



BOARD OF REGENTS

**APRIL 19, 2023
SPECIAL MEETING
AGENDA BOOK**

**9:00 AM
Student Union Building, Ballroom C
Executive Session: SUB Sandia Room**



**UNIVERSITY OF NEW MEXICO
BOARD OF REGENTS SPECIAL MEETING**

Agenda

Wednesday, April 19, 2023, 9:00 AM
Student Union Building (SUB), Ballroom C
Livestream: <https://live.unm.edu/board-of-regents>

Agenda

1. Call to Order and Confirmation of a Quorum, *Chair Kim Sanchez Rael*
2. Adoption of the Agenda
3. Regents' Comments
4. UNM Administration's Presentation
5. Public Comment related to the agenda item* [*limit 3 min.*]
6. Discussion
7. To the extent determined necessary, vote to close the meeting in Executive Session (Roll Call) to consider the following:
 - o discussions of strategic or long-range business plans of public hospitals as permitted by NMSA 1978, Section 10-15-1.H(9); and
 - o discussion of the purchase, acquisition or disposal of real property as permitted by NMSA 1978, Section 10-15-1.H(8).
8. Vote to Re-Open the meeting and certification that the matters discussed in Closed Session were limited only to items on the Executive Session agenda
9. Vote on the transaction under which UNM Hospital will acquire all of the assets and assume all of the liabilities of SRMC and thereafter the SRMC Hospital would operate under UNM Hospital's License
10. Adjourn

*To register to give public comment, send an email to regents@unm.edu before 4:00 PM on Tuesday, April 18. A public comment sign-up sheet will also be available at the meeting. Write in comments to regents@unm.edu are welcomed and should be sent prior to the day of the meeting with preferable deadline of 4:00 PM on Tuesday, April 18.



SRMC Hospital Licensure Change

UNM REGENTS

APRIL 19, 2023

Agenda

- Situation Briefing
- Operational Impact
- Financial Impact
- What to expect

Situation Briefing

Current State

University of New Mexico (UNM) currently owns 100% of membership interest in UNM Sandoval Regional Medical Center, Inc. (SRMC) which is a University Research Park and Economic Development Act corporation. SRMC operates under its own license, its own provider numbers, medical staff, employees, and a degree of local variability relative to the broader University of New Mexico Health System (UNMHS).

A degree of integration is already in place across the health system for areas such as information technology, revenue cycle, payer contracting, supply chain, and some other support services.

Proposed Transaction

SRMC and UNMHS are planning a transaction to combine SRMC and University of New Mexico Hospital (UNMH) to create a fully integrated, multi-campus hospital under the UNMH license.

This transaction maintains certain aspects of SRMC's current operations; however, it also requires changes to operations. In order to create a multi-campus hospital, at close of transaction SRMC need to meet all requirements related to becoming a provider-based location of UNMH under CMS rules.

The proposed transaction will transfer all assets and liabilities of SRMC to UNM on behalf of UNMH and upon completion of the transaction the SRMC corporate entity will be dissolved.

Expected Benefits

SRMC and UNMH expect positive operational and financial effects from the transaction, including:

- Expanded teaching and training opportunities at SRMC and potential research opportunities
- Improved standardization, flexibility, and continuity of care for patients by streamlining access to tertiary and quaternary services available at UNMH and through the creation of a single medical staff
- Financial benefits include additional revenue generation at SRMC and potential access to state appropriations as a UNMH operation

Operational Impact

The transaction brings benefits across the tripartite mission



Clinical Care

Aligning SRMC and UNMH to create a multi-campus hospital further facilitates existing relationships in care delivery while expanding academic expertise in SRMC's community environment. Benefits include:

- Seamless transitions of care
- Expanded access to resources at UNMH for SRMC patients
- Standardization of policies, procedures, and care between campuses



Teaching

By creating a single academic hospital with two campuses teaching and training opportunities at SRMC increase, providing academic-level care to SRMC's community. Benefits include:

- Providing ready access to a community hospital-like training environment for residents
- Opportunity to create focused training programs for high-demand services at SRMC



Research

Alongside expansion of teaching opportunities, a combined multi-campus hospital can leverage UNMH's existing combined EHR data and access to SRMC's patient population to pursue additional research opportunities. UNMH can bring:

- Experience in developing research protocols
- Administrative expertise to support the research mission at the SRMC campus

Financial Impact

Overview and Summary

SRMC and UNMH Finance teams performed an analysis of financial impacts expected to result from the transaction to create a multi-campus hospital through a combination of UNMH and SRMC.

The resulting net annual benefit to SRMC is anticipated to be \$6,798,399 annually. Given the high levels of integration present between SRMC and UNMH, the outlined projected financial impacts are expected to be achieved within the first year. Current ongoing processes related to financial forecasts and regular updates expected to continue as currently laid out.

Note: Potential one-time costs are not included in the analysis and remain under development; these are expected to be borne largely by UNMH.

Projected \$6,937,142 increase in revenues

Driven by:

- \$5,343,027 increase in Medicare – FFS & Managed
- \$2,358,845 increase in Medicaid - FFS & Managed
- (\$764,730) decrease from Contracting / Managed Care

Offset by a \$138,743 increase in expenses

Driven by:

- \$138,743 increase in Gross Receipts Tax
- Other expenses assumed to remain status quo



Net Annual Recurring Benefit: \$6,798,399

Revenue Impact Detail

Expected net **revenue increase** of \$6,937,142

Impact Area	Key SRMC/UNMH Provided Assumptions (On an Annual Basis)	Risks & Considerations
Medicare – FFS & Managed (\$5,343,027 revenue increase)	<ul style="list-style-type: none"> DRG Difference: \$1,560,482 IME & GME: \$3,441,485 <ul style="list-style-type: none"> – IME multiplier decrease, but applied to SRMC volume DSH: \$263,684 OP Wage Index: \$77,325 	<ul style="list-style-type: none"> Must meet all CMS requirements for SRMC to be considered a provider-based location of UNMH prior to Day 1
Medicaid - FFS & Managed (\$2,358,845 revenue increase)	<ul style="list-style-type: none"> IP DRG Difference: \$2,803,523 IP Outlier Difference: \$166,464 OP: (\$144,356) DSH: (\$1,158,727) Medicaid-related IME: \$691,941 	<ul style="list-style-type: none"> Potential negative reaction from state related to a transaction that increases cost of care for the SRMC patient base <i>Shift from current 13% + 2% to UMNH rate structure (+45%)</i>
Medicaid Directed Payments	<ul style="list-style-type: none"> No change expected 	
Contracting / Managed Care (\$764,730 revenue decrease)	<ul style="list-style-type: none"> Presbyterian Commercial Per Diem Difference: \$47,425 Western Sky HIX: No impact IHS <ul style="list-style-type: none"> – IP: SRMC Medicare vs UNMH Per Diem: \$324,247 – OP: No impact Self Pay: (\$119,402) based on lower collection rates Humana VBC: (\$870,000) affected by SRMC population RAF BCBS VBC: (\$147,000) 	<ul style="list-style-type: none"> Response of payers to transactions of this type is often unpredictable and may require further negotiation <i>Contracted rates – need to review assumptions</i>

Expense Impact Detail

Expected net **expense increase** of \$138,743

Impact Area	Key SRMC/UNMH Provided Assumptions	Risk Considerations
Labor Expense (No change)	<ul style="list-style-type: none"> ▪ SRMC wage and benefit scales remain status quo as related to transaction <ul style="list-style-type: none"> – If transition to UNMH Scales required, potential impact of: <ul style="list-style-type: none"> – Salaries Impact: \$452,150 – Benefits Impact: \$507,036 	<ul style="list-style-type: none"> ▪ SRMC employees to move under a single HR management system and structure as part of UNMH as a distinct unit with status quo compensation and benefits ▪ Ongoing organization efforts and research periods for a large portion of the SRMC workforce may create challenges and effect labor expense as they evolve
Non-Labor Expense including Supply and Purchased Services (\$138,743 expense increase)	<ul style="list-style-type: none"> ▪ Goal is to maintain status quo supply costs <ul style="list-style-type: none"> – If result is a 5% increase in supply chain costs could increase up to \$657,949 annually ▪ Workers' Compensation and Medical Malpractice: No impact ▪ Gross Receipt Tax: \$138,743 	<ul style="list-style-type: none"> ▪ Costs associated with alignment between campuses will vary based on physician practice post-close ▪ Contracts for supplies and purchased services are generally consolidated across the existing UNMHS; however, there are likely agreements that could be affected including: <ul style="list-style-type: none"> – Agreements on SRMC paper or to which SRMC is the only party – Agreements with clauses that may permit reopening or renegotiation as a result of a transaction
One-Time Expenses	<ul style="list-style-type: none"> ▪ Most one-time costs borne by UNMH 	<ul style="list-style-type: none"> ▪ One-time expenses are common with any transaction and may rise to a level of materiality depending on timeline, magnitude of change/effort required, state-specific factors (e.g., retitling of certain SRMC assets), and other factors determined by the ultimate structure of the transaction and future state operating structure ▪ UNM Legal to confirm whether transfer creates a tax liability with outside counsel ▪ UNM Legal to confirm any one-time costs associated with HUD Loan and transfer

What to Expect

Remaining Status Quo

- Services offered at SRMC remain as currently planned, subject to continued evolution of care environment
- Systems and processes currently aligned and integrated across the system
 - Information Technology
 - Supply Chain
 - Revenue Cycle
 - Financial reporting to support Mill Levy and debt covenants (e.g., HUD)
- Financial items such as Mill Levy and HUD loan interest rate are expected to remain unchanged
- Employees physically at SRMC remain physically at SRMC with present pay scales and benefits
 - SRMC employees expected to move under a single HR management system via UNMH

Expected Changes

- In order to make SRMC a provider-based location and campus of UNMH, some key operational and administrative changes will be necessary, including (but not limited to):
 - SRMC legal entity will dissolve
 - SRMC Medicare CCN will be sunset, and licensed under UNMH
 - Medical Staff will be consolidated across both sites, including committees
 - Employees will become UNMH employees
 - Reporting structures may change in key areas (e.g., medical staff, nursing) to align with regulatory requirements
 - Branding and billing will be consolidated under the UNMH brand
 - SRMC will fall under UNMH's governing body(ies) as required by law and regulation

