

**MONITORING, COMPLIANCE AND ENFORCEMENT AGREEMENT  
AMONG THE DEPARTMENT OF ATTORNEY GENERAL, MARQUETTE GENERAL  
HOSPITAL, INC., SUPERIOR HEALTH FOUNDATION, DLP MARQUETTE  
HOLDING COMPANY, LLC AND LIFEPOINT HOSPITALS, INC.**

Effective upon execution of this Agreement, the Michigan Department of Attorney General ("Attorney General"), Marquette General Hospital, Inc. ("MGH"), Superior Health Foundation, formerly Marquette General Foundation ("Foundation"), DLP Marquette Holding Company, LLC ("DLP") and LifePoint Hospitals, Inc. (each individually a "Party" and collectively, the "Parties"), agree as follows:

**RECITALS**

WHEREAS, MGH and DLP are parties to an Asset Purchase Agreement, dated as of June 28, 2012 (the "Purchase Agreement"), pursuant to which MGH is selling substantially all its assets to DLP ( the "Transaction");

WHEREAS, Section 7.13 of the Purchase Agreement provides a closing condition that MGH and any of its affiliated businesses, as applicable, shall have received approvals from the Attorney General that are necessary for DLP to consummate the Transaction;

WHEREAS, the Attorney General in its review of the Transaction, requires enforcement protection regarding certain Post-Closing Covenants (as hereinafter defined) set forth in the Purchase Agreement;

WHEREAS, the Attorney General requires that the Foundation have the appropriate and necessary resources to monitor, evaluate, and, if necessary, enforce DLP's compliance with the Post-Closing Covenants;

NOW, THEREFORE, for and in consideration of the premises, agreements and covenants, hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of all of which are forever acknowledged and confessed, the parties hereby agree as follows:

**TERMS**

**1. Defined Terms**

All capitalized terms used in this contract and not otherwise defined herein shall have the meanings as defined in the Purchase Agreement.

**AG Enforceable Provisions:** Sections 9.9 (Indigent Care), 9.10 (Capital Commitment), 9.11 (Physician Recruitment Commitment), 9.15 (Continuation of Services), 9.16 (Restrictions on Seller Transfers ), 9.17 (Restrictions on Sale of the Hospital), 11.12 (No Third-Party Beneficiaries), 11.13 (Enforcement) and 11.17 (Entire Agreement/ Amendment) of the Purchase Agreement, as any of the aforesaid Sections may be modified by Section 6 (Attorney General as Third-Party Beneficiary) and Section 7

(Attorney General's Written Consent Required to Materially Amend Purchase Agreement) of this Agreement.

**Agreement:** This Monitoring, Compliance and Enforcement Agreement among the Department of Attorney General, Marquette General Hospital, Inc., Superior Health Foundation and DLP Marquette Holding Company, LLC.

**Complaint:** Any complaint brought by a third party not affiliated with the Foundation that alleges that DLP has failed to comply with the terms and conditions of any Post-Closing Covenant.

**DLP Affiliate:** Any corporation, limited liability company or other business entity that directly or indirectly owns, is owned by or is under common ownership with DLP.

**Foundation:** Superior Health Foundation, a Michigan nonprofit corporation, which will have primary responsibility for monitoring DLP's compliance with the Post-Closing Covenants. The Foundation is designated to hold the Excluded Assets and Excluded Liabilities and is responsible for preserving and protecting MGH charitable assets.

**Post-Closing Covenants:** Sections 9.9 (Indigent Care), 9.10 (Capital Commitment), 9.11 (Physician Recruitment Commitment), 9.15 (Continuation of Services), 9.16 (Restrictions on Seller Transfers) and 9.17 (Restrictions on Sale of the Hospital) of the Purchase Agreement.

**Purchase Agreement:** Asset Purchase Agreement, dated as of June 28, 2012, by and between MGH as Seller and DLP as Buyer.

