

## MERGER AGREEMENT

**THIS MERGER AGREEMENT (“Agreement”)** is effective the 31st day of October 2019 (the “**Effective Date**”), by and among **My Choice Family Care, Inc.**, a Wisconsin nonstock, not-for-profit corporation organized under Chapter 181 of the Wisconsin Statutes (“**My Choice**”), **Trilogy Health Insurance, Inc.**, a Wisconsin stock insurance corporation organized under Chapter 611 of the Wisconsin Statutes (“**Trilogy**”), **Care Wisconsin First, Inc.**, a Wisconsin nonstock, not-for-profit corporation organized under Chapter 181 of the Wisconsin Statutes (“**Care Wisconsin**”), and **Care Wisconsin Health Plan, Inc.**, a Wisconsin nonstock, not-for-profit insurance service corporation organized under Chapter 613 of the Wisconsin Statutes (“**CWHP**”). Each of My Choice, Trilogy, Care Wisconsin, and CWHP may be referred to individually as “**Party**” and collectively, the “**Parties.**”

### RECITALS

- A. My Choice and Care Wisconsin each operate as care management organizations, providing managed long-term care supports and services, and related services for the Family Care program under contract with the Wisconsin Department of Health Services (“**DHS**”).
- B. My Choice is the sole shareholder of Trilogy, which is licensed as a health maintenance organization and contracted by DHS to deliver the BadgerCare Plus benefit package relating to the management of long-term care supports and services, acute and primary health services and behavioral health services.
- C. Care Wisconsin is the sole member of CWHP, which is licensed as a health maintenance organization and contracted by DHS to deliver an integrated Family Care benefit package relating to management of long-term care supports and services, acute and primary health services and behavioral health services through its Family Care Partnership program, SSI, and Medicare Dual Eligible Advantage Program.
- D. Care Wisconsin and My Choice believe that a formal merger between Care Wisconsin and My Choice (the “**My Choice Merger**”) will better position Care Wisconsin and My Choice to support their collective members.
- E. Trilogy and CWHP believe that a formal merger between Trilogy and CWHP (the “**CWHP Merger,**” collectively with My Choice Merger, the “**Mergers**”) will create a stronger health plan and better position Trilogy and CWHP to support the merged Care Wisconsin and My Choice organization’s members.
- F. The Parties additionally believe that the Mergers will enable the Parties to cooperate to reduce duplication of resources, deliver a continuum of services and efficiently satisfy their unified mission and vision, and broaden the scope of services provided to managed long-term care supports and services recipients.

- G. The Parties desire to enter into the Mergers, subject to the terms and conditions of this Agreement and execution of this Agreement is a condition to the Parties' approval of the Articles of Merger and Plan of Merger.

**IN CONSIDERATION** of the above Recitals, which are incorporated into this Agreement by reference, of the mutual promises set forth herein, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

## **1. STRUCTURE OF MERGERS.**

- 1.1** Subject to the terms and conditions set forth herein and subject to approval from the Office of the Insurance Commissioner (the "**OCI**"), the Centers for Medicare and Medicaid Services ("**CMS**") and DHS and any other applicable governmental approvals, the Parties agree that the Mergers shall be executed as follows:

- a. On December 31, 2019, at 11:58 p.m. (the "**My Choice Merger Time**"), Care Wisconsin shall be merged into My Choice, as a single Wisconsin nonstock, not-for-profit corporation organized under Chapter 181 of the Wisconsin Statutes. The separate corporate existence of Care Wisconsin shall cease to exist and My Choice shall continue as the surviving corporation. My Choice as the surviving corporation after the My Choice Merger shall be referred to herein as "**My Choice MergeCo.**" The My Choice Merger will be accomplished by filing Articles of Merger and Plan of Merger in the form attached as **Exhibit 1**.
  - i. Prior to the My Choice Merger Time, the board of directors of My Choice shall approve My Choice MergeCo's Amended and Restated Articles of Incorporation (the "**My Choice Articles**") and Second Amended and Restated Bylaws (the "**My Choice Bylaws**") to be effective one minute after the My Choice Merger Time. The My Choice Articles shall be in the form attached as **Exhibit 2**. The My Choice Bylaws shall be in the form attached as **Exhibit 3**.
- b. On December 31, 2019, at 11:59 p.m. (the "**CWHP Merger Time**," collectively with the My Choice Merger Time, the "**Merger Times**"), Trilogy shall be merged into CWHP, as a single Wisconsin nonstock, not-for-profit service insurance corporation organized under Chapter 613 of the Wisconsin Statutes. The separate corporate existence of Trilogy shall cease to exist and CWHP shall continue as the surviving corporation. CWHP as the surviving corporation after the CWHP Merger shall be referred to herein as the "**CWHP MergeCo.**" The sole member of CWHP MergeCo shall be My Choice MergeCo. The CWHP Merger will be accomplished by filing Articles of Merger and Plan of Merger in the form attached as **Exhibit 4**.
  - i. Simultaneously to the CWHP Merger Time, each share of Trilogy stock held by My Choice shall be cancelled and extinguished without any conversion thereof.

