another entity;
- (g) Modification of the charitable purposes of the Corporation; and
- (h) The dissolution of the Corporation.

Additionally, unless waived by all directors who would be entitled to vote, notice of a proposed merger or dissolution of the Corporation or the sale or other transfer of substantially all of the assets or governance control of the Corporation to another entity must be provided at least thirty (30) days before the action is taken.

No member of the Board or of any committee or subcommittee may give to any other person the power to exercise a proxy vote.

**SECTION 14. ACTIONS BY WRITTEN CONSENT.** Any action to be taken at a meeting of the Board may be taken without a meeting if a consent in writing setting forth the action to be taken is signed by the number of directors that would be required to approve the action at a duly called meeting of the Board. Such consent in writing may be achieved by electronic mail, facsimile, electronic board portal, or other electronic means. Any action taken by written consent is filed with the minutes of the Corporation.

**SECTION 15. MANNER OF GIVING NOTICE.** Notice of any regular or special meeting of the Board or any committee or subcommittee shall be transmitted in writing by messenger, courier, mail, electronic mail, facsimile, electronic board portal, or other electronic means.

**SECTION 16. PARLIAMENTARY AUTHORITY.** The rules stated in the then current edition of Roberts' Rules of Order shall govern meetings of the Board and any committee or subcommittee, except

to the extent that any such rule is inconsistent with a provision of these Bylaws or with a special rule adopted by the Board or such committee or subcommittee.

**SECTION 17. COMPENSATION.** A director shall receive no financial compensation for service as a director (or as a member of a committee of the Board), but shall be reimbursed for reasonable expenses, if any, incurred in performing his or her duties as a director.

## **ARTICLE IV COMMITTEES**

**SECTION 1. NOMINATING AND GOVERNANCE COMMITTEE.** The Corporation shall have a standing Nominating and Governance Committee.

(a) **Composition.** The committee shall consist of the Chair, Vice Chair, Secretary, and Treasurer as voting members. The Chief Executive Officer and President shall each be non-voting members of the committee. A majority of the voting members of the committee shall be independent directors. During the Integration Period, the voting members of the committee shall consist of an equal number of KODA Designees and LifeCenter Designees. The Chair shall serve as the chair of the Nominating and Governance Committee.

(b) **Authority.** Except as the Board may otherwise direct, the committee shall:

(i) have oversight responsibilities relating to (x) the compensation and benefits of the Chief Executive Officer, President and other executive officers and (y) management succession planning, and shall provide recommendations regarding such matters to the full Board for its further action;

(ii) present nominations to the Board for officers and directors of the Corporation and shall consult with the Chair of the Board with respect to the process by which members of the Board are assigned to committees; and

(iii) assist the Board by monitoring the overall management and governance structures of the organization, by evaluating Board performance at least annually, and by overseeing policies regarding Board composition and performance.

(c) **Meetings.** The committee shall hold regular meetings as specified by the Chair. A special meeting of the committee may be called by the Chair or, in his/her absence, the Vice Chair, and shall be called at the request of three (3) members of the committee. Notice of meetings shall be mailed to each member at least seven (7) days before the meeting pursuant thereto or notice of the same may be given by telephone or electronic mail at least three (3) days before the meeting. Action taken at any meeting of the committee will be reported to the Board no later than the next scheduled meeting of the Board.

**SECTION 2. STANDING COMMITTEES.** In addition to the Nominating and Governance Committee, the Corporation shall have the following standing committees:

(a) Strategic Planning Committee;

(b) Finance Committee;

(c) Quality Committee; and

(d) Medical Advisory Board.

Any standing committee, except for the Nominating and Governance Committee, may have non-directors (i.e., individuals from the community) as members of the committee to provide additional expertise for the achievement of such committee's purpose. The Corporation's Staff members may be committee liaisons and participants but shall not be voting members of such committees. The standing committees shall have the following general functions:

(a) **Strategic Planning Committee.** The Strategic Planning Committee shall be responsible for continuous oversight of the development of the organization's current strategic plan, including any integration matters. Additionally, the committee is accountable for assisting the Board in engaging in and spending adequate time on strategic dialogues. The committee will meet on designated dates at least two (2) times during the year. The committee chair will serve a term consistent with their term on the Board.

(b) **Finance Committee.** The Finance Committee shall assist the Board in its oversight responsibilities relating to fiscal management of organization-wide financial assets and all audits of the financial statements and operations of the Corporation. It shall oversee the Corporation's financial condition and performance, as well as make recommendations to the Board for the adoption of the annual budget and other such financial plans as may be determined to be needed. The committee will meet on predetermined dates at a minimum of two (2) times during the year. The chair of the committee shall be an independent director, and the majority of the members shall be independent directors.