## 2. Update to Ensure No Conflict of Interest

- A. Within five days prior to Closing, each of (i) the members of Foundation's Board of Trustees, and (ii) the Foundation's officers, will complete and execute standard Foundation conflict of interest statements covering all times up through the date of execution. Foundation shall provide statements to the Attorney General within three days prior to Closing.
- B. Within three days prior to Closing, senior management of DLP, MGH and Foundation must do the following:
  - i. Attest in writing that no member of MGH's or Foundation's Board of Trustees or officers will receive any increase in salary, incentive payment or bonus, or other form of compensation from DLP or any DLP Affiliate in return for negotiating, supporting, or entering into the Purchase Agreement or any related agreement, promise or offer; and
  - ii. Agree in writing that, except as provided below, any incentive compensation, increase in salary, bonus or other form of compensation DLP or any DLP Affiliate may award after Closing to members of MGH's or

Foundation's senior management, or that such persons may accept, will reward individuals solely on the basis of post-Closing performance.

Notwithstanding other provisions of this section, DLP shall be permitted to make incentive payments in accordance with MGH's 2011 incentive compensation plan and MGH (or DLP, as the case may be) shall be permitted to satisfy MGH's contractual obligations to senior management under employment contracts which are not being assumed by DLP. Within 90 days after Closing, each Party that employs any person post-Closing, (an "Employee") who served pre-Closing as a trustee or officer of MGH or of Foundation, shall be responsible for providing written disclosure to the Attorney General of all agreements between each such Employee and DLP or between such Employee and any DLP Affiliate regarding future employment or other compensation (each a "Future Compensation Agreement") that are not disclosed in the Purchase Agreement. If any Future Compensation Agreement has not been executed within 90 days after Closing, then the disclosure required by this section must be provided within 10 business days after the agreement is completed.

### **3. Foundation Monitoring Responsibilities**

- A. Foundation shall diligently monitor compliance by DLP with the Post-Closing Covenants.
- B. In order to carry out its obligation, Foundation will receive information prepared by DLP in the ordinary course of business as follows:
  - i. DLP will provide copies of reports to governmental agencies and other periodic reports to the Foundation, as specifically set forth on the list of reports attached as Exhibit 1 to this Agreement promptly after their submission to the applicable agency or other recipient entity, and, if any such report is publicly available on any website or database, DLP may satisfy its obligation with respect to that report by providing to the Foundation a URL or hot-link to such report at that website or database; and
  - ii. DLP shall promptly provide Foundation with such additional information that is relevant to a determination that DLP is fulfilling the Post-Closing Covenants and is prepared by DLP in the ordinary course of DLP's business that the Foundation reasonably requests; and
  - iii. If requested by DLP, Foundation shall keep confidential information that is proprietary or commercially sensitive to DLP or any of its affiliates, but only in accordance with the terms of a written confidentiality agreement between Foundation and DLP.
  - (iv) Foundation and the Attorney General agree that if either of them believe that DLP has violated in any material respect one of the AG Enforceable Provisions or any other material provision of this Agreement, they will

give DLP sixty (60) days' written notice of, and opportunity to cure, the alleged material violation within that sixty-day period, before commencing legal action against DLP to enforce this Agreement.

- C. Foundation shall establish public Complaint-intake procedures at no or minimal cost. Such procedures shall include a link on Foundation's website to a permanent email address maintained by the Foundation. Foundation shall review, follow-up, and, if appropriate, investigate every Complaint filed with Foundation.
- D. Foundation's Monitoring and Enforcement Committee will report quarterly to the Foundation Board regarding DLP's compliance with the Post-Closing Covenants. The Attorney General Designee (as defined below) shall be a member of the Monitoring and Enforcement Committee.
- E. Foundation's Monitoring and Enforcement Committee will produce written reports at least annually for use by the Foundation Board in evaluating DLP's compliance with the Post-Closing Covenants. Such reports shall include summaries of Complaints filed with Foundation and the status of such Complaints, including whether the Complaint was substantiated and/or resolved.
  - i. Subject to the terms and conditions of the confidentiality agreement described in paragraph B(iii) above, such written reports shall be made available to the public through the Foundation's website within 30 days after approval by the Foundation Board;
  - ii. The first written report shall be brought to the Foundation Board no later than 180 days after Closing, and then annually, with a total of at least 10 annual reports, except as otherwise provided herein. The reports shall be published to the public no later than the 15<sup>th</sup> day of the fourth month following the close of the year reported on.