- ii. Prior to the CWHP Merger Time, the board of directors of CWHP shall approve CWHP MergeCo's Second Amended and Restated Articles of Incorporation (the "**CWHP Articles**") and Third Amended and Restated Bylaws (the "**CWHP Bylaws**") to be effective simultaneously with the CWHP Merger Time. The CWHP Articles shall be in the form attached as **Exhibit 5**. The CWHP Bylaws shall be in the form attached as **Exhibit 6**.

**1.2 Effect of the Mergers.** On the Merger Times, the effect of the Mergers shall be as provided in this Agreement, the Articles of Merger and the Plan of Merger, the applicable provisions of Wisconsin law and subject to approval from the OCI, CMS and DHS. Without limiting the generality of the foregoing and subject thereto, on the Merger Times:

- a. My Choice MergeCo shall succeed to all the assets, rights, privileges, and powers and be subject to all of the liabilities, restrictions, disabilities and duties of Care Wisconsin; and
- b. CWHP MergeCo shall succeed to all the assets, rights, privileges, and powers and be subject to all of the liabilities, restrictions, disabilities and duties of Trilogy.

**1.3 Governance Post-Mergers.**

- a. Immediately following the My Choice Merger Time, the composition of the board of directors and officers of My Choice MergeCo shall be as set forth on **Exhibit 7**.
- b. Immediately following the CWHP Merger Time, the composition of the board of directors and officers of CWHP MergeCo shall be as set forth on **Exhibit 8**.

**1.4 Personnel.** Following the My Choice Merger Time, Care Wisconsin's employees will become employees of My Choice MergeCo. Trilogy and CWHP do not have employees. My Choice MergeCo will provide individuals, who begin employment with My Choice MergeCo as result of the Merger, a start date as of the date they commenced employment with Care Wisconsin and such individuals will accrue benefits based on attributed seniority the same as like employees of My Choice. My Choice MergeCo agrees to the terms set forth on **Exhibit 9** in regards to employment for those individuals on **Exhibit 9**.

**1.5 Locations.** The following shall be the primary headquarters for My Choice MergeCo and CWHP MergeCo:

- a. My Choice MergeCo Headquarters: 10201 W. Innovation Drive, Suite 100, Wauwatosa, WI 53226.
- b. CWHP MergeCo Headquarters: 10201 W. Innovation Drive, Suite 100, Wauwatosa, WI 53226.

## 2. COVENANTS OF THE PARTIES.

### 2.1 Name of the Merged Corporations.

- a. The Parties agree that as of the date of the Mergers My Choice MergeCo's interim name shall be "[INSERT]". "[DBA]" shall be used immediately following the Mergers on all operational, marketing, advertising, and promotional materials and activities.
- b. The Parties agree that as of the date of the Mergers CWHP MergeCo's name shall be "[INSERT]". "[DBA]" shall be used immediately following the Mergers on all operational, marketing, advertising, and promotional materials and activities.
- c. My Choice MergoCo plans to conduct a market study following the Mergers to determine permanent names for My Choice MergeCo and CWHP MergeCo.

**2.2 Donor Directed Funds.** The Parties agree that: (a) funds held by any Party on the Merger Times restricted for a specific purpose or use by the donor will be held in My Choice MergeCo's or CWHP MergeCo's (as applicable) internal restricted general ledger accounts for the specified purpose or use; (b) funds received after the Merger Times restricted for a specific purpose or use by the donor will be held in My Choice MergeCo's or CWHP MergeCo's (as applicable) internal restricted general ledger accounts for the specified purpose or use; and (c) funds received after the Merger Times not restricted for a specific purpose or use by the donor will be held within My Choice MergeCo's or CWHP MergeCo's (as applicable) investment portfolio used to support the unified mission.

**2.3 Commitments Regarding Future Operations.** The Parties agree that My Choice MergeCo and CWHP MergeCo shall act in good faith and take all reasonable steps as reasonable business judgment dictates to:

- a. maintain its status as exempt from federal income taxes;
- b. be and remain in compliance with all laws;
- c. remain eligible to receive funding from government and other programs; and
- d. continue to support the purposes of this Agreement.

## 3. COVENANTS PENDING MERGERS.

**3.1 Affirmative and Negative Covenants.** After the Effective Date of this Agreement and prior to the Merger Times, each Party will promptly notify the other Party of any action or event which has the effect of making false, incorrect, incomplete or misleading in any material respect any of the representations or warranties made by each Party to this Agreement, or which has the effect of rendering any covenants or agreements to be performed by the Party incapable of performance.

**3.2 Due Diligence Review and Cooperation.** After the Effective Date of this Agreement and prior to the Merger Times, each Party will continue to make available to the other and their designated representatives access to all relevant due diligence information. After the Merger Times, the Parties agree to cooperate in completing the tasks associated with the Mergers.