(c) **Quality Committee.** The Quality Committee shall assist the Board (i) to oversee that the Corporation's quality program, which is designed to: (x) identify areas of key importance and adequately monitor associated measures of quality, safety, and customer service; (y) identify value-added opportunities to drive improvement throughout the entire organization; and (z) assure that changes for improvement and performance are sustained over time; (ii) to provide oversight of the quality activities and the research the organization is involved with; (iii) to monitor success of the Corporation's quality program through review and approval of regular quality reports, including Corporation approved and supported research, delivered through the committee; and (d) to support an ongoing culture of quality, safety, and service. The committee chair will serve a term consistent with their term on the Board. If the committee chair's term on the Board is less than three (3) full years at the time of their appointment, then the committee chair is required to fulfill a committee term of three (3) years. In the event that a 3-year term is prohibited by the committee chair's personal circumstances or fulfillment of the term is not in the Corporation's best interest, the Chair of the Board will be advised of such and will appoint a new chair. Members will serve on the committee for a term no longer than three (3) years. If a member of the committee is also a member of the Board, the member's term on the committee will be consistent with their term on the Board. Members may serve consecutive terms as appointed by the Chair of the Board.

(d) **Medical Advisory Board.** The Board shall also establish a Medical Advisory Board, which shall satisfy the requirements of 42 USC §273(b)(1)H and its composition and responsibilities shall at all times comply with 42 USC §273(b)(1) and any other applicable federal or state laws. There shall be a report presented at each Board meeting from the Medical Advisory Board. The report shall detail recent actions and discussions of the Medical Advisory Board.

**SECTION 3. QUORUM AND ACTION OF COMMITTEES.** At any meeting of a committee, a majority of the voting members of the committee shall constitute a quorum, and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

**SECTION 4. OTHER COMMITTEES.** The Board is authorized to establish such other committees, special committees, task forces, or ad hoc committees from time to time, as it shall deem appropriate and in furtherance of the effective and efficient management of the Corporation; provided, however, that no such special committee, task force, or ad hoc committee shall have a term extending beyond one (1) year unless re-appointed by the Board.

**SECTION 5. MEMBERS; COMMITTEE CHAIR.**

(a) **Members.** Except as otherwise stated in this Article, the requirements of this section shall apply to all committees. The chair and the members of each committee shall be proposed annually by the Chair of the Board, in consultation with the Nominating and Governance Committee, and approved by a Majority Vote of the Board. Persons who are not members of the Board may be appointed by the Chair to serve on an advisory committee with the approval of a Majority Vote of the Board. Each such advisory committee shall include at least one (1) member of the Board. Committee members shall serve at the pleasure of the Board. Members will serve on the committee for a term no longer than three (3) years. If a member of the committee is also a member of the Board, then the member's term on a committee will be consistent with their term on the Board. Members may serve consecutive terms as appointed by the Chair of the Board. During the Integration Period, each Committee shall include an equal number of KODA Designees and LifeCenter Designees.

(b) **Committee Chair.** If any committee chair's term on the Board is less than three (3) full years at the time of their appointment, then the committee chair is required to fulfill a committee term of three (3) years. In the event that a 3-year term is prohibited by such committee chair's personal circumstances or fulfillment of the term is not in the Corporation's best interest, the Chair of the Board will be advised of such and a new chair will be appointed, in accordance with Section 5(a).

**SECTION 6. PROCEDURES.** Except as otherwise provided in this Article IV, the provisions of Article III regarding meetings of the Board (including provisions related to regular and special meetings, notice, quorum and manner of acting) shall apply in the same manner to committees.

**ARTICLE V  
OFFICERS**

**SECTION 1. OFFICERS.** The officers of the Corporation shall be the Chair, Vice Chair, Secretary, Treasurer, Chief Executive Officer, and President/Chief Operating Officer. The Corporation may have such other officers and assistant officers as the Board may deem necessary, such officers to have the authority and duties described by these Bylaws and prescribed by the Board. No person shall hold more than one office of the Corporation, except that position of Secretary and Treasurer may be held by the same person.

**SECTION 2. ELECTION AND TERM OF OFFICE.** The officers of the Corporation shall be elected by the Board at its regular annual meeting upon recommendation of the Nominating and Governance Committee. The Chair, Vice Chair, Secretary, and Treasurer shall be elected from among the voting members of the Board for a two (2) year term, and at least a majority of such officers shall be independent

directors. A director may not serve as Chair or Vice Chair for more than two (2) consecutive terms. If an officer's tenure as a director were set to terminate for any reason, that person's position as a director shall be extended so that the end of the individual's term of service as a director coincides with the end of the individual's term of service as an officer. Nominations from the floor for an office shall not be permitted; all suggestions for nominations as an officer shall be made to the Nominating and Governance Committee.