#### **4. Foundation Corporate Structure**

- A. Foundation has made changes to the Articles of Incorporation and the Bylaws in accordance with its obligations under this contract and its new purposes, including but not limited to oversight, monitoring, and enforcement of the Post-Closing Covenants and such changes have been approved by the Attorney General prior to execution of this contract.
- B. Foundation has adopted, and shall maintain and enforce, a conflict of interest policy. For 10 years after Closing, no board member shall serve as a director, officer or key employee of a health insurance company, health maintenance organization, hospital, or health care corporation formed under 1980 PA 350; this restriction shall not apply to a physician who: (1) neither is employed by nor holds a managerial position with one of the previously mentioned entities (excluding hospital medical director positions), and (2) otherwise has no conflict of interest.

- C. For 10 years after Closing, the Attorney General must approve all changes in Foundation's Articles of Incorporation, Bylaws, or Conflict of Interest policy. Approval will be deemed to have been given if the Attorney General does not object to the proposed change within 45 days after receiving notice of the proposed change.
- D. The Foundation Board of Trustees will be composed at all times of at least 11 and not more than 15 Trustees. The terms of the initial board members will begin immediately following Closing and expire on January 1, 2016, except as appointed in (i) below.
- i. The Attorney General shall have the right for perpetuity to appoint one member of the Board of Trustees (the "Attorney General Designee"), who shall also serve as a member of the Monitoring and Enforcement Committee. The Attorney General Designee's term shall begin immediately following Closing and shall continue until such time as he or she is replaced by the sitting Attorney General. In the event of a vacancy in the Attorney General Designee position, the vacancy shall not be filled except by appointment of the sitting Attorney General;
  - ii. The Foundation Board shall appoint the remaining Trustees who are not the Attorney General Designee ("Other Trustees") from nominees selected by the committee responsible for governance matters. In choosing nominees, the committee responsible for governance matters shall focus on representatives of the business community, physicians, volunteers, and individuals with hospital administration, charity care advocacy, or other, public health experience and whose interests and abilities will enable them to contribute to the fulfillment of the purposes of the Foundation. Members of the Monitoring, Enforcement and Compliance Committee will have experience in law, accounting or health care. At least one of the members of the Board's committee responsible for governance matters will have hospital administration, charity care advocacy, or public health experience, including the needs in the underserved areas of the Upper Peninsula; and
  - iii. For terms beginning on or after January 1, 2016, the Board shall appoint approximately one-third of the Other Trustees for a one-year term, approximately one-third of the Other Trustees for a two-year term, and approximately one-third of the Other Trustees for a three-year term. Thereafter, Other Trustees shall be elected for a three-year term, so as to maintain a staggered term arrangement. Other Trustees shall hold office until the later of the expiration of their terms or until successors have been duly appointed by the Board. In selecting Other Trustees, the Board shall apply the criteria set forth in subsection (ii) above.
- E. The Foundation Board will monitor DLP's performance of the Post-Closing Covenants.

- F. Foundation is currently registered as a charitable trust under the Supervision of Trustees for Charitable Purposes Act and licensed to solicit contributions under the Charitable Organizations and Solicitations Act with the Attorney General's Charitable Trust Section. After the Closing, Foundation shall continuously comply with all charitable trust registration requirements. If Foundation intends to solicit contributions, it shall also timely renew and maintain its solicitation license.
- G. Foundation representation on other boards.
  - i. Any member of Foundation's Board of Trustees serving on the board of any other entity shall recuse himself or herself from any decision by the board of such other entity in the event of a conflict between the interest of Foundation and such other entity.
  - ii. A Foundation representative may, while serving on such board, receive reasonable reimbursement for expenses, including a reasonable per diem allowance, but shall not accept compensation for services, stock options, or other remuneration from any DLP Affiliate.
- H. Foundation shall establish a reserve of One Million Dollars (\$1,000,000.00) to be used to cover the costs and expenses of Foundation related to enforcement of DLP's obligations under this Agreement; provided, however, that the parties agree that Foundation may use the income generated by the reserve funds for operating and other expenses of Foundation.