**3.3 Conduct of Business Pending Mergers.** After the Effective Date of this Agreement and prior to the Merger Times, the Parties shall operate in the ordinary course and consistent with past practice, without material changes in those businesses or their operations. Without limiting the foregoing, no Party shall dispose of or commit to dispose of any material assets other than in the ordinary course of business consistent with past practice, make or commit to make any material capital expenditures, adjust compensation or benefits for employees or enter into (or amend in any material respect) any material contracts, agreements, or arrangements with any third parties, or, except as set forth in this Agreement, transfer any cash or other assets from one Party to any other person or entity. Notwithstanding the foregoing, CWHP is not prohibited from transferring cash or other assets to Care Wisconsin, as may be necessary to maintain Care Wisconsin's short-term financial viability and provided all required regulatory approvals are first obtained. Care Wisconsin and CWHP shall notify and consult with My Choice prior to making any such transfers. All Parties agree to notify the other Parties within three days if any key employee (defined as any executive, manager or director level person) resigns or is terminated.

**3.4 Best Efforts; Reasonable Assurances.** Subject to the terms and conditions provided in this Agreement, each of the Parties shall use their respective best efforts in good faith to take or cause to be taken as promptly as practicable all reasonable actions that are within its power to cause to be fulfilled the conditions precedent to its obligations or the obligations of the other Parties to consummate the transactions contemplated by this Agreement that are dependent upon its actions, including obtaining all necessary consents, authorizations, orders, approvals and waivers. Each Party hereto agrees to execute and deliver such additional documents and instruments, and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

**4. REPRESENTATIONS AND WARRANTIES.** When a representation is made to a Party's notice or knowledge, that means to its knowledge after inquiry of its senior management, any "Executive Team" individual listed on Exhibit 9, officers, directors, members (as applicable), or shareholders (as applicable). Such warranties and representations shall be corporate obligations of each Party and the officers or directors shall have no personal liability with respect to such warranties and representations, absent fraud or intentional misrepresentation. Exceptions to and/or detailed information regarding the representations and warranties are disclosed on Schedules to this Agreement. For purposes of this Section 4, "material" is defined as \$20,000 or more.

**4.1 Mutual Representations and Warranties by My Choice and Care Wisconsin.** My Choice represents and warrants to Care Wisconsin and Care Wisconsin represents and

warrants to My Choice as follows (in this Section 4.1, "each Party" refers to Care Wisconsin and My Choice):

- a. **Affiliated Entities.** My Choice is, and up to the My Choice Merger Time, affiliated with Trilogy as the sole shareholder, and through voting membership on their respective boards of directors. Care Wisconsin is, and up to the CWHP Merger Time, affiliated with CWHP, as the sole member, and through voting membership on their respective boards of directors. Other than as disclosed in this Section, each Party represents and warrants that no Party has any direct or indirect membership, shareholder, investment, partnership or joint venture interests in any entity other than passive investment holdings in publicly traded corporations.
- b. **Authorization.** Each Party as of the Effective Date of this Agreement is, and at the Merger Times will be, a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin with all requisite power, authority and approvals to own and operate its properties and to carry on its businesses as currently conducted. Each Party represents that it has all requisite authority, corporate and otherwise, to consummate the mergers and transactions contemplated by this Agreement and to operate its business as currently operated after the Merger Times and the contemplated transactions.
- c. **Tax-Exempt Status.** Each Party is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended, as an organization described in Section 501(c)(3), and to the knowledge of each Party, each have operated at all times in all material respects in accordance with its application for such tax-exempt status. Further, neither Party has notice or knowledge of any condition which may lead to the loss of such exempt status. To the knowledge of each Party, consummation of this transaction and the operation of its businesses after the Merger Times in the same fashion as it operated its businesses prior to the Merger Times (and as contemplated by this Agreement after the Merger Times) will not affect such exempt status.
- d. **Taxes.** To its knowledge, each Party has filed all returns and reports which are required to be filed and none are due or past due for filing with the Internal Revenue Service ("IRS") or the Wisconsin Department of Revenue. Each Party has paid any and all taxes, assessments, interest, penalties, deficiencies or fees required by the IRS or the Wisconsin Department of Revenue. No audit of any tax returns or reports of a Party is presently pending or, to the knowledge of a Party, threatened. To its knowledge, all federal, state and other income, profits, franchise, sales, use, occupation, property, excise, payroll, unemployment and other taxes due for periods prior to the Merger Times have been or will be, prior to the Merger Times, fully paid or appropriately reserved by each Party.