Communications and Key Milestones

Key Pre-Approval Communications

- President's Office Briefings - Nov 29, 2022 and Mar 29, 2023
- SRMC Board – Jan 26, Feb 23, and Mar 23, 2023
- UNMH Board – Jan 27 and Mar 29, 2023
- Deans Advisory Council – April 5, 2023
- Regents HSC Committee – Feb 7, 2023
- Regents Executive Session – Feb 14, 2023

Key Approval Milestones

- Regents HSC Committee Executive Session – April 7
- Regents Executive Session – April 10
- SRMC Board Resolutions –April 18*
- Regents Board Resolutions – April 19*
- State HED – May 10 (Jun 4 alternative)
- State Board of Finance – May 16 (Jun 20 alternative)
- HUD Notice – June 1
- CHOW – no later than Oct 2

**Special meeting and open session item noticed on April 14*

Communications Plan- Beginning Week of April 10

Phase 1 – Pre Regent and SRMC Meeting Notice

- SRMC Manager Meetings
- UNMH Managers Meetings

Phase 2 – Concurrent with Regent and SRMC Meeting Notice

- SRMC Board and Regent Open Meeting Notice
- Messages from UNMH and SRMC with FAQ
- Message from CMOs to Medical Staff
- Message to Collective Bargaining Units
- Contact key governmental stakeholders

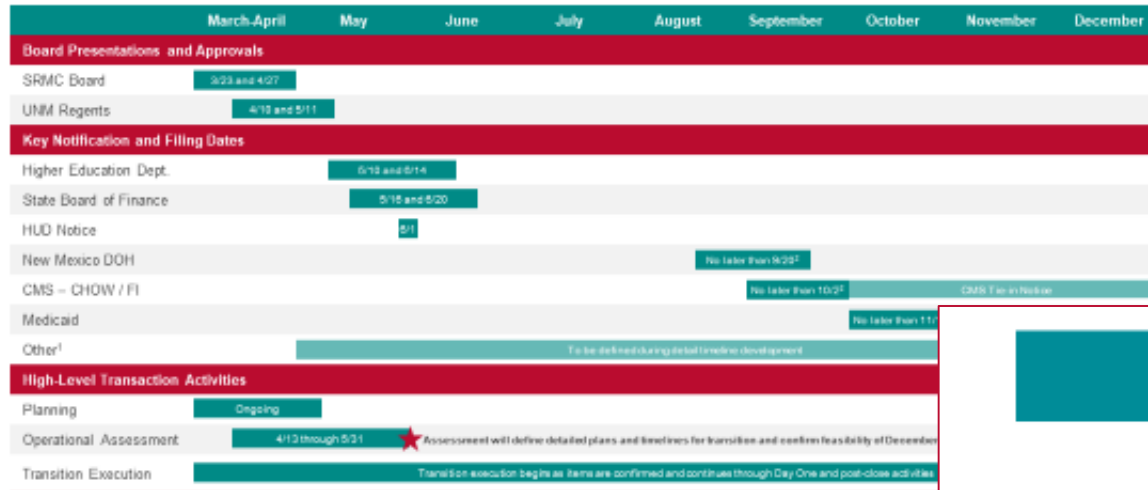
Phase 3 – After Regent Action

- Other key stakeholders and community leaders
- Letters to patients
- Media Relations
- HS Townhalls

Key Governmental Stakeholder Groups

- Governor's Office – TBD
- HSD – Mike Richards
- DOH – Mike Richards
- HHS Committee, LFC, Key Legislators – Stevie Olson/Governmental Affairs
- Sandoval County Management and Chair of Commission – Jamie Silva-Steele
- Bernalillo County Management and Chair of Commission – Kate Becker
- ABQ Mayor, Chair of Council – Mike Puelle
- RR Mayor, Chair of Council – Jamie Silva Steele
- Federal Staff Level courtesy call – Nathan Bush

Anticipated Timeline



¹Detailed timeline under development with Kula Risk; additional key dates will be added as they are identified.
²Dates reflected as "no later than" may be dependent on outcomes of prior notifications and filings and represent the last possible date for completion for a December 31 close.



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**New operations would begin
Jan 1, 2024**

Detailed operational assessment of transition and implementation would begin after Regent approval

Transaction Workstreams

- Clinical Operations**
 - Behavioral Health
 - Care Delivery
 - Clinical Education
 - Clinical Operations (General)
 - Lab
 - Nursing
 - Patient Experience & Guest Services
 - Pharmacy
 - Radiology
- Education & Training**
 - Clinical Education
 - Education (General)
 - Learning & Development
 - Finance & Accounting
 - Accounts Payable
- Finance & Accounting (General)**
 - Financial Planning & Decision Support
 - General Accounting
 - Payroll
 - Tax & Government Filings
 - Treasury

- HR & Workforce**
 - Benefits
 - Employee Health
 - Employee Relations
 - Human Resources & Workforce (General)
 - Talent Management
- Information Technology**
- Legal & Regulatory**
 - Compliance
 - Legal
 - Legal, Risk, & Regulatory (General)
 - Privacy
 - Regulatory
 - Risk
- Marketing & Communications**
 - Communications
 - Digital
 - Marketing & Branding
 - Marketing & Communications (General)
- Medical Staff & Medical Group**
 - Bylaws
 - Credentialing & Enrollment
 - Medical Group
 - Medical Staff & Medical Group (General)
 - Physician Services
 - Provider Recruitment & Onboarding

- Real Estate & Facilities**
 - Food Services
 - Maintenance
 - Public Safety
 - Real Estate
 - Real Estate & Facilities (General)
 - Utilities
- Revenue Cycle & Payer Strategy**
 - Charge Entry & Coding
 - Credentialing / Enrollment
 - HM
 - Patient Access
 - Patient Financial Services
 - Payer Contracting
 - Revenue Cycle & Payer Strategy (General)
 - Utilization Review
- Supply Chain & Purchased Services**
 - Procurement
 - Sourcing
 - Supply Chain (General)
 - Vendor Management
 - Warehousing / Distribution / Logistics



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Questions and Feedback



Transaction Workstreams

Clinical Operations

- Behavioral Health
- Care Delivery
- Clinical Education
- Clinical Operations (General)
- Lab
- Nursing
- Patient Experience & Guest Services
- Pharmacy
- Radiology

Education & Training

- Clinical Education
- Education (General)
- Learning & Development
- Finance & Accounting
- Accounts Payable

Finance & Accounting (General)

- Financial Planning & Decision Support
- General Accounting
- Payroll
- Tax & Government Filings
- Treasury

HR & Workforce

- Benefits
- Employee Health
- Employee Relations
- Human Resources & Workforce(General)
- Talent Management

Information Technology

Legal & Regulatory

- Compliance
- Legal
- Legal, Risk, & Regulatory (General)
- Privacy
- Regulatory
- Risk

Marketing & Communications

- Communications
- Digital
- Marketing & Branding
- Marketing & Communications (General)

Medical Staff & Medical Group

- Bylaws
- Credentialing & Enrollment
- Medical Group
- Medical Staff & Medical Group (General)
- Physician Services
- Provider Recruitment & Onboarding

Real Estate & Facilities

- Food Services
- Maintenance
- Public Safety
- Real Estate
- Real Estate & Facilities (General)
- Utilities

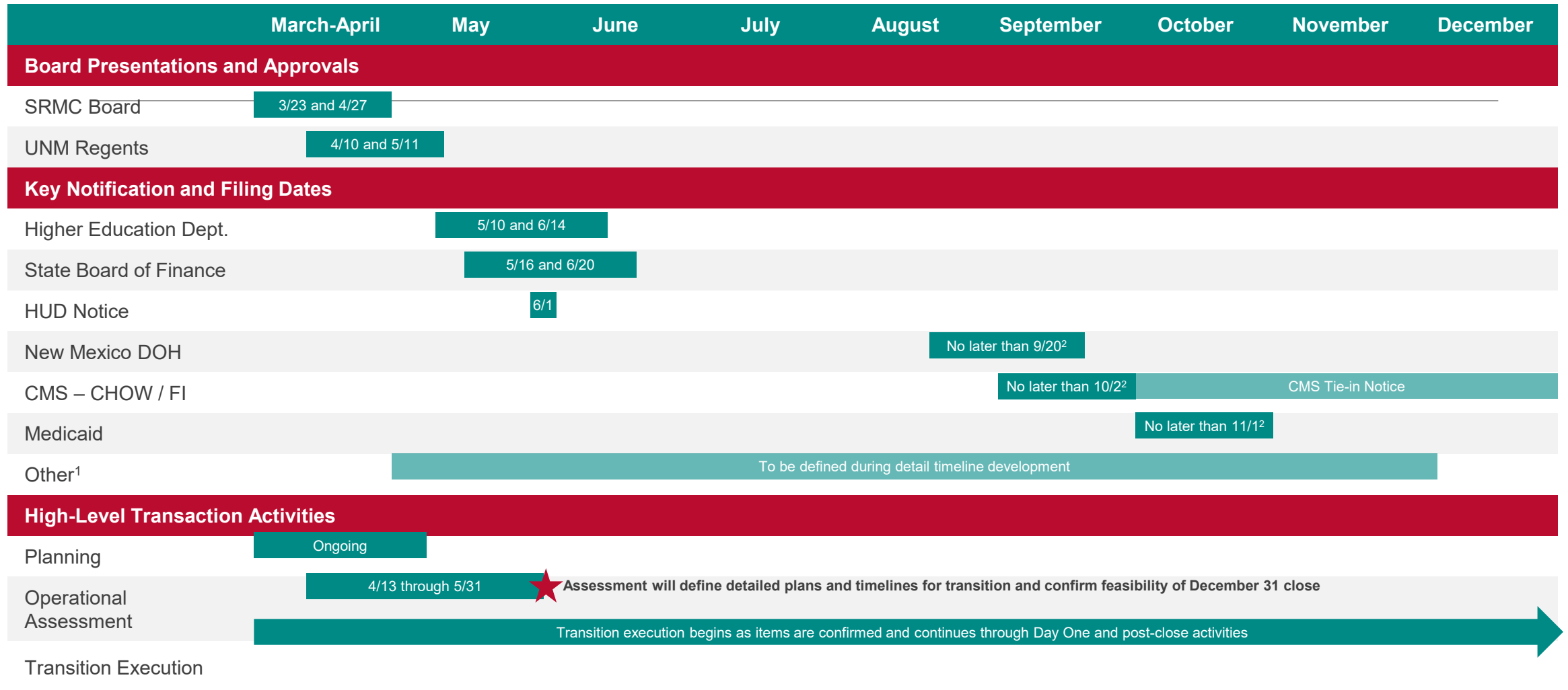
Revenue Cycle & Payer Strategy

- Charge Entry & Coding
- Credentialing / Enrollment
- HIM
- Patient Access
- Patient Financial Services
- Payer Contracting
- Revenue Cycle & Payer Strategy (General)
- Utilization Review

Supply Chain & Purchased Services

- Procurement
- Sourcing
- Supply Chain (General)
- Vendor Management
- Warehousing / Distribution / Logistics

Anticipated Timeline



¹Detailed timeline under development with Kutak Rock; additional key dates will be added as they are identified.