**SECTION 3. VACANCIES.** Vacancies may be filled, or new offices created and filled, at any meeting of the Board. Each officer shall hold office until his or her successor has been duly elected and qualified. If the positions of the Chair or Vice Chair become vacant for any reason, the Board shall elect a successor from among its independent membership (subject to Section 6 of this Article V) at its next meeting to serve the remainder of the term, unless the next meeting is the Annual Meeting.

**SECTION 4. REMOVAL.** Any officer or agent elected or appointed by the Board (other than assistant officers) may be removed for cause by a Supermajority Vote, excluding the individual who is being considered for removal, whenever in their judgment the best interests of the Corporation would be served; provided, however, that no officer shall be removed at any meeting unless notice of the meeting provided in accordance with these Bylaws shall have stated that such action would be considered at the meeting including the names of the officer(s); and *provided, further*, that no officer shall be removed by the Board in a manner that is inconsistent with, or otherwise violates, any employment agreement entered into by the Corporation and such officer. Notwithstanding the foregoing, the Chief Executive Officer and President/Chief Operating Officer may be removed with or without cause by a Supermajority Vote, subject to the terms and conditions of the employment agreement between such officer and the Corporation. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. The election or appointment of an officer or agent shall not of itself create contract rights.

**SECTION 5. CHAIR.** The Chair of the Board shall preside at all meetings of the Board and Nominating and Governance Committee and shall perform such other duties as may be prescribed by the Board. During the Integration Period, the Chair shall be a KODA Designee. The Chair shall be an independent director; provided, however that this limitation will not apply to the LifeCenter Designee serving as Vice Chair upon the Merger Effective Time in the event that he/she succeeds to the office of Chair immediately after his/her service as Vice Chair. The Chair, in the absence of the President and the Chief Executive Officer, shall have authority to sign and execute, in the name of the Corporation, all deeds, mortgages, bonds, contracts or other instruments to be executed on the Corporation's behalf.

**SECTION 6. VICE CHAIR.** The Vice Chair shall preside at meetings of the Board and Nominating and Governance Committee in the absence of the Chair and shall perform such other duties as may be prescribed by the Board. The Vice Chair shall be an independent director; provided, however that this limitation will not apply to the LifeCenter Designee serving as Vice Chair upon the Merger Effective Time.

**SECTION 7. CHIEF EXECUTIVE OFFICER.** The Chief Executive Officer shall perform all duties incident to the office of the Chief Executive Officer and such other duties as may be prescribed by the Board. In the absence of the Chief Executive or in the event of his or her inability or refusal to act, the Board shall determine who shall perform the duties of the Chief Executive Officer.

**SECTION 8. PRESIDENT AND CHIEF OPERATING OFFICER.** The President is the Chief Operating Officer of the Corporation and shall perform all duties incident to the office of President and Chief Operating Officer and such other duties as may be prescribed by the Board. In the absence of the President or in the event of his or her inability or refusal to act, the Board shall determine who shall perform the duties of the President.

**SECTION 9. SECRETARY.** The Secretary is the custodian of corporate records. The Secretary is responsible for: (a) ensuring that minutes of the Board meetings are taken and kept in one or more books provided for that purpose; (b) providing notices as required by these Bylaws or by law; (c) maintaining a register of the addresses and telephone numbers of each director; and (d) in general, performing all duties incident to the office of Secretary.

**SECTION 10. TREASURER.** The Treasurer shall supervise the financial activities of the Corporation and shall see that: (1) full and accurate accounts are maintained, (2) directors receive regular reports of the financial condition of the Corporation, and (3) an annual audit of the Corporation's books is performed by an auditor appointed by the Board.

**SECTION 11. COMPENSATION.** Officers who are employees of the Corporation shall receive such reasonable compensation for service as an officer as may be fixed from time to time by the Board and shall be reimbursed for reasonable expenses incurred in carrying out the duties of the office. No officer shall be prevented from receiving such compensation by reason of the fact that the officer is also a director of the Corporation.

## **ARTICLE VI CONTRACTS, LOANS, CHECKS, AND DEPOSITS**

**SECTION 1. CONTRACTS.** The Board may authorize by resolution any officer, officers, agent, or agents, to enter into any contract or execute and deliver any instruments in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**SECTION 2. LOANS.** No loans shall be contracted on behalf of the Corporation, and no evidences of indebtedness, or guarantees thereof, shall be issued in its name, unless authorized by a resolution of the Board. Such authority may be general or specific.

**SECTION 3. CHECKS, DRAFTS, ORDERS, ETC.** All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such authorized officer, officers, agent, or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

**SECTION 4. DEPOSITS.** All funds of the Corporation not otherwise employed shall be deposited to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select.