- e. **Breach or Violation of Governing Documents, Contracts, Orders or Laws.** Except as specifically disclosed in **Schedule 4.1e**, neither the execution and delivery of this Agreement by a Party, nor the consummation by a Party of the Mergers and other transactions contemplated by this Agreement will: (a) constitute a breach or violation of, (b) require the notice to or consent of any third party (governmental or otherwise) under, or (c) create any material debt obligation or liability affecting any of the terms or provisions of any of: (i) a Party's Articles of Incorporation or By-laws; (ii) any material contracts, agreements, leases, license agreements or other commitments to which a Party is a party or which affects a Party or any of its property; (iii) any material judgment, decree, order, regulation or rule of any court or governmental entity; or (iv) any statute, law, ordinance, regulation or rule.
- f. **Financial Statements.** Each Party has delivered to the other Party copies of the most recently available combined annual audited financial statements (i.e., balance sheet, income statement and cash flow statements); all of such statements have been prepared from books and records in accordance with Generally Accepted Accounting Principles consistently applied.
- g. **Compliance With Laws.** To the knowledge of each Party, all of the properties and operations of each Party are in compliance with all laws, regulations, ordinances, agreements and obligations, the noncompliance with which would have a material impact on the operations or financial condition of the Party.
- h. **Undisclosed Liabilities.** Except as disclosed in **Schedule 4.1h**, to the knowledge of each Party, there are no: (i) contingent liabilities not disclosed in its financial statements; (ii) undisclosed guarantees; (iii) encumbrances not reflected or disclosed in its financial statements; (iv) professional liability claims pending; or (v) adverse claims (pending or to its knowledge threatened), which may have a material adverse impact on a Party's operations, financial condition or prospects.
- i. **Litigation.** Except as disclosed in **Schedule 4.1i**, there is no litigation, claim, proceeding or governmental investigation pending or, to the knowledge of each Party, threatened against or relating to each Party or their properties which, if adversely determined, would materially affect the transactions contemplated by this Agreement or have a material adverse effect on the financial condition, business, property or prospects.
- j. **Material Contracts.** Except as disclosed in **Schedule 4.1j**, to the knowledge of each Party, each Party is in (i) compliance with all material contracts, and (ii) are operating in substantial compliance with all laws, regulations and licenses.
- k. **Environmental Conditions.** To the knowledge of each Party, there are no environmental problems (including, but not limited to, any hazardous materials, presence of asbestos, any underground storage tanks, or any petroleum products) affecting any real properties owned by a Party or their affiliates. To

the knowledge of each Party, there are no conditions existing on any property owned or leased by a Party, which would subject any holder of an interest in the property to damages, penalties, injunctive relief or clean-up costs under any Environmental Laws (defined below) or which require or are likely to require clean up, removal, remedial action or other response pursuant to the Environmental Laws by any holder of an interest of the property. "**Environmental Laws**" mean all federal, state and local laws, including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the environment or hazardous substances, including but not limited to, the removal, transport and disposal of asbestos-containing or medical waste.

- l. **Insurance.** Each Party maintains and has continuously maintained insurance including fire and general casualty insurance with extended coverage insuring its properties in the full replacement cost, general and professional liability insurance, directors and officers' liability insurance and all other insurance coverage at levels consistent with those it currently maintains for its businesses and without any gaps in coverage. The insurance policies currently maintained are described on **Schedule 4.11** and have been, or prior to the Merger Times will be, provided by each Party to the other.
- m. **Payment of Claims.** Each Party has paid 90% of all clean claims within 30 days.

**4.2 Mutual Representations and Warranties by CWHP and Trilogy.** CWHP represents and warrants to Trilogy and Trilogy represents and warrants to CWHP (except for **Section 4.2c** below) as follows (in this Section 4.2, "each Party" refers to CWHP and Trilogy):

- a. **Affiliated Entities.** My Choice is, and up to the My Choice Merger Time, affiliated with Trilogy as the sole shareholder, and through voting membership on their respective boards of directors. Care Wisconsin is, and up to the CWHP Merger Time, affiliated with CWHP, as the sole member, and through voting membership on their respective boards of directors. Other than as disclosed in this Section, each Party represents and warrants that no Party has any direct or indirect membership, shareholder, investment, partnership or joint venture interests in any entity other than passive investment holdings in publicly traded corporations.
- b. **Authorization.** Each Party as of the Effective Date of this Agreement is, and at the Merger Times will be, a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin with all requisite power, authority and approvals to own and operate its properties and to carry on its businesses as currently conducted. Each Party represent has all requisite authority, corporate and otherwise, to consummate the mergers and transactions contemplated by this Agreement and to operate its business as currently operated after the Merger Times and the contemplated transactions.



- c. **Tax-Exempt Status.** CWHP is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended, as an organization described in Section 501(c)(3), and to the knowledge of each CWHP, each have operated at all times in all material respects in accordance with its application for such tax-exempt status. Further, CWHP does not have notice or knowledge of any condition which may lead to the loss of such exempt status. To the knowledge of CWHP, consummation of this transaction and the operation of its businesses after the Merger Times in the same fashion as it operated its businesses prior to the Merger Times (and as contemplated by this Agreement after the Merger Times) will not affect such exempt status.
- d. **Taxes.** To its knowledge, each Party has filed all returns and reports which are required to be filed and none are due or past due for filing with the Internal Revenue Service ("IRS") or the Wisconsin Department of Revenue. Each Party has paid any and all taxes, assessments, interest, penalties, deficiencies or fees required by the IRS or the Wisconsin Department of Revenue. No audit of any tax returns or reports of a Party is presently pending or, to the knowledge of a Party, threatened. To its knowledge, all federal, state and other income, profits, franchise, sales, use, occupation, property, excise, payroll, unemployment and other taxes due for periods prior to the Merger Times have been or will be, prior to the Merger Times, fully paid or appropriately reserved by each Party.
- e. **Breach or Violation of Governing Documents, Contracts, Orders or Laws.** Except as specifically disclosed in **Schedule 4.2e**, neither the execution and delivery of this Agreement by a Party, nor the consummation by a Party of the Mergers and other transactions contemplated by this Agreement will: (a) constitute a breach or violation of, (b) require the notice to or consent of any third party (governmental or otherwise) under, or (c) create any material debt obligation or liability affecting any of the terms or provisions of any of: (i) a Party's Articles of Incorporation or By-laws; (ii) any material contracts, agreements, leases, license agreements or other commitments to which a Party is a party or which affects a Party or any of its property; (iii) any material judgment, decree, order, regulation or rule of any court or governmental entity; or (iv) any statute, law, ordinance, regulation or rule.
- f. **Financial Statements.** Each Party has delivered to the other Party copies of the most recently available combined annual audited financial statements (i.e., balance sheet, income statement and cash flow statements); all of such statements have been prepared from books and records in accordance with Generally Accepted Accounting Principles consistently applied.
- g. **Compliance With Laws.** To the knowledge of each Party, all of the properties and operations of each Party are in compliance with all laws, regulations, ordinances, agreements and obligations, the noncompliance with which would have a material impact on the operations or financial condition of the Party.