##### **5. Attorney General as Third-Party Beneficiary**

Notwithstanding any provision to the contrary contained in the Purchase Agreement, the Parties agree:

- A. The Attorney General has standing as an intended third-party beneficiary solely with respect to the AG Enforceable Provisions, with express authority to independently enforce the AG Enforceable Provisions;
- B. Not to contest the Attorney General's authority or standing to initiate an appropriate action in any state court of competent jurisdiction to enforce any of the AG Enforceable Provisions;
- C. Any action brought by the Attorney General to enforce any of the AG Enforceable Provisions must allege in good faith either: (1) that the Foundation Board of Trustees, in determining not to pursue enforcement remedies for breach of any of the AG Enforceable Provisions, has violated its applicable fiduciary obligations; or (2) that DLP has violated in any material respect one of the AG Enforceable Provisions and the Foundation has failed to pursue curative action within a reasonable period of time after the violation was, or should have been, identified by the Foundation;

- D. If the Attorney General has commenced any action alleging that DLP has violated in any material respect one or more of the AG Enforceable Provisions (an “AG Enforcement Action”), then the Foundation shall not be permitted to commence a second or separate action predicated on the same or substantially similar facts or circumstances as those alleged in the AG Enforcement Action but may join in an AG Enforcement Action in its discretion;
- E. Procedural terms of the Purchase Agreement do not apply to the Attorney General’s exercise of his rights as third-party beneficiary with respect to the AG Enforceable Provisions. The procedure governing an action by the Attorney General as third-party beneficiary with respect to the AG Enforceable Provisions shall be governed by generally-applicable laws and court rules.

**6. Attorney General Written Consent Required to Materially Amend Purchase Agreement**

Notwithstanding any provision to the contrary contained in the Purchase Agreement, the Parties agree that in no event shall the terms of:

- A. the Purchase Agreement be amended in any material manner on or prior to the Closing without obtaining the prior written consent of the Attorney General, which shall not be unreasonably withheld; and
- B. any of the AG Enforceable Provisions be amended in any material manner after the Closing without obtaining the prior written consent of the Attorney General, which shall not be unreasonably withheld.

Paragraphs A and B above shall have no impact on the confidentiality of the Purchase Agreement or any of its Schedules or Exhibits. MGH and DLP shall provide the Attorney General with a copy of each amendment of the Purchase Agreement not described in paragraph A or B above promptly after the execution of such amendment. Any pre-Closing amendment requiring the prior written consent of the Attorney General will be provided to the Attorney General not less than one (1) business day prior to its execution by the parties thereto (or such shorter period as is acceptable to the Attorney General in his reasonable discretion), and a complete, current version of the Purchase Agreement shall be provided not less than one (1) business day prior to Closing.

Any post-Closing amendment of an AG-Enforceable Provision requiring the prior written consent of the Attorney General will be provided to the Attorney General not less than 14 days prior to its execution by the parties thereto (or such shorter period as is acceptable to the Attorney General in his reasonable discretion). Any Attorney General approval of any post-Closing amendment required by this Section 6 shall be deemed to have been given if the Attorney General does not object in writing to the proposed post-Closing amendment within 14 days after the Attorney General’s receipt of the proposed post-Closing amendment.

**7. Notice**

All written notices to the Attorney General required under this Agreement must be addressed to:

**Overnight:**

Attorney General  
525 W. Ottawa – 7th Floor  
Lansing, MI 48933

and

Consumer Protection Division  
Attn: Division Chief - Time Sensitive  
525 W. Ottawa, 1st Floor  
Lansing, MI 48933

OR

**US Mail:**

Attorney General  
P.O. Box 30212  
Lansing, MI 48909

and

Consumer Protection Division  
Attn: Division Chief - Time Sensitive  
P.O. Box 30213  
Lansing, MI 48909

All written notices to any other Party required under this Agreement must be addressed to:

MGH: Marquette General Hospital, Inc.  
420 West Magnetic Street  
Marquette, MI 49855  
Fax No.: 906-225-3084  
Attention: Jerry Worden

Foundation: Superior Health Foundation  
580 West College Avenue  
Marquette, MI 49855  
Fax No.: 906-225-6916  
Attention: Chairman

with a copy to: Dykema Gossett, PLLC  
2723 State Street, Suite 400  
Ann Arbor, Michigan 48104  
Fax No. 734-214-7696  
Attention: Kathrin E. Kudner, Esq.