²Dates reflected as "no later than" may be dependent on outcomes of prior notifications and filings and represent the last possible date for completion for a December 31 close.

RESOLUTION

RELATING TO BOARD OF DIRECTORS OF UNM SANDOVAL REGIONAL MEDICAL CENTER, INC. APPROVING THE EXECUTION OF AN ASSET PURCHASE AGREEMENT IN CONNECTION WITH THE UNIVERSITY OF NEW MEXICO HOSPITAL'S ACQUISITION OF THE ASSETS OF UNM SANDOVAL REGIONAL MEDICAL CENTER, INC.; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; AND REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION.

BE IT RESOLVED by the Board of Directors (the "**Board**") of UNM Sandoval Regional Medical Center, Inc. (the "**Corporation**");

WHEREAS, the Corporation is a research park corporation organized under the New Mexico University Research Park and Economic Development Act, N.M. Stat. Ann. Section 21-28-1, et seq. (the "**URPEDA**") and a nonprofit corporation organized under the New Mexico Nonprofit Corporation Act, N.M. Stat. Ann. Section 53-8-1, et seq. (the "**Nonprofit Corporation Act**"); and

WHEREAS, the Corporation is a wholly owned subsidiary and blended component unit of the University of New Mexico (the "**University**") and the Board of Regents of the University (the "**Regents**") is the sole member of the Corporation and appoints the members of the Board; and

WHEREAS, the Corporation owns and operates the UNM Sandoval Regional Medical Center, a 60-bed licensed acute care hospital located in the City of Rio Rancho, Sandoval County, New Mexico (the "**SRMC Hospital**"); and

WHEREAS, pursuant to the Ground Lease, dated as of June 1, 2010 (as amended and supplemented, the "**Ground Lease**"), by and between the University and the Corporation, the Corporation leases from the University the site upon which the SRMC Hospital is situated; and

WHEREAS, University of New Mexico Hospital ("**UNM Hospital**") is the primary teaching hospital of the University of New Mexico School of Medicine and a major source of tertiary care for citizens of the State of New Mexico (the "**State**") and is an operation of the University; and

WHEREAS, pursuant to the terms of an Asset Purchase Agreement, to be dated its date of execution (the "**Asset Purchase Agreement**"), by and between the Corporation and the University, the Corporation desires to sell, and the University desires to purchase, substantially all of the Corporation's assets and the University, by and through the UNM Hospital, will agree to assume substantially all of the Corporation's liabilities and obligations;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CORPORATION:

Section 1. Ratification. All actions not inconsistent with the provisions of this Resolution heretofore taken by the Board and the officials of the Corporation directed toward the acquisition of the Corporation be and the same hereby are ratified, approved and confirmed.

Section 2. Delegation and Approval. The Board hereby authorizes and approves any necessary action to be performed by the Corporation to effectuate the consummation of the transactions contemplated by the Asset Purchase Agreement and any of the documents and agreements contemplated by the Asset Purchase Agreement (collectively, the “**Transaction Documents**”). The form of the Asset Purchase Agreement has been presented to the Board. The terms and provisions of the Asset Purchase Agreement are in all respects approved, authorized and confirmed, with such changes, modifications, additions and deletions therein as shall be necessary, desirable or appropriate as determined by an Authorized Officer (hereinafter defined). The Chair of the Board, the President and CEO, and Secretary of the Corporation (each, an “**Authorized Officer**,” or, collectively, the “**Authorized Officers**”) are hereby each authorized to execute the Transaction Documents and any documents that are required to be executed by the Regents and such execution thereof shall constitute conclusive evidence of the Board’s approval of such documents.

Section 3. Approval of Member. The Authorized Officers of the Corporation are hereby authorized to seek the consent of the Regents, in their capacity as sole member of the Corporation, to approve the execution of the Transaction Documents. The Authorized Officers of the Corporation are, in addition, authorized to seek the consent of the Regents, as sole member of the Corporation, approving the dissolution of the Corporation, at an appropriate time subsequent to the acquisition of the Corporation.

Section 4. Termination of Ground Lease. The Corporation approves the termination of the Ground Lease concurrently with the consummation of the acquisition of the Corporation by the University and direct the Authorized Officers to execute any and all documents relating thereto.

Section 5. Conditions Precedent. The acquisition of the Corporation by the University is subject to various third party approvals, including, but not limited to, approval of the University participation in the transactions contemplated by the Asset Purchase Agreement by the New Mexico Higher Education Department, the New Mexico State Board of Finance, as well as approval of the Corporation’s consummation of the transactions contemplated by the Asset Purchase Agreement by United States Department of Housing and Urban Development (“**HUD**”), the Federal Housing Administration, and various federal, state and local health care reimbursement, regulatory and licensing agencies. The Authorized Officials are hereby directed to take any and all actions necessary to support and obtain such approvals.

Section 6. Authorization. The officers of the Corporation are empowered to do and perform all acts reasonably necessary to accomplish the acquisition of the Corporation as provided in the Asset Purchase Agreement, and to execute and deliver such other instruments and documents as may be necessary to enable the Regents, the University, UNM Hospital and the Corporation to effectuate the transactions contemplated by the Transaction Documents.

Section 7. Repealer. All policies and resolutions, or parts thereof, inconsistent herewith, are hereby repealed to the extent of such inconsistency. This repealer shall not be construed as reviving any policy or resolution, or part thereof, heretofore repealed.

Section 8. Severability. If any section, paragraph, clause or provision hereof shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 9. Effective Date. The Resolution shall become effective immediately upon its passage and adoption by the Board.

PASSED, ADOPTED AND APPROVED THIS 18th DAY OF APRIL, 2023.

[SEAL]

BOARD OF DIRECTORS OF UNM
SANDOVAL REGIONAL MEDICAL
CENTER, INC.

By _____
Douglas M. Ziedonis, M.D., MPH, Chair

Attest:

By _____
Secretary/Treasurer

RESOLUTION

RELATING TO THE REGENTS OF THE UNIVERSITY OF NEW MEXICO APPROVING THE EXECUTION OF AN ASSET PURCHASE AGREEMENT IN CONNECTION WITH THE ACQUISITION OF THE ASSETS OF UNM SANDOVAL REGIONAL MEDICAL CENTER, INC.; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; AND REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION.

BE IT RESOLVED by the Board of Regents (the “Regents”) of the University of New Mexico (the “University”):

WHEREAS, University of New Mexico Hospitals (“UNM Hospitals”) is the primary teaching hospital of the University of New Mexico School of Medicine and a major source of tertiary care for citizens of the State of New Mexico (the “State”); and

WHEREAS, UNM Hospitals is owned partly by the University and partly by Bernalillo County (the “County”) and is operated by the University under a lease with the County; and

WHEREAS, UNM Sandoval Regional Medical Center, Inc. (“SRMC”) is a research park corporation organized under the New Mexico University Research Park and Economic Development Act, N.M. Stat. Ann. Section 21-28-1, *et seq.* (the “URPEDA”) and a nonprofit corporation organized under the New Mexico Nonprofit Corporation Act, N.M. Stat. Ann. Section 53-8-1, *et seq.* (the “Nonprofit Corporation Act”); and

WHEREAS, SRMC is a wholly owned subsidiary and blended component unit of the University and the Regents are the sole member of SRMC and appoints the members of the SRMC Board of Directors; and

WHEREAS, pursuant to the Ground Lease, dated as of June 1, 2010 (as amended and supplemented, the “Ground Lease”), by and between the Regents and SRMC, SRMC leases from the Regents the site upon which SRMC is situated; and

WHEREAS, pursuant to the terms of an Asset Purchase Agreement, to be dated its date of execution (the “Asset Purchase Agreement”), by and between SRMC and the Regents, SRMC desires to sell, and the Regents desires to purchase, substantially all of SRMC’s assets and the Regents will agree to assume substantially all of SRMC’s liabilities and obligations;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO:

Section 1. Ratification. All actions not inconsistent with the provisions of this Resolution heretofore taken by the Regents and the officials of the University and UNM Hospitals directed toward the acquisition of SRMC be and the same hereby are ratified, approved and confirmed.

Section 2. Delegation and Approval. The Regents hereby authorize and approve any necessary action to be performed by the University to effectuate the consummation of the transactions contemplated by the Asset Purchase Agreement and any of the documents and

agreements contemplated by the Asset Purchase Agreement (collectively, the “Transaction Documents”). The form of the Asset Purchase Agreement has been presented to the Regents. The terms and provisions of the Asset Purchase Agreement are in all respects approved, authorized and confirmed, with such changes, modifications, additions and deletions therein as shall be necessary, desirable or appropriate as determined by an Authorized Officer (hereinafter defined). The President, Vice President, and Secretary of the Board of Regents and the President, the Executive Vice President for Finance & Administration, the Executive Vice President for Health Sciences and CEO of the UNM Health System, Chief Executive Officer for UNM Hospitals, and Chief Financial Officer of UNM Hospitals (each, an “Authorized Officer” and, collectively, the “Authorized Officers”) are hereby each authorized to execute the Transaction Documents and any documents that are required to be executed by the Regents and such execution thereof shall constitute conclusive evidence of the Regent’s approval of such documents.