- h. **Undisclosed Liabilities.** Except as disclosed in **Schedule 4.2h**, to the knowledge of each Party, there are no: (i) contingent liabilities not disclosed in its financial statements; (ii) undisclosed guarantees; (iii) encumbrances not reflected or disclosed in its financial statements; (iv) professional liability claims pending; or (v) adverse claims (pending or to its knowledge threatened), which may have a material adverse impact on the Parties' operations, financial condition or prospects.
- i. **Litigation.** Except as disclosed in **Schedule 4.2i**, there is no litigation, claim, proceeding or governmental investigation pending or, to the knowledge of each Party, threatened against or relating to either Party or their properties which, if adversely determined, would materially affect the transactions contemplated by this Agreement or have a material adverse effect on the Parties' financial condition, business, property or prospects.
- j. **Material Contracts.** Except as disclosed in **Schedule 4.2j**, to the knowledge of each Party, each Party is in (i) compliance with all material contracts, and (ii) are operating in substantial compliance with all laws, regulations and licenses.
- k. **Environmental Conditions.** To the knowledge of each Party, there are no environmental problems (including, but not limited to, any hazardous materials, presence of asbestos, any underground storage tanks, or any petroleum products) affecting any real properties owned or leased by a Party or their affiliates. To the knowledge of each Party, there are no conditions existing on any property owned or leased by a Party, which would subject any holder of an interest in the property to damages, penalties, injunctive relief or clean-up costs under any Environmental Laws or which require or are likely to require clean up, removal, remedial action or other response pursuant to the Environmental Laws by any holder of an interest of the property.
- l. **Insurance.** Each Party maintains and has continuously maintained insurance including fire and general casualty insurance with extended coverage insuring its properties in the full replacement cost, general and professional liability insurance, directors and officers' liability insurance and all other insurance coverage at levels consistent with those it currently maintains for its businesses and without any gaps in coverage. The insurance policies currently maintained are described on **Schedule 4.2l** and have been, or prior to the Merger Times will be, provided by each Party to the other.

**4.3 Representations and Warranties by Care Wisconsin.** Care Wisconsin represents and warrants to My Choice as follows:

- a. **Employee Benefit Plans.** Care Wisconsin has provided or will provide a list of all employee benefit plans, programs, written agreements or handbooks (collectively referred to as "**Employee Benefit Plans**") under which or to which Care Wisconsin contributes to or is for the benefit of present and

former employees and other agents of Care Wisconsin or have so contributed at any time. Care Wisconsin shall deliver to My Choice such documentation and other materials with respect to such Employee Benefit Plans as My Choice may reasonably request, including, without limitation, copies of (a) all such Employee Benefit Plans, and all amendments, (b) to the extent applicable, all reports filed with respect to such Employee Benefit Plans with the United States Department of Labor, the IRS, the Pension Benefit Guaranty Corporation and any other federal or state regulatory agency for the preceding two years, (c) notices and other reporting and disclosure material furnished to participants in any of such Employee Benefit Plans, and (d) all currently effective IRS rulings or determination letters related to such Employee Benefit Plans. All such Employee Benefit Plans have been, and up to the Merger Times shall continue to be, in compliance in all material respects, both with respect to plan operation and documentation, with all federal or state laws regulating employment and employee benefits, and all regulations and rulings issued by government agencies responsible for the administration or enforcement of one or more of such laws. To the knowledge of Care Wisconsin, no such Employee Benefit Plan, nor any trust created thereunder, nor any trustee or administrator thereof, nor any other "disqualified person" or "party in interest," has engaged in a "prohibited transaction" within the meaning of Section 406 of Employee Retirement Income Security Act of 1974 or Section 4975 of the Internal Revenue Code ("ERISA"). Care Wisconsin has not, nor, to the knowledge of Care Wisconsin or any other fiduciary of an Employee Benefit Plan has breached any duty owed to the participants and beneficiaries of the Employee Benefit Plan. There are no actions, suits or claims pending or, to the knowledge of Care Wisconsin, threatened (other than normal claims for benefits) against any Employee Benefit Plan or the assets thereof. No such Employee Benefit Plan, nor any trust established thereunder, shall be amended or terminated by formal action after the date copies thereof are furnished to My Choice, and no such Employee Benefit Plan or trust shall be amended or terminated prior to the Merger Times, except as an amendment may be necessary to effect the transactions contemplated by this Agreement or as may be adopted as a condition to the issuance of a favorable determination letter by the IRS, or as otherwise may be required to comply with the requirements of ERISA.