**SECTION 5. AUDITS.** There shall be an annual audit of the Corporation by an independent certified public accountant. The independent auditor shall be appointed annually by the Board upon the recommendation of the Finance Committee and shall report to the Finance Committee. The fees for the independent auditor shall be set by the Board upon recommendation of the Finance Committee. No less frequently than every five (5) years, the Finance Committee shall recommend whether a new independent auditor should be selected; if the then-current auditor is retained, a new lead partner or officer shall be selected. The Board, upon the recommendation of the Finance Committee, may direct the audit of offices, programs and activities of the Corporation at such times and in such a manner as it may specify.

**SECTION 6. FISCAL YEAR.** The fiscal year for all business transactions of the Corporation shall be the calendar year, unless the Board shall fix a different period.

## **ARTICLE VII BOOKS AND RECORDS**

The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Board and standing committees; and shall keep at its registered office or principal office a record of the names and addresses of its Board. All books and records of the Corporation may be inspected by any director, or his or her agent or attorney, or by any person authorized by law for any proper purpose at any reasonable time.

## **ARTICLE VIII LOANS TO DIRECTORS AND OFFICERS**

No loans or guarantee of indebtedness shall be made by the Corporation to its directors or officers, nor shall the Corporation enter into a lease with any of its directors or officers.

## **ARTICLE IX INDEMNIFICATION**

**SECTION 1. INDEMNIFICATION.** The Corporation may to the fullest extent permitted by, and in accordance with the provisions of Kentucky Revised Statutes Chapter 273, indemnify each director, committee member, officer or employee against expenses (including attorneys' fees, judgments, taxes, fines, and amounts paid in settlement, which he or she may incur in connection with, and shall advance expenses (including attorneys' fees) which he or she may incur in defending, any threatened, pending, or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) to which he or she is, or is threatened to be, made a party, by reason of the fact that he or she is or was a director, committee member, officer or employee or was serving at the Corporation's request as a director, officer, partner, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust or other enterprise. The Board may require a person to post security enabling the Corporation to recover amounts the Board has advanced, if there is a possibility that it may ultimately be determined that the person is not entitled to indemnification. The indemnification for which this Article IX provides shall not be deemed exclusive of any other rights to which directors, committee members, officers or employees may be entitled under any statute, agreement, or action of the Board or otherwise, and shall continue as to a person who has ceased to be a director, committee member, officer or employee of the Corporation, and shall inure to be benefit of the estate or fiduciary of such a person.

**SECTION 2. INSURANCE.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, committee member, officer, employee or agent, or is or was serving at the Corporation's request as a director, officer, partner, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust or other enterprise, against any liability anyone may assert against him or her and which he or she incurred in such capacity, or which arose out of his or her status as such, whether or not the Corporation would have the power or be obligated to indemnify him or her against such liability under the provisions of this Article IX or Kentucky Revised Statutes Chapter 273.

**SECTION 3. LIMITATIONS ON INDEMNIFICATION.** Notwithstanding any provision heretofore set forth in this Article IX, if at any time the Corporation is a private foundation or a private operating foundation as such terms are defined in the Code, then the Corporation shall only act as permitted under the Code without subjecting the Corporation to additional taxes imposed under the Code.

## **ARTICLE X TRANSACTIONS BETWEEN A MEMBER OF THE BOARD OR SUCH MEMBER'S ORGANIZATION AND THE CORPORATION**

Directors are subject to the Conflict-of-Interest Policy (the "Conflicts Policy"), attached to these Bylaws as Exhibit A, which Conflicts Policy is incorporated by reference as a part of these Bylaws. All conflicts of interest transactions shall be identified and addressed in accordance with the Conflicts Policy. Except as otherwise provided in this Article, there shall be no prohibition against the Corporation doing business on an arm's-length basis with a member of the Board or any organization in which any such member has an interest, financial or otherwise, or in which any such member is an officer, director or employee; provided that the transaction is fair and equitable to the Corporation and:

(a) **Disclosure.** The member's relationship with and/or interest in any organization proposing to transact with the Corporation is fully disclosed to the Board or applicable committee prior to its consideration;

(b) **Recusal.** The interested member is not present for or shall leave any portion of a meeting at which the Board or committee is considering and voting upon the transaction (provided, however, that the interested member may be present prior to the vote to make a presentation to the Board or committee, to disclose additional facts, or to respond to questions); and

(c) **Compliance with Internal Revenue Code.** Any proposed transaction within the scope of this Article is hereby authorized only to the extent permitted under applicable law, including, but not limited to, section 501(c)(3) of the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

## **ARTICLE XI AMENDMENT OF BYLAWS**

The Board may alter, amend or rescind these Bylaws or adopt new ones at any regular or special meeting by a Supermajority Vote, provided that notice of the proposed amendment, including a copy or summary thereof, has been provided to the directors at least five (5) days in advance of the meeting. Any amendment to these Bylaws may not violate the covenants made under the Merger Agreement.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the undersigned, solely in his/her capacity as Secretary of the Corporation, hereby certifies that these Bylaws were adopted and approved at a meeting of the Board to be effective as of [DATE].