Section 3. Approval of Member. The Regents, in their capacity as sole member of SRMC, approve the execution of the Transaction Documents. As sole member of SRMC, the Regents approve the dissolution of SRMC, at an appropriate time subsequent to the acquisition of SRMC.

Section 4. Termination of Ground Lease. The Regents approve the termination of the Ground Lease concurrently with the consummation of the acquisition of SRMC and direct the Authorized Officers to execute any and all documents relating thereto.

Section 5. Conditions Precedent. The acquisition of SRMC by the Regents is subject to various third party approvals, including, but not limited to, approval by the New Mexico Higher Education Department, the New Mexico State Board of Finance, the United States Department of Housing and Urban Development (“HUD”), the Federal Housing Administration, and various federal, state and local health care reimbursement, regulatory and licensing agencies. The Authorized Officials are hereby directed to take any and all actions necessary to obtain such approvals.

Section 6. Authorization. The officers of the Regents, the University, UNM Hospitals and SRMC are empowered to do and perform all acts reasonably necessary to accomplish the acquisition of SRMC, and to execute and deliver such other instruments and documents as may be necessary to enable the Regents, the University, UNM Hospitals and SRMC to effectuate the transactions contemplated by the Transaction Documents.

Section 7. Repealer. All policies and resolutions, or parts thereof, inconsistent herewith, are hereby repealed to the extent of such inconsistency. This repealer shall not be construed as reviving any policy or resolution, or part thereof, heretofore repealed.

Section 8. Severability. If any section, paragraph, clause or provision hereof shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 9. Effective Date. The Resolution shall become effective immediately upon its passage and adoption by the Regents.

PASSED, ADOPTED AND APPROVED THIS __th DAY OF APRIL, 2023.

[SEAL]

THE REGENTS OF THE UNIVERSITY OF
NEW MEXICO

By _____
President

Attest:

By _____
Secretary/Treasurer

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “**Agreement**”), is entered into as of the date below written (the “**Execution Date**”), by and between **UNM SANDOVAL REGIONAL MEDICAL CENTER, INC.**, a New Mexico nonprofit and University Research Park and Economic Development Act corporation (“**Seller**”), and **REGENTS OF THE UNIVERSITY OF NEW MEXICO**, for its public operation known as the **UNM HOSPITAL** (“**Buyer**”). Defined terms used but not otherwise defined herein shall have the meanings contained in Exhibit A hereto.

WITNESSETH:

WHEREAS, Seller desires to sell, and Buyer desires to purchase, substantially all of Seller’s assets comprising its Business; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of setting forth their mutual rights and obligations with respect to the foregoing.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged and accepted, and in consideration of the premises and mutual promises herein contained, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 TRANSFER OF ASSETS

1.1 **Sale of Assets**. At the Closing and subject to the terms and conditions of this Agreement, Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase from Seller, all rights, title, and interest in and to all assets of every description, and whether real, personal or mixed, tangible or intangible, owned or leased by Seller and held or used in the Seller’s Business, including the following items (collectively, the “**Acquired Assets**”):

(a) All tangible personal property, including all equipment, furniture, fixtures, machinery, vehicles, office furnishings, instruments, leasehold improvements, spare parts and, to the extent assignable or transferable, all rights in all warranties of any manufacturer or vendor with respect thereto owned by Seller or otherwise employed in the conduct and operation of the Business (collectively, the “**Personal Property**”), including the Personal Property described on Schedule 1.1(a).

(b) All rights under Contracts identified on Schedule 1.1(b) together with any Employee Benefit Plan of any nature whatsoever applicable to Seller’s employees and all contracts with any Government Reimbursement Program or other third-party payor or other party that reimburses Seller for the provision of medical services (collectively, the “**Acquired Contracts**”).

(c) The corporate record books, minute books, corporate seals and tax records of Seller and all records of any kind that Seller is required by Legal Requirements to retain in its own possession (collectively, the “**Records**”), subject to the Parties’ rights under Section 6.1.

(d) All claims of Seller against third parties, choate or inchoate, known or unknown, contingent or otherwise.

(e) With respect to the amount by which any retrospective settlement of any cost report exceeds such original cost report relating to a period prior to the Effective Time, all rights of Seller now existing or which may hereafter exist with respect to any payment or reimbursement owed to Seller by

any Government Reimbursement Program or other payor which is attributable to any period of time prior to the Effective Time.

(f) All personnel records and other books and records (or copies thereof, as applicable) that Seller is required by law to retain in its possession; provided, however, that the originals or copies of all such records shall be provided to Buyer at the Closing.

(g) All cash, cash equivalents, short term investments, investments in debt securities limited as to use under indenture agreements, investments in fixed income securities, and deposits to fund unemployment benefits, and the accounts in which those assets are deposited.

(h) All leases, leasehold interests or other contractual rights relating to the Personal Property used in the operation of the Business (whether as (sub)lessor or (sub)lessee) (the “**Personal Property Leases**”) to which Seller is a Party, including the Personal Property Leases described on Schedule 1.1(h).

(i) All Contracts and contract rights of Seller relating to the Acquired Assets or the Business of any type or nature as determined in accordance with the procedures set forth in Section 6.2, (all such assigned Contracts, the “**Assumed Contracts**”).

(j) All real property leases, leasehold interests or other contractual rights, interests, easements, and appurtenances relating to the Business (whether as (sub)lessor or (sub)lessee) (the “**Real Property Leases**”) to which Seller is a Party, including the Real Property Leases described on Schedule 1.1(j).

(k) To the extent transferable or assignable and subject to any applicable consent requirements, rights to all state, federal, special or local licenses or permits (including, but not limited to, air, water or other environmental licenses and permits), rights, certificates of need, certificates of exemption, franchises, accreditations, registrations, permits, approvals and consents, and all applications therefor and waivers of any requirements pertaining thereto (each a “**License**” and collectively, the “**Licenses**”), if any, issued to Seller for the Acquired Assets or the Business, including the Licenses described on Schedule 1.1(k).

(l) All computer hardware and data processing equipment held by Seller or used primarily in the conduct of its Business or the operation of the Acquired Assets, and, to the extent assignable or transferable, all rights in all warranties of any manufacturer or vendor with respect thereto and the computer software listed on Schedule 1.1(l);

(m) All inventories of usable goods and supplies of the Business owned by or, with respect to consigned goods and supplies, owned by Seller, including pharmaceuticals and medications, food, janitorial supplies, office supplies, forms, consumables, disposables, linens, and medical supplies, existing and wherever located (collectively, the “**Purchased Inventory**”).

(n) The deposits, escrows, prepaid expenses or other advance payments of Seller relating to the Business which are assumable and usable by Buyer listed on Schedule 1.1(n) (collectively, the “**Prepaid Expenses**”).

(o) To the extent transferable or assignable and subject to any applicable consent requirements, all documents, books, records, operating and policy manuals and files owned by Seller, pertaining to or used primarily in connection with the Business, operations of Seller or the Acquired Assets, whether in hard copy or other form, including all patient records, medical records, medical staff records, clinical records, financial records, equipment records and medical and administrative libraries, personnel records and purchase and vendor records, existing and wherever located (collectively, the “**Transferred Records**”).

(p) To the extent held or used in or ancillary to the Business or operation of the Acquired Assets, trademarks, trade names, service marks, copyrights and any applications therefor, mask works, net lists, schematics, technology, know-how, trade secrets ideas, algorithms, process, domain names or intangible proprietary information or material set forth on Schedule 1.1(p).

(q) The names, logos and symbols used by Seller in connection with the Business or the Acquired Assets, including the name “UNM Sandoval Regional Medical Center,” all goodwill associated with the Business of Seller as a going concern, all warranties (express or implied) and all telephone and facsimile numbers as currently used by Seller primarily in support of the Business.

(r) Any insurance proceeds and insurance proceeds receivable (including applicable deductibles, co-payments, or self-insured requirements) arising from the Acquired Assets to the extent provided in Section 2.11.

(s) All claims of Seller against third parties, choate or inchoate, known or unknown, contingent or otherwise, relating to the Acquired Assets.

(t) All accounts receivable of Seller, and all rights to payment, whether billed or unbilled, recorded or unrecorded, accrued and existing, whether or not written off, as of the Effective Time with respect to the Business, including, without limitation, rights to payment for all goods and services that Seller provides at the SRMC Hospital to its patients prior to the Effective Time (collectively, the “**Accounts Receivable**”).

(u) All provider numbers and related agreements related to any Government Reimbursement Programs.

(v) All bank accounts of Seller.

1.2 Assumption of Liabilities. As of the Effective Time, Buyer shall assume and agree to pay, discharge, and perform according to their terms only the following Liabilities and obligations of Seller (collectively, the “**Assumed Liabilities**”):

(a) All liabilities and obligations, including accounts payable arising out of operation of the Business or the use or ownership of the Acquired Assets.

(b) All liabilities and obligations arising out of the HUD Mortgage Loan and related documents.

(c) All liabilities and obligations under or arising out of the Assumed Contracts and the Real Property Leases.

(d) All liabilities and obligations arising under any Licenses from and after the Effective Time, to the extent such liabilities and obligations relate solely to Buyer’s use or ownership of the Business or the Acquired Assets.

(e) Any obligation or liability of Seller arising out of or relating to any Employee Benefit Plan of any nature whatsoever maintained by Seller for the benefit of its employees.

(f) Obligations or liabilities to Government Reimbursement Programs for overpayments and other financial obligations arising from adjustments or reductions in reimbursement attributable to events, transactions, circumstances, or conditions occurring or existing prior to the Effective Time.

(g) Seller’s expenses relating to this Agreement.