- b. **Title to Properties.** Care Wisconsin has good and valid title to, or valid leasehold interests in or other valid rights to use, all of the assets and properties (including any of those shown on the financial statements) used in Care Wisconsin's business, free and clear of all encumbrances, except as set forth on **Schedule 4.3b**. Such assets are sufficient for the continued operation of Care Wisconsin's business in all material respects. To Care Wisconsin's knowledge, all machinery, vehicles, equipment and other tangible personal property owned or leased by Care Wisconsin or used in the Care Wisconsin's business are in reasonable condition and repair, normal wear and tear excepted, and all leases of real or personal property to which Care Wisconsin

is a party are fully effective and afford Care Wisconsin peaceful and undisturbed leasehold possession of the real or personal property that is the subject of the lease.

- c. **Employees on Exhibit 9.** None of the persons listed on Exhibit 9 is under any disciplinary action or performance improvement plan, nor have their areas of responsibility been subject to any corrective action requirements by any government authority. Further, none of the persons listed on Exhibit 9 are under any duty restrictions imposed by DHS.

**4.4 Representations and Warranties by CWHP.** CWHP represents and warrants to My Choice as follows:

- a. **Employee Benefit Plans.** CWHP has no employees and no Employee Benefit Plans.
- b. **Title to Properties.** CWHP has good and valid title to, or valid leasehold interests in or other valid rights to use, all of the assets and properties (including any of those shown on the financial statements) used in CWHP's business, free and clear of all encumbrances, except as set forth on **Schedule 4.4b**. Such assets are sufficient for the continued operation of CWHP's business in all material respects. To CWHP's knowledge, all machinery, vehicles, equipment and other tangible personal property owned or leased by CWHP or used in the CWHP's business are in reasonable condition and repair, normal wear and tear excepted, and all leases of real or personal property to which CWHP is a party are fully effective and afford CWHP peaceful and undisturbed leasehold possession of the real or personal property that is the subject of the lease.

5. **REGULATORY AND PRIVATE PARTY CONSENTS.** Prior to the Merger Times, the Parties shall work cooperatively to identify all needed consents and to obtain any and all consents of regulatory bodies and third parties necessary to consummate the Mergers resulting from this Agreement and necessary to ensure that: (a) My Choice MergeCo may operate and conduct the operations and own the assets following the My Choice Merger as My Choice and Care Wisconsin did separately prior to the My Choice Merger, and (b) CWHP MergeCo may operate and conduct the operations and own the assets following the CWHP Merger as Trilogy and CWHP did separately prior to the CWHP Merger. Such known consents may include, but are not limited to, approval by the OCI, CMS, DHS, and Department of Justice/Federal Trade Commission (Premerger Notification Office) of the transactions contemplated by this Agreement.

6. **CONDITIONS TO THE OBLIGATIONS OF EACH PARTY.** The obligations of each Party to consummate the Mergers are conditioned upon the following:

- a. All steps necessary to complete the Mergers shall have been taken by each Party or other arrangements made satisfactory to the other Parties in its reasonable exercise of discretion.

- b. Receipt by each Party of all deliverables under **Section 7** of this Agreement.
- c. All representations and warranties made in this Agreement by each Party shall be reaffirmed as of the Merger Times and shall be true and correct as of the Merger Times.
- d. No suit, action or other proceeding or investigation shall, to the knowledge of any Party, be threatened or pending by any governmental agency or entity or pending by any third party questioning the legality of this Agreement, the consummation of the Mergers in whole or in part or which, if adversely determined, would have a material adverse effect on the business or operations of the Party.
- e. All regulatory and third-party approvals and consents required for consummation of the Mergers shall have been obtained, including, but not limited to, those identified in **Section 5** of this Agreement.
- f. Performance of a due diligence review which confirms that there are no previously undisclosed liabilities or potential liabilities (either as to their existence or extent) that in the aggregate would render any representation or warranty contained in this Agreement false, incomplete, inaccurate or misleading or would cause a reasonably prudent organization to not proceed with the Mergers.

## **7. MERGER DATE AND DELIVERIES.**

**7.1 Time and Place.** The date and time of the Merger contemplated by this Agreement shall be no later the Merger Times. In the event appropriate approvals have not been obtained prior to the proposed Merger Times, the Mergers shall occur, in the same sequence and order as set forth in **Section 1.1**, at the earliest practical date after all approvals have been obtained.