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

**EXHIBIT A**

**CONFLICTS OF INTEREST POLICY**

**EXHIBIT E**

**Bylaws of the Medical Advisory Board of  
the Surviving Corporation**

[ATTACHED]

**[MERGECO, INC.]**

**MEDICAL ADVISORY BOARD BYLAWS**

**SECTION 1. MEDICAL ADVISORY BOARD**

The Medical Advisory Board ("MAB") is a standing committee of [MergeCo, Inc.] (the "Corporation"). It is established to satisfy the requirements of 42 U.S.C. §273(b)(1) and 42 C.F.R. §486.324(a) that the Corporation will have a Medical Advisory Board. The composition and responsibilities of the Medical Advisory Board shall at all times comply with 42 U.S.C. §273(b) and 42 C.F.R. §486.324 and any implementing regulations issued by the U.S. Department of Health and Human Services, and any other applicable federal or state laws.

**SECTION 2. RESPONSIBILITIES**

Subject to the direction and authority of the Board of Directors of the Corporation (the "Board of Directors"), the MAB shall:

- A. Develop and recommend to the Corporation's Board of Directors policies, protocols, and procedures for the following:
  - 1. Procurement of organs.
  - 2. Effective agreements to identify potential organ, tissue, and eye donors with a substantial majority of hospitals in the Corporation's service area that have facilities for organ donation.
  - 3. Systematic efforts, including professional education, to acquire all useable organs from potential donors.
  - 4. The acquisition and preservation of donated organs and provision of quality standards for the acquisition of organs that are consistent with the standards adopted by the Organ Procurement and Transplantation Network ("OPTN"), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immunodeficiency syndrome ("AIDS"), except as permitted by law and federal regulations (i.e. the Hope Act).
  - 5. Tissue typing of organs.
  - 6. System for allocation of organs among transplant patients that is consistent with the rules and requirements of the OPTN, as further outlined in federal regulations.
  - 7. Transportation of organs to transplant hospitals and other transplant center designated facilities.

8. Coordination of activities with transplant hospitals in the Corporation's service area.
  9. Participation in the OPTN.
  10. Cooperation with tissue banks for procurement, processing, preservation, storage, and distribution of tissues to assure that all useable tissues are obtained from potential donors.
  11. Annual evaluation of the Corporation's effectiveness in acquiring organs.
  12. Assistance to hospitals in establishing and implementing protocols for making routine inquiries about organ and tissue donations by potential donors.
  13. Practices and processes related to the recovery of tissue donors, including community and professional education on tissue donation, oversight of the partnerships with tissue processors, and internal quality metrics.
- B. Monitor the implementation of and compliance with recovery policies, protocols, and procedures adopted by the Board of Directors.
- C. Review and report as requested to the Board of Directors regarding the quality of the services provided during the organ and tissue procurement process.

### **SECTION 3. DEFINITIONS**

"Healthcare System" shall mean a corporation (or other legal entity), or commonly controlled group thereof, that conducts one or more Transplant Programs and has entered into a participation agreement with the Corporation. For purposes of the foregoing, a "commonly controlled group" consists of two or more corporations (or other entities) in which one corporation (or other entity) controls, directly or indirectly, each other corporation (or other entity) in the group.

"Transplant Program" shall mean a component within a transplant hospital (as defined in 42 C.F.R. § 482.70) that provides transplantation of a particular type of organ.

"Timely notification" shall mean notice is provided by electronic means no later than two (2) weeks prior to a scheduled meeting. Notice of scheduled meetings will occur as soon as possible after a date has been established.

### **SECTION 4. MEMBERS: NUMBER AND APPOINTMENT**

The Board of Directors shall select members of the MAB to ensure that the MAB's overall composition is representative of organ transplant activities in the community. The MAB shall consist of no less than 16 members. Each member of the MAB shall be

approved by the Board of Directors prior the beginning of their membership. The MAB shall be constituted as follows:

- A. The Board of Directors shall appoint one (1) transplant surgeon nominated by each Healthcare System to be a member of the MAB.
  - 1. Each Healthcare System may nominate for membership on the MAB one (1) transplant surgeon to represent that Healthcare System.
  - 2. Each nominated surgeon must be currently privileged to perform transplants and actively performing such transplants in that Healthcare System.
  - 3. The nomination shall be made prior to the Board of Directors' meeting at which the Healthcare System's representative is to be appointed.
  - 4. A transplant surgeon may not represent more than one Healthcare System even if the surgeon is currently privileged and actively performing transplants at more than one Healthcare System.
- B. The Board of Directors shall evaluate and appoint additional persons to meet the requirements for designation as an Organ Procurement Organization by the Department of Health and Human Services, including:
  - 1. Persons who represent hospital administrators, intensive care or emergency department personnel, tissue banks, and voluntary health associations in the Corporation's donation service area;
  - 2. Individuals who represent the public residing in the Corporation's donation service area;
  - 3. A physician with knowledge, experience, or skill in the field of human histocompatibility, or an individual with a doctorate degree in a biological science and with knowledge, experience, or skills in the field of human histocompatibility;
  - 4. A neurosurgeon or other physician with knowledge or skills in the neurosciences;
  - 5. An organ donor family member.
- C. The Medical Director(s) of the Corporation will serve as an ex-officio member of the MAB and will provide reports of activities of the MAB to the Board of Directors as requested.
- D. Additional members may be appointed by the Board of Directors to the MAB to represent other stakeholder groups or parts of the organ or tissue donation process.

- E. No member of the MAB may serve concurrently as a member of the Board of Directors or any other board of the Corporation. Any member of the MAB who is elected as a director of the Corporation shall be deemed to have resigned from the MAB, such resignation to be effective on the effective date of his or her election to the Board of Directors.

#### **SECTION 5. ATTENDANCE AT MEETINGS BY STAFF**

- A. The President/Chief Operating Officer (“COO”) and Chief Executive Officer (“CEO”) of the Corporation may attend all meetings and participate in all deliberations of the MAB. Neither the COO nor CEO are entitled to vote on any matter before the MAB.
- B. The COO and CEO shall, jointly, select two (2) of the Corporation’s staff members who shall attend all meetings and participate in all deliberations of the MAB. The Corporation’s Medical Director (s) shall also attend and participate in deliberations. Any other staff members may attend and participate in meetings at the discretion of the COO and/or CEO.

#### **SECTION 6. TERM AND TERM LIMITS**

Each member of the MAB shall serve until the member’s resignation, removal, or death.

#### **SECTION 7. MEETINGS, ATTENDANCE, QUORUM, AND ACTION OF COMMITTEE**

Meetings will be held at least two (2) times per year. Additional meetings or sub-group meetings may be scheduled as agreed upon by the MAB in order to effectively provide recommendations related to the procurement actions of the organization.

Members of the MAB are expected to make every effort to attend all regularly scheduled meetings. Active members are considered to be all members who attend at least one (1) meeting per year and at least one (1) of every three (3) meetings held.

At any meeting of the MAB, a majority of the members of the MAB shall constitute a quorum, and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the MAB.

Actions of the MAB shall have no authority until approved by the governing Board of Directors.

#### **SECTION 8. VACANCIES**

Any vacancy of a regulation-required position on the MAB should be refilled with a qualified appointee approved at the next regularly scheduled meeting of the Board of Directors. All other vacancies should be filled after qualified, committed appointees are identified and approved at a regularly scheduled meeting of the Board of Directors.

Nominated individuals who have not yet been approved by the Board of Directors may attend any portion of a regularly scheduled MAB meeting (that is not otherwise confidential) as a guest but do not have the authority to vote on any recommendation being considered.

## **SECTION 9. RESIGNATION AND REMOVAL**

- A. The absence of a MAB member from more than half of the regular meetings in any one (1) year shall constitute cause for a discussion led by the Chair of the MAB to be held to determine if recommendation for removal to the governing Board of Directors is appropriate. Such recommendation shall be made only by a vote of the majority of the remaining voting members of the MAB.
- B. No MAB member shall be recommended for removal from office to the Board of Directors unless the notice of the meeting hereof shall have stated that such action would be considered at the meeting, including names(s) of the affected member(s). A MAB member may be removed, with or without cause, as determined by a two-thirds vote of the Board of Directors present at any meeting at which there is a quorum. Cause shall include, but not be limited to, failure to participate in the activities of the MAB as evidenced by the failure to attend at least one of three (3) consecutive meetings of the MAB.
- C. A MAB member may resign only by submitting a written resignation to the Chair of the MAB and the CEO and COO of the organization, or, if the resigning MAB member is the Chair, to the Vice Chair of the MAB and the CEO and COO of the organization.

## **SECTION 10. OFFICERS OF THE MEDICAL ADVISORY BOARD**

- A. **Appointment.** The MAB shall have a Co-Chairs, a Vice-Chair and a Secretary, each of whom shall be nominated by the MAB members, subject to approval and appointment by the Board of Directors of the Corporation, for a two (2)-year term. The Co-Chairs, Vice-Chair, and Secretary may be removed from office in the same manner as described above in Section 9.
- B. **Chair/Co-Chairs.** The Chair/Co-Chairs of the MAB shall preside at all meetings of the MAB and shall perform such other tasks as may be assigned by the MAB. In the absence of the Chair(s) and Vice Chair of the MAB at any meeting, an acting chairperson may be appointed by the Chair, CEO or COO. The Chair(s) of the MAB shall be a permanent invitee to meetings of the Board of Directors and shall serve as the MAB's liaison to the Board of Directors. He/she may participate in meetings of the Board of Directors, but shall not be a director, shall not vote, shall not be included in executive sessions unless invited, and shall not count towards quorum requirements.