(h) All professional liability claims or other claims for acts or omissions of Seller.

(i) All liabilities and obligations of Seller as of the Effective Time for accrued paid time off expenses, whether for vacation sick pay or otherwise (collectively, the “**Accrued PTO**”), attributable to the Transferred Employees; provided, however, that Seller shall pay to Buyer in immediately available funds as of the Effective Time an amount equal to the Accrued PTO expenses attributable to the Transferred Employees reflected on the Seller’s books as of the Closing Date or arising from its operation of the Business prior to the Effective Time.

(j) All obligations to provide patient care to existing patients of the SRMC Hospital as of the Closing Date.

1.3 Transaction Consideration. Subject to the terms of this Agreement, the consideration payable by Buyer to Seller for the Acquired Assets will be an amount equal to the value of Buyer’s complete and absolute assumption of and agreement to perform and satisfy the Assumed Liabilities (the “**Transaction Price**”).

1.4 Closing; Effective Time.

(a) The closing of the transactions contemplated by this Agreement shall take place at 10 a.m., local time, at _____, on December __, 2023, or at such other time and date and/or at such other location as the Parties may mutually designate in writing (such closing being called the “**Closing**” and such date being called the “**Closing Date**”).

(b) The transactions contemplated by this Agreement shall be effective as of 12:01 a.m. on January 1, 2024 (“**Effective Time**”).

**ARTICLE 2
REPRESENTATIONS AND
CERTIFICATIONS OF SELLER**

As of the Execution Date and again as of the Closing Date, Seller represents and certifies to Buyer that, except as contained in the disclosure Schedules attached hereto and incorporated herein:

2.1 Organization, Corporate Power and Authority.

(a) Seller is a corporation duly formed, validly existing and in good standing under the laws of the State of New Mexico and is duly qualified to do business and is in good standing under the laws of the State of New Mexico. Seller has the corporate power and authority to own, lease and operate and hold its properties and to carry on its Business as now conducted.

(b) Seller has full corporate power and authority to execute, deliver and perform the corporate obligations and covenants contained in this Agreement and Seller’s Closing Documents and to carry out the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and Seller’s Closing Documents by Seller and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Seller. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to applicable Exceptions. Each of Seller’s Closing Documents, when duly executed and delivered by Seller and the other Parties thereto, will constitute the legal, valid and binding obligation of Seller enforceable in accordance with its respective terms, subject to applicable Exceptions.

2.2 No Breach. Except as described on Schedule 2.2, neither the execution and delivery of this Agreement and related agreements contemplated herein by Seller nor the consummation or performance of the transactions contemplated hereby or in the Seller's Closing Documents will, directly or indirectly (with or without notice, lapse of time or both): conflict with or result in any violation of or constitute a breach or default under any term of (A) the respective charter documents, bylaws, the articles of organization, operating agreements or other organizational documents of Seller, (B) any Contract, permit or other instrument to which Seller is a party, or by which Seller is bound or to which the Business or any of the Acquired Assets is subject, assuming however all third party consents to assignments of Contracts have been obtained, (C) any judgment to which Seller, the Business or any of the Acquired Assets is bound or subject, or (D) any Legal Requirement, (ii) will not result in the creation of any material lien or other Encumbrance upon the Business or any property which is required to be part of the Acquired Assets, and (iii) do not require any notice to or any permit, authorization, consent or approval of any Governmental Authority or of any other Person.

2.3 Assets. Schedule 2.3 represents all of the Acquired Assets either owned by Seller or in which Seller holds a leasehold interest. The Acquired Assets listed on Schedule 2.3 constitute all assets which are held or used by Seller in the conduct of the Business and operation of the SRMC Hospital. The Acquired Assets constitute all assets that are necessary for Buyer to conduct the Business and operation of the SRMC Hospital as currently conducted.

2.4 Inventory. The items of inventory of Seller as of the Effective Time (i) are (and will be) of a quality and quantity useable or saleable in the ordinary course and are (and will be) of a quantity sufficient to enable Buyer and its Affiliates to carry on the Business as currently conducted, (ii) are (and will be) not in excess of reasonable quantities for anticipated sale in the ordinary course and, except as set forth in Schedule 2.4, carried at amounts which reflect valuations pursuant to the Seller's normal inventory valuation policy and in accordance with GAAP and (iii) do not include any obsolete or defective materials or any inventory items which should be written off or written down for which there is not an adequate reserve calculated in accordance with GAAP.

2.5 Personal Property Leases. Schedule 2.5 is an accurate and complete list of all equipment leased or subleased by Seller (the listed equipment being collectively called the "Leased Equipment"), including identification of the lease or sublease affecting such Leased Equipment or any interest therein to which the Seller is a party or by which Seller's interests in the Leased Equipment is or will be bound.

2.6 Real Property.

(a) Schedule 1.1(j) sets forth an accurate and complete list of all Real Property Leases, including identification of the lease or sublease to which Seller or any of its Affiliates is a party or by which any of such entity's interests in real property is bound affecting such real estate or any interest therein. Seller has made available to Buyer accurate, correct and complete copies of all Real Property Leases and all amendments thereto. Neither Seller nor any of its Affiliates have (i) any material liability with respect to any Real Property Lease except as expressly set forth therein, or (ii) received any notice from any other party to any Real Property Leases of any uncured defaults. The Leased Real Property is not subject to any other leases or tenancies of any nature whatsoever.

(b) None of the utility companies serving any building or facility of Seller has threatened Seller in writing with any reduction in service. All installation and connection charges have been paid for in full.

2.7 Structural Defects; Condition of Real Property. Seller has received no written notice from an architect, engineer or Governmental Authority that there are structural defects in any improvement or structure situated on the Real Property which would prevent Buyer from conducting the Business following

the Effective Time as currently conducted, except for routine maintenance and repairs which occur in the ordinary course of business.

2.8 Government Reimbursement Participation; Health Care Law Compliance.

(a) Seller is eligible to receive payment without restriction under Title XVIII of the Social Security Act (“**Medicare**”) and is a “**provider**” with valid and current provider agreements with one or more provider numbers with Government Reimbursement Programs through fiscal intermediaries. Seller is in substantial compliance with the conditions of participation for the Government Reimbursement Programs in all material respects. Except as described on Schedule 2.8, there are no pending, or threatened Proceedings or investigations under the Government Reimbursement Programs involving Seller. The cost reports of Seller, as applicable, for the Government Reimbursement Programs referred to above, and for payment and reimbursement of any other cost report settlements, required to be filed prior to the Effective Time, have been or will be properly filed and are or will be complete and correct in all material respects.

(b) Neither Seller nor any partner, member, director, officer or employee of Seller is a party to any Contract (including any joint venture or consulting agreement) related to Seller, its Business or the Acquired Assets with any physician, healthcare facility, hospital, nursing facility, home health agency or other Person who is in a position to make or influence referrals to or otherwise generate business for Seller with respect to the SRMC Hospital or the Acquired Assets, to provide services, lease space, lease equipment or engage in any other venture or activity, to the extent that any of the foregoing is prohibited by Legal Requirements.

(c) The Hospital is fully accredited by The Joint Commission (“**Joint Commission**”), and Seller has made available to Buyer true and complete copies of the most recent Joint Commission accreditation survey report and deficiency list for the SRMC Hospital, if any, and the SRMC Hospital’s plan of correction, if any.

(d) Seller is in compliance with the Medicare Fraud and Abuse Amendments of 1977, as amended by the Medicare Patient and Program Protection Act of 1987 (the “**Anti-Kickback Statute**”), federal prohibitions on physician “**self-referrals**” (the “**Stark Law**”), the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), the civil monetary penalties law, 42 U.S.C. § 1320a-7a(b) (“**CMP**”), Federal False Claims Act, 42 U.S.C. §§ 3729 – 3733 (“**FCA**”), and Orders.

2.9 No Violation of Law. Seller (a) is not in violation of any Legal Requirements and (b) has not received any current written notice of any alleged violation or non-compliance with any Legal Requirement.

2.10 Legal Proceedings. Except as described on Schedule 2.10, there are no Proceedings instituted or pending or threatened against Seller that challenge, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, the transactions contemplated hereby, and there are no Orders outstanding or threatened against Seller that challenge, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the transactions contemplated hereby.

2.11 Insurance. Schedule 2.11 sets forth a true and complete list of all insurance policies or self-insurance funds maintained by Seller covering the ownership and operation of the Business and the Acquired Assets, indicating the types of insurance, policy numbers, terms, identity of insurers and amounts and coverages (including applicable deductibles). All of such policies are now and will be until the Closing in full force and effect on an occurrence basis with no premium arrearages. Such policies of insurance shall not be assigned to Buyer as part of the Acquired Assets and Buyer acknowledges that all of the coverages listed on Schedule 2.11 with respect to the Acquired Assets will cease with respect to events occurring after the Effective Time.

2.12 Employees.

(a) Schedule 2.12(a) lists the employees of Seller and their current rates of compensation, dates of hire, status (i.e., exempt or non-exempt) and eligibility for, and participation in, Employee Benefit Plans. Except as described on Schedule 2.12(a), (i) there are no collective agreements or bargaining relationships or other contracts or understandings with any labor organization with respect to Seller's employees, (ii) the Seller has no knowledge of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of the Seller, and to the Seller's knowledge no such efforts have occurred within the past three years, (iii) there is no worker's compensation liability, experience or matter outside the ordinary course of business, (iv) there are no strikes, slowdowns, work stoppages, material grievances, material unfair labor practices claims or other material employee or labor disputes currently pending or threatened against or involving the Seller and none has occurred within the last three years, (v) the Seller has not engaged in any unfair labor practices within the meaning of the National Labor Relations Act, (vi) during the three year period preceding the Closing Date, the Seller has not implemented any layoffs of employees that could implicate the Worker Adjustment and Retraining Notification Act, 29 U.S. Stat. § 2101 et seq. (the "**WARN Act**"), (vii) there are no pending or threatened in writing complaints or charges before any Governmental Authority regarding employment discrimination, safety or other employment-related charges or complaints, wage and hour claims, unemployment compensation claims, worker's compensation claims or the like involving any current or former employee of Seller, (viii) Seller is in compliance in all material respects with all Legal Requirements and Contracts respecting employment and employment practices, labor relations, terms and conditions of employment and wages and hours and (ix) Buyer will not be subject to any claim or liability for severance pay as a result of the consummation of the transactions contemplated by this Agreement as long as Buyer fulfills its obligations under the term of this Agreement.