**7.2 Deliveries by Care Wisconsin to My Choice.** On or before the My Choice Merger Time, Care Wisconsin shall deliver to My Choice each of the following:

- a. Evidence satisfactory to My Choice, in the reasonable exercise of its discretion, of Care Wisconsin's adoption of resolutions and other corporate actions necessary to effectuate this Agreement and approving the My Choice Merger.
- b. Any Schedules and Exhibits that are the responsibility of Care Wisconsin and not completed prior to the Effective Date of this Agreement. Any such Schedules and/or Exhibits completed after the Effective Date shall be subject to approval by My Choice and upon such approval shall be incorporated into and become a part of this Agreement as if they were attached hereto as of the Effective Date.
- c. A certificate from the Interim CEO of Care Wisconsin, in form and content reasonably acceptable to My Choice, that all warranties and representations made in this Agreement by Care Wisconsin are true and correct and that such

warranties shall remain true, correct and complete as of the My Choice Merger Time and that all conditions under this Agreement have been fulfilled. Such warranties and representations shall be a corporate obligation of Care Wisconsin and the officer signing such certificate shall have no personal liability with respect to such warranties and representations, absent fraud or intentional misrepresentation.

- d. All regulatory and third-party consents that are in Care Wisconsin's control and are necessary for the Mergers.
- e. Executed originals of all agreements and documents required by this Agreement.
- f. All of Care Wisconsin's company record books, minute books, and tax records, whether electronic or hardcopy form.

**7.3 Deliveries by My Choice to Care Wisconsin.** On or before the My Choice Merger Time, My Choice shall deliver to Care Wisconsin each of the following:

- a. Evidence satisfactory to Care Wisconsin, in the reasonable exercise of its discretion, of My Choice's adoption of resolutions and other corporate actions necessary to effectuate this Agreement and approving the My Choice Merger.
- b. Any Schedules and Exhibits that are the responsibility of My Choice and not completed prior to the Effective Date of this Agreement. Any such Schedules and/or Exhibits completed after the Effective Date shall be subject to approval by Care Wisconsin and upon such approval shall be incorporated into and become a part of this Agreement as if they were attached hereto as of the Effective Date.
- c. A certificate of the CEO of My Choice, in form and content reasonably acceptable to Care Wisconsin, that all warranties and representations made in this Agreement by My Choice are true and correct and that such warranties shall remain true, correct and complete as of the My Choice Merger Time and that all conditions under this Agreement have been fulfilled. Such warranties and representations shall be corporate obligations of My Choice and the officer signing such certificate shall have no personal liability with respect to such warranties and representations, absent fraud or intentional misrepresentation.
- d. All third-party consents that are in My Choice's control and are necessary for the Mergers.
- e. Executed originals of all agreements and documents required by this Agreement.

**7.4 Deliveries by CWHP to Trilogy.** On or before the CWHP Merger Time, CWHP shall deliver to Trilogy each of the following:

- a. Evidence satisfactory to Trilogy, in the reasonable exercise of its discretion, of CWHP's adoption of resolutions and other corporate actions necessary to effectuate this Agreement and approving the CWHP Merger.
- b. Any Schedules and Exhibits that are the responsibility of CWHP and not completed prior to the Effective Date of this Agreement. Any such Schedules and/or Exhibits completed after the Effective Date shall be subject to approval by Trilogy and upon such approval shall be incorporated into and become a part of this Agreement as if they were attached hereto as of the Effective Date.
- c. A certificate from the Interim CEO of CWHP, in form and content reasonably acceptable to Trilogy, that all warranties and representations made in this Agreement by CWHP are true and correct and that such warranties shall remain true, correct and complete as of the CWHP Merger Time and that all conditions under this Agreement have been fulfilled. Such warranties and representations shall be a corporate obligation of CWHP and the officer signing such certificate shall have no personal liability with respect to such warranties and representations, absent fraud or intentional misrepresentation.
- d. All regulatory and third-party consents that are in CWHP's control and are necessary for the CWHP Merger.
- e. Executed originals of all agreements and documents required by this Agreement.
- f. All of CWHP's company record books, minute books, and tax records, whether electronic or hardcopy form.

**7.5 Deliveries by Trilogy to CWHP** On or before the CWHP Merger Time, CWHP shall deliver to Trilogy each of the following:

- a. Evidence satisfactory to CWHP, in the reasonable exercise of its discretion, of Trilogy's adoption of resolutions and other corporate actions necessary to effectuate this Agreement and approving the CWHP Merger.
- b. Any Schedules and Exhibits that are the responsibility of Trilogy and not completed prior to the Effective Date of this Agreement. Any such Schedules and/or Exhibits completed after the Effective Date shall be subject to approval by CWHP and upon such approval shall be incorporated into and become a part of this Agreement as if they were attached hereto as of the Effective Date.
- c. A certificate from the CEO of Trilogy, in form and content reasonably acceptable to CWHP, that all warranties and representations made in this Agreement by Trilogy are true and correct and that such warranties shall remain true, correct and complete as of the CWHP Merger Time and that all

conditions under this Agreement have been fulfilled. Such warranties and representations shall be a corporate obligation of Trilogy and the officer signing such certificate shall have no personal liability with respect to such warranties and representations, absent fraud or intentional misrepresentation.

- d. All regulatory and third-party consents that are in Trilogy's control and are necessary for the CWHP Merger.
- e. Executed originals of all agreements and documents required by this Agreement.