- C. **Vice-Chair.** The Vice-Chair of the MAB shall perform the duties of the Chair of the MAB if the Chair of the MAB is unable to do so or is absent and shall perform such other tasks as may be assigned by the MAB, and, at the request of the Chair of the MAB, assist in the performance of the duties of the Chair of the MAB.
- D. **Secretary.** The Secretary of the MAB, or designee, shall keep accurate records and minutes of all meetings of the MAB, shall make available copies of the minutes of the previous meeting and distribute them in advance of each meeting, shall make available meeting minutes to the governing Board of Directors with clear details of all recommendations for action, shall cause to be delivered all notices of meetings to those persons entitled to vote at such meeting, shall document all governing Board of Directors' approvals or declines for recommendations submitted by the MAB, and a current listing, with contact information, of the MAB members at the office of the Corporation.

## **SECTION 11. COMPENSATION**

MAB members shall receive no compensation for their services as such but, by resolution of the Board of Directors, may be allowed reimbursement for their expenses actually and reasonably incurred on behalf of and approved by the Corporation.

## **SECTION 12. POTENTIAL CONFLICTS OF INTEREST**

Except as otherwise provided in this Section, there shall be no prohibition against the Corporation doing business on an arm's-length basis with a member of the MAB or any organization in which any such member has an interest, financial or otherwise, or in which any such member is an officer, director or employee provided that:

- A. **Disclosure.** The member's relationship with and/or interest in any organization proposing to transact business with the Corporation is fully disclosed to the Chair of the MAB and disclosed to and approved by the Chair of the Board of Directors prior to its consideration by the Board of Directors.
- B. **Recusal.** The interested member must recuse her/himself and abstain from participation in any MAB consideration of and vote upon a proposed transaction related to an organization/entity that is the cause of the conflict of interest; and
- C. **Compliance with Internal Revenue Code.** Any proposed transaction within the scope of this Section is hereby authorized only to the extent permitted under applicable law, including, but not limited to, Section 501(c)(3) of the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

### **SECTION 13. INFORMAL ACTION BY MEDICAL ADVISORY BOARD MEMBERS**

Any action of the MAB may be taken without a meeting if a consent in writing setting forth the action taken is signed by all MAB members and filed with the minutes of the MAB. In the event that a regular or special meeting of the MAB is called with timely notice to the members, but a quorum does not appear, any action taken at such a meeting may be approved and ratified in writing by no less than two-thirds of all MAB members. When the written ratification is filed with the minutes of the meeting, the action shall be considered the official action of the MAB.

Written consent may be obtained through wet signature or via email if the email is the documented email on file of the member.

### **SECTION 14. TELEPHONE OR VIDEO CONFERENCES**

Members of the MAB may participate in a meeting of the MAB by means of a conference telephone, video conference, or similar communications equipment by means of which all persons participating in the meetings can hear and potentially see each other at the same time and participation by such means shall constitute presence in person at the meeting. Members of the MAB may cast their votes orally when participating in meetings of the MAB by conference telephone, video conference, or similar communication equipment.

### **SECTION 15. AMENDMENT OF MEDICAL ADVISORY BOARD BYLAWS**

The Board of Directors may alter, amend, or rescind these MAB Bylaws or adopt new ones, by an affirmative vote of a majority of the members of the Board of Directors present at any regular or special meeting at which there is a quorum.

### **SECTION 16. BYLAW INTERPRETATION AND CONSTRUCTION**

These MAB Bylaws shall be construed to be consistent with the Bylaws of the Corporation. In the event of any inconsistency, the Bylaws of the Corporation shall control. If these MAB Bylaws are silent, then the Bylaws of the Corporation shall apply.

### **SECTION 17. PRINCIPAL OFFICE**

The mailing address of the principal office of the MAB shall be:

[MergCo, Inc.]  
Medical Advisory Board  
10301 Linn Station Road  
Louisville, KY 40223

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the undersigned, solely in [his/her] capacity as Secretary of the Corporation, hereby certifies that these Medical Advisory Board Bylaws were adopted and approved at a meeting of the Board of Directors to be effective as of \_\_\_\_\_.