(b) All Employee Benefit Plans maintained by the Seller or to which the Seller is obligated to contribute, are listed on Schedule 2.12(b) hereto. With respect to the Employee Benefit Plans:

- (i) a copy of each such Employee Benefit Plans has been made available to the Buyer;
- (ii) all such Employee Benefit Plans have been maintained, funded and administered in compliance in all material respects with all applicable Legal Requirements, including ERISA and the Code;
- (iii) no Employee Benefit Plan is or has within the last three years been subject to the minimum funding requirements of Section 412 or 430 of the Code or Title IV of ERISA;
- (iv) the Seller does not have any obligation to contribute to any "**multiemployer plan**" within the meaning of Section 3(37) of ERISA;
- (v) each Employee Benefit Plan intended to qualify under Section 401(a) of the Code has received a favorable determination letter or is entitled to rely on an opinion letter from the Internal Revenue Service that such Employee Benefit Plan is a "**qualified plan**" under Section 401(a) of the Code, the related trust is exempt from tax under Section 501(a) of the Code, and no facts or circumstances exist that would be reasonably likely to jeopardize the qualification of such Employee Benefit Plan; and
- (vi) with respect to the Employee Benefit Plans, all required contributions have been made or properly accrued on the Seller's financial statements.

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 2, THE ACQUIRED ASSETS ARE BEING SOLD TO BUYER "**AS IS, WHERE IS, AND**

WITH ALL FAULTS”, AND SELLER EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**ARTICLE 3
REPRESENTATIONS AND
CERTIFICATIONS OF BUYER**

As of the Execution Date and again as of the Closing Date, Buyer represents and warrants to Seller that, except as contained in the disclosure Schedules attached hereto and incorporated herein:

3.1 Organization, Corporate Power and Authority.

(a) Buyer is a state higher educational institution established under and pursuant to Article XII, Section 11 of the New Mexico Constitution and, therefore, is duly organized, validly existing under the laws of the State of New Mexico.

(b) Under and pursuant to NMSA 1978, § 21-7-3, Buyer has full corporate power and authority to execute, deliver and perform the corporate obligations and covenants contained in this Agreement and Buyer’s Closing Documents and to carry out the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and Buyer’s Closing Documents by Buyer and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Buyer. This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms, subject to applicable Exceptions. Each of Buyer’s Closing Documents, when duly executed and delivered by Buyer and the other Parties thereto, will constitute the legal, valid and binding obligation of Buyer enforceable in accordance with its respective terms, subject to applicable Exceptions.

3.2 No Breach. Neither the execution and delivery of this Agreement and related agreements contemplated herein by Buyer nor the consummation or performance of the transactions contemplated hereby or in the Buyer’s Closing Documents will, directly or indirectly (with or without notice, lapse of time, or both): (i) conflict with or result in the breach or violation of the governing documents of or resolutions adopted by Buyer; (ii) conflict with or result in the breach or violation of any provision of any Order of any Governmental Authority, in either such case, to which Buyer, or any of the Acquired Assets, are bound, or cause any acceleration thereof; or (iii) contravene, conflict with, or result in a violation in any Legal Requirements. Except for the other approvals and consents described on Schedule 3.2, Buyer is not and will not be required to give any notice to or obtain any consent from any Governmental Authority in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

3.3 Legal Proceedings. Except as provided in Schedule 3.3, there are no Proceedings instituted, pending or threatened against Buyer that challenge, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, the transactions contemplated hereby, and there are no Orders outstanding or threatened against Buyer that challenge, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the transactions contemplated hereby.

ARTICLE 4
CONDITIONS TO THE
OBLIGATIONS OF BUYER

The obligations of Buyer to consummate the purchase of the Acquired Assets and any other transaction contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions:

4.1 **Covenants**. Seller shall have performed and complied with all of its covenants hereunder through Closing.

4.2 **No Action or Proceeding**. No Order of any Governmental Authority restraining, enjoining or otherwise preventing or delaying the consummation of this Agreement or the transactions contemplated hereby shall be outstanding, and no Proceedings or investigations by or before, or otherwise involving, any Governmental Authority shall be threatened or pending against Seller or Buyer which seeks to enjoin or prevent the consummation of the transactions contemplated under this Agreement or which seeks damages in connection with the transactions contemplated hereby.

4.3 **Governmental Authority Approvals/Licenses**. Buyer shall have been issued, or shall have received Governmental Authority approval or assurance of approval of the transactions contemplated in this Agreement and the transfer of, all Licenses necessary to enable Buyer to own, occupy and lease the Acquired Assets and operate the Business.

4.4 **Seller's Closing Deliverables**. Buyer and its counsel shall have received executed copies of the following documents (the "**Seller's Closing Documents**"):

(a) **Bill of Sale and Assignment**. A bill of sale and assignment, substantially in the form attached hereto as Exhibit _____, executed by Seller conveying to Buyer good and marketable title to all tangible assets, including Personal Property, which are a part of the Acquired Assets and good and marketable title to all intangible assets which are a part of the Acquired Assets,.

(b) **Assignment and Assumption Agreement**. Assignment and assumption agreement, substantially in the form attached hereto as Exhibit _____ (the "**Assignment and Assumption Agreement**") executed by Seller: (i) conveying to Buyer all of Seller's right, title and interest in, to and under the Assumed Contracts and, by one or more separate instruments, the Real Property Leases and Licenses, and (ii) pursuant to which Buyer shall assume the future payment and performance of the Assumed Liabilities.

(c) **Authorizing Resolutions**. Copies of duly adopted resolutions of the board of directors of Seller, authorizing and approving Seller's performance of the transactions contemplated hereby and the execution and delivery of this Agreement and the Seller's Closing Documents, certified by the appropriate officer or officers of Seller as true and in full force and effect as of the Closing.

(d) **HUD-Required Documents**. Execution and delivery by Seller of such documents, instruments, certificates, and agreements as may be required to effect the assignment of the HUD Mortgage Loan to the Buyer;

(e) **Secretary's Certificate**. A certificate of the Secretary or an Assistant Secretary of Seller dated as of the Closing Date and certifying: (i) that attached thereto is a true and complete copy of all resolutions adopted by the Board of Directors of Seller authorizing the execution, delivery, and performance of this Agreement and all transactions contemplated by this Agreement and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated by this Agreement; (ii) that attached thereto is a true and complete copy of the Resolutions

of the Board of Regents of the Buyer, as the sole member of Seller, consenting to the the execution, delivery, and performance of this Agreement and all transactions contemplated by this Agreement, and (iii) to the incumbency and specimen signature of each officer of Seller executing this Agreement or the other documents to be delivered by Seller pursuant to this Agreement, and a certification by another officer of Seller as to the incumbency and signature of the officer signing the certificate referred to in this Section 4.4(e).

(f) FIRPTA Certificate. A FIRPTA certificate, executed by Seller certifying Seller's U.S. taxpayer identification number and that Seller is not a foreign Person, within the meaning of Section 1445 of the Code.

(g) Certificate of Good Standing. A certificate of good standing of Seller issued by the Secretary of State of the State of New Mexico dated no earlier than ten (10) days prior to the Closing.

ARTICLE 5

CONDITIONS TO THE OBLIGATIONS OF SELLER

The obligations of Seller to consummate the sale of the Acquired Assets and any other transaction contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions.

5.1 No Action or Proceeding. No Order of any Governmental Authority restraining, enjoining or otherwise preventing or delaying the consummation of this Agreement or the transactions contemplated hereby shall be outstanding, and no Proceeding or investigations by or before, or otherwise involving, any Governmental Authority shall be threatened or pending against Seller or Buyer which seeks to enjoin or prevent the consummation of the transactions contemplated under this Agreement or which seeks material damages in connection with the transactions contemplated hereby.

5.2 Buyer's Closing Deliverables. Seller and their counsel shall have received executed copies of the following documents (the "**Buyer's Closing Documents**"):

(a) Assignment and Assumption Agreement. The Assignment and Assumption Agreement executed by Buyer, pursuant to which Buyer shall assume the future payment and performance of the Assumed Liabilities.

(b) HUD-Required Documents. Execution and delivery by Buyer of such documents, instruments, certificates, and agreements as may be required to effect the assignment of the HUD Mortgage Loan to Buyer and the assumption of the liability with respect thereto.

(c) Higher Education Department/State Board of Finance Approval. Such documents as may have been issued by the New Mexico Higher Education Department and the New Mexico State Board of Finance consenting to the execution, delivery, and performance of this Agreement and all transactions contemplated by this Agreement.

(d) Secretary's Certificate. A certificate of the Secretary of Buyer dated as of the Closing Date and certifying: (i) that attached thereto is a true and complete copy of all resolutions adopted by the Board of Trustees of Buyer and the Board of Regents of Buyer authorizing the execution, delivery, and performance of this Agreement and all transactions contemplated by this Agreement and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated by this Agreement; and (ii) to the incumbency and specimen signature of each officer of Buyer executing this Agreement or the other documents to be delivered by Buyer pursuant to this Agreement, and a certification by another officer of Buyer as to the incumbency and signature of the officer signing the certificate referred to in this Section 5.2(d).

ARTICLE 6
ADDITIONAL AGREEMENTS

6.1 Retention and Access to Records. After the Closing Date, Buyer shall retain the Transferred Records for a period consistent with Buyer's record retention policies and practices, but in any event for at least the minimum period for which such Transferred Records are required to be retained under applicable Legal Requirements. Buyer also shall provide Seller and its representatives reasonable access thereto, during normal business hours and on reasonable prior written notice, to enable them to prepare financial statements, tax returns, respond to tax audits or any other reasonable business purpose.