## 8. TERMINATION.

**8.1 Termination Prior to Merger Times.** This Agreement may be terminated at any time prior to the Merger Times as follows:

- a. By Mutual Agreement of Parents. At any time by mutual agreement of My Choice and Care Wisconsin.
- b. Upon Default. In the event of a material breach of the Agreement, the non-breaching Party or Parties shall provide written notice of the breach to the breaching party and may terminate this Agreement at any time after providing the breaching Party ten (10) business days to cure such breach.
- c. Immediate Termination. This Agreement shall automatically terminate, without further notice if any Party:
  - i. has its contract to deliver Family Care services terminated or non-renewed by DHS;
  - ii. has its permit issued under Wis. Stat. Chap. 648 terminated or non-renewed by the OCI;
  - iii. has its health maintenance organization license terminated or non-renewed by the OCI;
  - iv. does not receive approval from CMS, DHS and/or OCI to merge its assets and liabilities, have D-SNP and MCO contracts and /or OCI permit/license assumed pursuant to the Mergers set forth in this Agreement;
  - v. becomes a party to any receivership, bankruptcy or similar proceedings, which is not dismissed within sixty (60) days in the event of any involuntary proceeding; or
  - vi. becomes insolvent or is not paying 90% of clean claims within 30 days.

**8.2 Elective Termination.** This Agreement shall terminate at My Choice and/or Care Wisconsin's option if the Mergers do not occur by March 2, 2020.



## 9. MISCELLANEOUS.

- 9.1 Confidentiality; Publicity.** This Agreement and its Exhibits and Schedules are deemed to be confidential information and shall be subject to the terms and conditions of that certain Confidentiality and Non-Disclosure Agreement, dated August 26, 2019, by the Parties hereto, which is incorporated by reference into this Agreement. Prior to the Merger Times, no Party hereto shall unilaterally make any public announcement or issue any press release or disclose to any other person any information or discussions among the Parties regarding the proposed Mergers without the prior consent of all of the other Parties hereto, unless otherwise required by law. The Parties shall collaborate and coordinate the content of any and all announcements and/or disclosures and provide a copy of such announcements or disclosures to the OCI and DHS at least twenty-four (24) hours prior to the release.
- 9.2 Entire Agreement.** Except as otherwise expressly set forth in this Agreement, this Agreement and the Exhibits and Schedules attached hereto or referred to herein (including exhibits and schedules to the Exhibits and Schedules) constitute the entire agreement of the Parties concerning the Mergers. No oral or other understandings not included in this Agreement shall have any force or effect.
- 9.3 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 9.4 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 9.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule.
- 9.6 Headings.** The headings of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be used to interpret the language of the paragraph or subparagraph.

**9.7 Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or deposited in the United States Mail, mailed first class, certified and return receipt requested, or when receipt is acknowledged, if sent by electronic transmission device, addressed as follows:

To My Choice & Trilogy: My Choice Family Care, Inc.  
10201 W. Innovation Drive, Suite 100  
Wauwatosa, WI 53226  
ATTN: Maria Ledger

With a copy to: Atty. Kevin Collins:  
[kevin.collins@mychoicefamilycare.com](mailto:kevin.collins@mychoicefamilycare.com) &  
Atty. Lisa Gingerich:  
[lngingerich@michaelbest.com](mailto:lngingerich@michaelbest.com)

To Care Wisconsin & CWHP: Care Wisconsin First, Inc.  
1617 Sherman Avenue  
Madison, WI 53704  
ATTN: Amy Ackermann

With a copy to: Atty. Diane Welsh:  
[dwelsh@pinesbach.com](mailto:dwelsh@pinesbach.com) &  
Atty. Joshua Kindkeppel  
[jkindkeppel@pinesbach.com](mailto:jkindkeppel@pinesbach.com)

**9.8 Expenses.** Each Party shall bear all of its respective expenses with respect to the negotiation and execution of this Agreement and the Merger. This Section shall remain in effect indefinitely and shall survive any termination of this Agreement.


**9.9 Binding Effect and Beneficiaries.** This Agreement shall be binding upon and is for the benefit of the Parties and their respective successors and assigns.

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

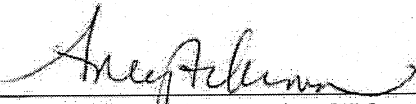
[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

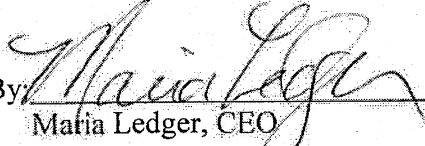
**My Choice Family Care, Inc.**

By:   
Maria Ledger, CEO

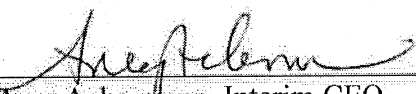
**Care Wisconsin First, Inc.**

By:   
Amy Ackermann, Interim CEO

**Trilogy Health Insurance, Inc.**

By:   
Maria Ledger, CEO

**Care Wisconsin Health Plan, Inc.**

By:   
Amy Ackermann, Interim CEO