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

**Exhibit B**  
**Second Amended and Restated Articles of Incorporation**

[TO BE ATTACHED]

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
NETWORK FOR HOPE., INC.**

Network for Hope, Inc., a Kentucky nonprofit corporation (the “Corporation”), in accordance with the provisions of KRS 273.273 and that certain Agreement and Plan of Merger effective as of the 22nd day of March, 2024 (the “Plan of Merger”), hereby adopts, effective as of October 1, 2024 (the “Effective Date”), these Second Amended and Restated Articles of Incorporation (these “Articles”) for the purpose of amending and restating in their entirety the Corporation’s Articles of Incorporation and all amendments thereto.

**ARTICLE I**

**Amendment and Restatement**

These Articles were adopted as required by law and in accordance with the Amended and Restated Bylaws of the Corporation (the “Bylaws”), by a vote of two-thirds (2/3) of the Board of Directors of the Corporation (the “Board of Directors”) at a meeting held on March 19, 2024, at which a quorum was present. These Articles supersede the original Articles of Incorporation and all amendments thereto.

**ARTICLE II**

**Name**

The name of the Corporation is Network for Hope, Inc.

**ARTICLE III**

**Mission, Purposes and Powers**

2.1 The mission of the Corporation is to pursue charitable missions, which includes providing enhanced performance and service in the following areas: (i) public education on donation; (ii) authorization of organ and tissue donors; (iii) donor management; (iv) organ allocation and utilization; (v) recovery, preservation and logistics of recovered organs and tissues; (vi) processing opportunities for donated tissue; (vii) call center operations; and (viii) family services during and after donation.

2.2 The Corporation is organized exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future federal tax laws or regulations of the Internal Revenue Service (the “Code”).

2.3 In furtherance of such purposes, the Corporation shall have the powers allowed to corporations under Chapter 273 of the Kentucky Revised Statutes and shall transact any and all lawful business for which non-profit corporations may be incorporated under the laws of the

Commonwealth of Kentucky, to the extent that such business may be conducted by organizations that qualify as exempt organizations under Section 501(a) of the Code as described in Section 501(c)(3) of the Code.

2.4 No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to any private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of purposes set forth herein. No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office, including the publishing or distribution of statements on behalf of any such candidate. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code.

#### ARTICLE IV

##### Members

The Corporation shall have no members.

#### ARTICLE V

##### Bylaws

The Bylaws shall regulate the internal affairs of the Corporation except as otherwise set forth herein.

#### ARTICLE VI

##### Medical Advisory Board

The Corporation shall have a Medical Advisory Board (the “Medical Advisory Board”). The authority and responsibilities of the Medical Advisory Board as well as the number, tenure and qualifications of the members of the Medical Advisory Board shall be determined in accordance with the Bylaws and the Medical Advisory Board’s Bylaws.

#### ARTICLE VII

##### Limitation of Liability of Director

No director on the Board of Directors (each, a “Director”) shall be personally liable to the Corporation for monetary damages for breach of his or her duties as a Director except for liability:

- (a) for any transaction in which the Director’s personal financial interest is in conflict with the financial interests of the Corporation;

(b) for acts and omissions not in good faith or which involve intentional misconduct or are known to the Director to be a violation of law; or

(c) for any transaction from which the Director derives an improper personal benefit.

Any repeal or modification of this Article shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

## ARTICLE VIII

### Indemnification

The Directors, members of the Medical Advisory Board, officers, and other agents of the Corporation shall be entitled to indemnification in accordance with the provisions of the Bylaws.

## ARTICLE IX

### Dissolution

Upon the dissolution or liquidation of the Corporation, the Board of Directors shall, after paying and making provision for the payment of all of the liabilities of the Corporation, transfer all of the property and assets of any nature of the Corporation to such organization or organizations organized and operated exclusively for charitable, educational and scientific purposes as shall at the time be qualified as an organization exempt from tax under Section 501(c)(3) of the Code and as the Board of Directors shall determine. Any assets not so disposed of in accordance with the above procedure shall be disposed of by the District Court of Jefferson County, Kentucky, exclusively for one or more of such exempt purposes or to such organization or organizations organized and operated exclusively for one or more of the exempt purposes of the corporation described herein and then qualified under Section 501(c)(3) of the Code, as such court shall determine.

## ARTICLE X

### Amendment

No amendment of these Articles shall be effective without the approval of two-thirds (2/3) of the Board of Directors in accordance with the provisions of the Bylaws and applicable law of the Commonwealth of Kentucky.

*[Signature Page Follows]*

**FINAL FORM**

IN WITNESS WHEREOF, the foregoing Second Amended and Restated Articles of Incorporation of Network for Hope., Inc. are adopted as of the Effective Date.

**NETWORK FOR HOPE, INC.**

By: *Barry C. Massa*  
0F8913DC273B48E...

Name: Barry C. Massa

Title: Chief Executive Officer