6.2 Access to Acquired Assets; Contracts.

(a) Between the Execution Date and the Closing Date, Seller shall afford to the authorized representatives and agents of Buyer reasonable access to and the right to inspect the plants, properties, books and records of Seller relating to the Business and the Acquired Assets, and will furnish Buyer with such additional financial and operating data and other information as to the Business and the Acquired Assets as Buyer may from time to time reasonably request. Buyer's right of access and inspection shall be made in such a manner as not to interfere unreasonably with the operation of Seller's Business or Seller's use of the Acquired Assets. Buyer may not conduct any borings, drilling or other non-destructive testing without first requesting and obtaining Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall keep all information and data received or discovered in connection with the due diligence inspections of the Acquired Assets strictly confidential, sharing all such information only with its consultants, its lenders, and its legal counsel. Buyer agrees that it will restore the Acquired Assets to its condition prior to conducting any tests or inspections. Buyer will indemnify and hold Seller harmless from any and all liability for property damage and/or personal injuries arising out of or related in any way to the activities of Buyer or its contractors, agents, or employees in their conduct of any such investigations and tests.

(b) This Agreement shall not constitute an attempt to assign any Acquired Asset or assume any Assumed Liability, if the attempted assignment or assumption of same, as a result of the absence of a consent or authorization of a third party, would constitute a breach or default under any lease, agreement or commitment or would in any way adversely affect the rights, or increase the obligations, of Buyer or Seller with respect thereto. Except as otherwise agreed to by the Parties, Buyer and Seller shall cooperate in good faith for obtaining any consent or authorization of a third party necessary for the assignment of any Acquired Asset to Buyer or the assumption by Buyer of any Assumed Liability. With respect to any Acquired Asset, if Seller fails to obtain the consent or authorization necessary for the assignment of such Acquired Asset prior to Closing, then Buyer may, at its option and expense, require Seller to enter into such arrangement (including sublease, agency, pass through, indemnity or payment arrangement) as reasonably necessary to provide Buyer with the benefits of such Acquired Asset. With respect to any Assumed Liability, Buyer agrees to cooperate with Seller to the extent reasonably necessary to relieve Seller from the obligations of such Assumed Liability.

6.3 Cooperation. The Parties shall reasonably cooperate with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (i) furnish upon written request to each other such further information; (ii) execute and deliver to each other such other documents; (iii) cooperate and provide reasonable assistance during any payroll transition; and (iv) do such other acts and things, all as the other Party may reasonably request, for the purpose of carrying out the intent of this Agreement and the contemplated transaction.

6.4 Employees.

(a) Buyer shall offer employment to all employees of the Seller who are employed by the Seller as of the Closing, and shall continue such employment for employees who accept such offer, with a position at the salary or wage no lower than the position and salary or wage of such Transferred Employee immediately preceding the Effective Time. Notwithstanding the foregoing, Buyer shall not be required to hire any former employee of Buyer whose employment record indicates such person is ineligible for rehire with Buyer (consistent with Buyer's standard practices with respect to employment of former employees). For purposes of this Agreement, employees who accept employment with the Buyer shall be referred to herein as the "**Transferred Employees.**"

(b) From and after the Effective Time, Buyer shall provide (or cause to be provided) all Transferred Employees with benefits and Employee Benefit Plans and programs substantially comparable to the benefits and employee benefit plans and programs provided to similarly situated employees of Buyer or its Affiliates. For purposes of eligibility to participate in and vesting of benefits under all such Employee Benefit Plans and programs, each Transferred Employee shall be credited with all of his or her service with Seller and any Seller Affiliate. In addition, Buyer shall cause each such Buyer employee benefit plan or program that is a health or welfare plan to (i) waive or cause to be waived any waiting period and any preexisting condition or restriction for Transferred Employees and their dependents and (ii) credit each Transferred Employee for all deductibles paid by such Transferred Employee under the corresponding Seller or Seller Affiliate Employee Benefit Plan for the portion of the plan year preceding the Closing Date, provided Buyer or the administrator of Buyer's Employee Benefit Plan provides to Seller the data necessary for Seller to comply with this clause (ii).

(c) Seller shall not increase the compensation or benefits of any officers from the Execution Date through the Effective Time.

(d) Buyer shall cause a qualified defined contribution plan maintained by Buyer or a Buyer Affiliate to accept as a rollover contribution each Transferred Employee's eligible rollover distribution, both cash and in kind in the form of any outstanding loans, from the Seller's defined contribution plan. Notwithstanding the foregoing, if Buyer determines in good faith within thirty (30) days following the Execution Date that a qualified defined contribution plan maintained by Buyer or a Buyer Affiliate is unable to accept as a rollover contribution the portion of any such Transferred Employee's distribution that represents an outstanding loan established under Seller's defined contribution plan, then Buyer shall offer to each of such Transferred Employees an alternative arrangement that complies with applicable Legal Requirements to hold such Transferred Employee harmless against the acceleration of the repayment of such loan and the adverse tax consequences associated with any such acceleration. Such alternative arrangement may include, among other options, Buyer's offering to make a short-term, bridge loan to each of such Transferred Employees for the outstanding balance of his or her participant loan under Seller's defined contribution plan (the proceeds of which shall be used to repay such outstanding participant loan under Seller's defined contribution plan) in consideration for the commitment by each of such Transferred Employees who accept Buyer's offer to repay such short-term, bridge- loan as soon as administratively feasible following the completion of the rollover of the distribution from Seller's defined contribution plan to Buyer's defined contribution plan with proceeds of a new participant loan from Buyer's defined contribution plan. Buyer further agrees to indemnify and hold Seller harmless from and against any claim asserted by a Transferred Employee arising from the acceleration of any repayment of any loan established under Seller's defined contribution plan as a result of this transaction and/or the adverse tax consequences associated with such acceleration.

(e) Effective as of Closing, Buyer shall (i) credit each Transferred Employee with his or her Accrued PTO, (ii) make such Accrued PTO available to such Transferred Employee at the same times and in the same form as such Accrued PTO was available under Seller's Employee Benefit Plans and

(iii) provide such Accrued PTO in addition to, and not in lieu of, any paid time off accrued for service from and after the Closing under Buyer's employee benefit plans.

(f) Notwithstanding any other provision of this Agreement to the contrary, (i) Seller or a Seller Affiliate shall retain sponsorship of each Employee Benefit Plan, program, or arrangement sponsored by Seller or any Seller Affiliate, (ii) Buyer shall not be entitled to any asset of (or associated with), or assume or be liable for any obligation of, any Employee Benefit Plan (or associated contract) or other such Employee Benefit Plan, program, or arrangement sponsored by Seller or any Seller Affiliate, and (iii) no Employee Benefit Plan (or associated contract) or other such Employee Benefit Plan, program, or arrangement sponsored by Seller or any Seller Affiliate shall be considered to be a purchased "Asset," a "Contract," or an "Assumed Liability" for purposes of this Agreement.

(g) Seller or a Seller Affiliate shall provide continuation coverage, to the extent it is required to do so under COBRA, (i) to all former employees of Seller (and its Affiliates) who incur COBRA "qualifying events" prior to the Effective Time (and their covered dependents) and (ii) to all employees who do not become Transferred Employees (and their covered dependents). Buyer shall be responsible and liable for (and Seller shall not be so responsible or liable for) providing COBRA continuation coverage to all Transferred Employees and their dependents who experience a qualifying event after the Effective Time.

(h) Buyer shall employ and retain for such period of time following the Closing Date such number of Transferred Employees as shall be necessary to avoid any potential liability by Seller for a violation of the Workers Adjustment and Retraining Notification Act, 29 U.S. Stat. § 2101 et seq. (the "WARN Act"), attendant to Seller's (or Seller Affiliate's) failure to notify such Transferred Employees of a "mass layoff" or "plant closing" (as such terms are defined in the WARN Act). Buyer shall be liable and responsible for any notification required under the WARN Act (or under any similar state or local Laws) and Buyer shall indemnify and hold Seller and its Affiliates harmless from and against any liability asserted against Seller or any Seller affiliate under the WARN Act as a result of Buyer's failure to comply with the provision of the WARN Act as of or after the Closing Date or Buyer's failure to comply with the provisions of this Section 6.9.

(i) At the Closing, Seller shall deliver to Buyer copies of all personnel records of the Transferred Employees. Seller shall coordinate with Buyer promptly after the Execution Date to provide Buyer reasonable access to employees of Seller and its Affiliates and shall provide to Buyer employee data and information in each case to complete the documentation necessary to enroll Transferred Employees in the employee benefit plans to be provided to Transferred Employees by Buyer and its Affiliates from and after the Effective Time.

6.5 Medicare and Medicaid Cost Reports. Seller shall timely file all Medicare and Medicaid cost reports for all cost reporting periods prior to the Effective Time for which the deadline for filing will arise after the Closing Date in accordance with all applicable Legal Requirements. Seller shall be liable for any Medicare or Medicaid overpayments or any other financial obligations arising from any adjustments or reductions in Medicare or Medicaid reimbursement for the period of time prior to the Effective Time or for any other obligations imposed by either the Medicare or Medicaid program for the period of time prior to the Effective Time.

6.6 Change of Name. On or before the Closing Date, Seller shall (a) amend its charter and take all other actions necessary to change its name to one sufficiently dissimilar to Seller's present name, in Buyer's judgment, to avoid confusion, and (b) take all actions requested by Buyer to enable Buyer to use any names acquired by Buyer at the Closing. From and after the Closing Date, Seller shall make no further use of (i) the name "UNM Sandoval Regional Medical Center" or any derivative thereof, or (ii) any other

name that, in Buyer's reasonable judgment, is sufficiently similar to "UNM Sandoval Regional Medical Center" so as to potentially cause confusion.

ARTICLE 7 TERMINATION

7.1 **Termination.** This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of the Buyer and the Seller;
- (b) by the Seller, if there has been a material breach by the Buyer of any covenant, representation or other agreement or term contained herein which has prevented the satisfaction of any condition to the obligations of the Seller at the Closing and such breach has not been waived by the Seller or cured by the Buyer within ten business days after the Buyer's receipt of written notice thereof from the Seller;
- (c) by the Buyer, if there has been a material breach by the Seller of any covenant, representation or other agreement or term contained herein which has prevented the satisfaction of any condition to the obligations of the Buyer at the Closing and such breach has not been waived by the Buyer or cured by the Seller within ten business days after the receipt of written notice thereof from the Buyer;
- (d) by the Seller, if the transactions contemplated hereby have not been consummated on or before []; provided that the Seller shall not be entitled to terminate this Agreement pursuant to this Section 7.1(d) if the Seller's willful breach of this Agreement has prevented the consummation of the transactions contemplated hereby;
- (e) by the Buyer, if the transactions contemplated hereby have not been consummated on or before []; provided that the Buyer shall not be entitled to terminate this Agreement pursuant to this Section 7.1(e) if the Buyer's willful breach of this Agreement has prevented the consummation of the transactions contemplated hereby; or
- (f) by the Buyer upon (i) the failure of the representations and warranties of Seller described in Sections 2.1(b), 2.3 or 2.10 to be true and correct in all material respects as of the Closing Date, or (ii) a Governmental Authority orders in writing that the transactions contemplated by this Agreement not be completed or notifies Buyer or Seller in writing that it is investigating such transaction for compliance with Legal Requirements.

The party desiring to terminate this Agreement pursuant to clauses (b), (c), (d), (e) or (f) of this Section 7.1 shall give written notice of such termination to the other party hereto.

7.2 **Effect of Termination.** In the event this Agreement is terminated by either the Buyer or the Seller as provided in Section 7.1, the provisions of this Agreement shall immediately become void and of no further force and effect (other than Section 6.2(a), this ARTICLE 7 and ARTICLE 8, each of which shall survive the termination of this Agreement), and there shall be no liability on the part of the Buyer or the Seller to any other party hereto except that any party whose breach or violation of the terms of this Agreement resulted in the termination of this Agreement shall be liable for damages incurred by the other party hereto.

ARTICLE 8 MISCELLANEOUS

9.1 Amendments. This Agreement may not be amended, modified or supplemented, and no provision hereof shall be waived, without the signed written consent of all the Parties hereto and clearly expressing such intent.

9.2 Notices. All notices, payments, or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given only if sent by hand delivery or by recognized overnight courier, all charges prepaid, addressed as follows (or to such other addresses as subsequently designated by a Party from time to time pursuant to this Section 9.4):

If to Seller to: UNM Sandoval Regional Medical Center, Inc.
3001 Broadmoor Blvd. NE
Rio Rancho, NM 87144
Attention: _____

If to Buyer, to: UNM Hospital
2211 Lomas Boulevard NE
Albuquerque, NM 87198
Attention: _____

9.3 Counterparts. This Agreement may be executed in any number of counterparts (including by means of telecopied signature pages or signature pages sent electronically in a .pdf format), each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

9.4 Governing Law. This Agreement shall be construed in accordance with the laws of the State of New Mexico, without regard to conflicts of laws principles.

9.5 Assignment. This Agreement shall not be assigned or delegated by any Party without the signed prior written consent of the other Party. Any purported assignment, delegation, or designation in violation of this Section 9.5 is void.

9.6 Parties in Interest. All representations, covenants, and agreements contained in this Agreement by or on behalf of any of the Parties hereto shall bind and inure to the benefit of the respective successors and permitted assigns (if any) of the Parties hereto.

9.7 Consents. No consent or approval contemplated hereunder shall be unreasonably withheld, conditioned, delayed or denied.

9.8 Third Parties. Except as specifically contained herein, this Agreement does not and is not intended to create any rights in any Person which is not a Party to this Agreement.

9.9 Entire Agreement. This Agreement, including the Schedules and Exhibits hereto and agreements referenced herein, constitutes the sole and entire agreement and understandings of the Parties with respect to the subject matter hereof, and supersedes and terminates any and all prior agreements, discussions, negotiations or communications. All Schedules and Exhibits hereto are incorporated herein by reference.

9.10 No Payments for Referrals. Seller and Buyer acknowledge and agree that the Purchase Price has been determined to be consistent with the fair market value of the Acquired Assets and that no portion of the Purchase Price or any other benefit granted to any Party under this Agreement is conditioned on any

requirement that Seller make referrals to, be in a position to make or influence referrals to, or otherwise generate business for, Buyer.

9.11 Dispute Resolution. In the event of any dispute or disagreement between the Parties as to the interpretation of any provision of this Agreement or the performance of any obligations hereunder the matter, upon the written request of any Party, shall be referred to the Buyer's Executive Vice President for Health Sciences and CEO, UNM Health System for resolution binding on the Parties.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement effective as of the _____ day of_.

SELLER:

UNM SANDOVAL REGIONAL MEDICAL CENTER,
INC.

By: _____
Jamie Silva-Steele, RN, its President and
Chief Executive Officer

BUYER:

REGENTS OF THE UNIVERSITY OF NEW
MEXICO, FOR THE UNM HOSPITALS

By: _____
Bruce Cherrin, Chief Procurement Officer

By: _____
Teresa Costantinidis, Executive Vice President
for Finance and Administration

Approved:

By: _____
Douglas M. Ziedonis, M.D., MPH, Executive
Vice President for Health Sciences and CEO,
UNM Health System

By: _____
Kathleen Becker, J.D., MPH, CEO, UNM
Hospitals

EXHIBIT A

For purposes of this Agreement, the following terms and variations thereof, to the extent not otherwise defined in the body of this Agreement shall have the meanings specified or referred to in this Exhibit A:

“**Affiliate**” or “**Affiliated Persons**” means, with respect to any Person, any Person directly or indirectly Controlling, Controlled by or under common Control with such Person.

“**Business**” means the full range of healthcare services of the SRMC Hospital as an acute care hospital, including its: inpatient and outpatient services, emergency care services, heart and vascular center and cardiac rehabilitation services, surgical clinic services, cardiac catheterization laboratory, diagnostic imaging services, ambulatory care services and ambulatory diagnostic center services.

“**COBRA**” means Section 4980B of the Code and Sections 601 through 608, inclusive, of ERISA.

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

“**Contract**” means any contract or agreement (whether written or oral) (a) under which Seller has or may acquire any rights or benefits used primarily in the Business, (b) under which Seller has or may become subject to any obligation or liability in the Business, or (c) by which Seller or any of the assets owned or used by Seller is or may become bound (including the Real Property Leases) in the Business.

“**Employee Benefit Plan**” means any employee benefit plan, program, arrangement, fund, policy, practice, or Contract with respect to which, through which, or under which the Seller or any Seller ERISA Affiliate (as hereinafter defined) has any liability to provide benefits or compensation to or on behalf of employees, former employees, or independent contractors of the Seller with respect to the Business, whether formal or informal, written or not written, including (a) any bonus, incentive compensation, profit sharing, stock option, deferred compensation, commission, severance pay, golden parachute, or other compensation plan or rabbi trust; (b) any “**employee benefit plan**” (as defined in Section 3(3) of ERISA); and (c) any stock purchase, vacation, scholarship, day care, prepaid legal services, dependent care, or other fringe benefit plans, programs, arrangements, Contracts, or practices.

“**Encumbrance**” means any charge, claim, equitable interest, lien, encumbrance, option, pledge, security interest, mortgage, encroachment, obligation to offer or transfer, right of first refusal or first option on transfer, or restriction of any kind, other than (i) Permitted Real Property Encumbrances and (ii) as set forth on Schedule 2.3(a).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto, and regulations and rules issued pursuant to that Act or any successor thereto.

“**Exceptions**” means bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors’ rights generally, limitations (including court discretion) upon the availability of equitable remedies (including injunctive relief and specific performance) and usury laws.

“**GAAP**” means United States generally accepted accounting principles, consistently applied.

“**Government Reimbursement Programs**” means Medicare, Medicaid, the TRICARE program, and all other similar federal, state or local reimbursement or governmental programs for which the Business is eligible.

“Governmental Authority” means any federal, state, local or municipal court, legislature, quasi-governmental, executive or regulatory authority, agency, licensing or accrediting body or commission, or other governmental entity, authority or instrumentality having jurisdiction or authority over the Business or the conduct of the Business.

“Hazardous Materials” means any substance by character or concentration defined in or regulated under any Environmental Law to be a pollutant, hazardous substance, radioactive substance, toxic substance, hazardous waste, medical waste, radioactive waste, special waste, petroleum or petroleum-derived substance or waste, asbestos, polychlorinated biphenyls, or any hazardous or toxic constituent thereof and includes, but is not limited to, any substance defined in or regulated under any Environmental Law.

“HUD Mortgage Loan” means all of the documents pertaining to Seller’s HUD insured mortgage loan with KeyBank National Association.

“Legal Requirements” means any federal, state, local or municipal laws, ordinances, codes, regulations, rules, orders, judgments, policies and guidelines or other legal requirements of any Governmental Authority of either the United States or the State of New Mexico as in effect and interpreted on the date hereof, and not as same or its interpretation may be subsequently changed or amended.

“Liabilities” mean all indebtedness, claims, liabilities, obligations, responsibilities, losses, damages, judgments, punitive damages, economic damages, treble damages, costs and expenses (including, without limitation, reasonable attorney, expert, engineering and consulting fees and costs and any fees and costs associated with any investigation, feasibility, or remedial action studies), fines, penalties and monetary sanctions, and interest, whether accrued, absolute or contingent, and whether or not of a kind required by generally accepted accounting principles to be set forth on a financial statement or in notes thereto.

“Order” means any order, injunction, judgment, determination, decree, award, ordinance, ruling or assessment of any Governmental Authority.

“Parties” means Seller and Buyer.

“Person” means any individual, partnership, limited partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity, or any Governmental Authority.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private).

“Seller ERISA Affiliate” means each trade or business (whether or not incorporated) which together with any Seller is treated as a single employer under Section 414(b) or (c) of the Code.

“SRMC Hospital” means that 60-bed acute care hospital owned by the Seller, and which is the Seller’s principal place of Business, located at 3001 Broadmoor Blvd., N.W., Rio Rancho, Sandoval County, New Mexico.