DLP: DLP Marquette Holding Company, LLC  
c/o LifePoint Hospitals  
103 Powell Court  
Brentwood, TN 37027  
Fax No.: 615-372-8572  
Attention: General Counsel

with copies to:

Duke University Health System, Inc.  
3100 Tower Blvd., Suite 600, Box 80  
Durham, North Carolina 27707  
Fax No.: 919-493-9159  
Attention: Paul Lindia

Waller Lansden Dortch & Davis, LLP  
Nashville City Center  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Fax No. 615-244-6804  
Attention: W. Kenneth Marlow, Esq.

Duke University Health System, Inc.  
Office of Counsel  
310 Blackwell Street, 4th Floor  
Durham, North Carolina 27701  
Fax No.: 919-684-8725  
Attention: Christy M. Gudaitis, Esq.

Plunkett Cooney  
38505 Woodward Ave., Ste. 2000  
Bloomfield Hills, MI 48304  
Fax No. 248-901-4040  
Attention: Mark S. Kopson, Esq.

LifePoint Hospitals:

LifePoint Hospitals  
103 Powell Court  
Brentwood, TN 37027  
Fax No.: 615-372-8572  
Attention: General Counsel

with a copy to:

Waller Lansden Dortch & Davis, LLP  
Nashville City Center  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Fax No. 615-244-6804  
Attention: W. Kenneth Marlow, Esq.

or to such other address, and to the attention of such other person or officer as any party may designate by giving at least thirty (30) days notice to the other parties; provided, however, that delivery of a copy of a notice to the persons identified above to receive a copy shall not constitute satisfaction of the notice requirements of this Section 7.

#### **8. Remedies**

The Foundation and DLP recognize that monetary damages will be inadequate for breach of the obligations contained in this contract. Subject to the provisions of Section 5 of this Agreement, in addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court of competent jurisdiction may deem appropriate for breach of the obligations contained in this contract, without the requirement to post any bond in connection therewith.

#### **9. Severability**

If any provision of this Agreement is held or determined to be illegal, invalid, or unenforceable and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby; (a) such provisions will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision has never comprised part of this contract; (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the severance of the illegal, invalid, or unenforceable provision; and (d) in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

#### **10. Amendment**

This Agreement may be amended only by a writing executed by each of the Parties; provided, however, that any amendment proposed after the dissolution and winding up of MGH shall not require execution by or on behalf of MGH.

## **11. Waiver**

Any waiver by any Party of any breach by another Party shall not be deemed to be waiver against a different Party or waiver of any subsequent or continuing breach.

## **12. Execution**

This contract may be executed in any number of counterparts, all of which taken together constitute one contract, and any of the Parties may execute this contract by signing any one counterpart. The exchange of copies of this Agreement and of signature pages by facsimile transmission or Portable Document Format (PDF) shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile and PDF shall be deemed to be their original signatures for any purposes whatsoever.

## **13. Governing Law and Jurisdiction**

This Agreement shall be subject to, applied, and interpreted according to the laws of the State of Michigan. No action shall be commenced against the Department of Attorney General or the Attorney General, his designee, agents or employees, or against any other Party to this Agreement, in any courts other than a court of competent jurisdiction in the State of Michigan. In addition to each Party consenting to the jurisdiction of any court in the State of Michigan, each Party waives any objection to venue laid therein and any defense or inconvenient forum regarding the maintenance of any action or proceeding so brought.

## **14. Entire Agreement**

This Agreement, together with other written agreements relating to the Purchase Agreement to which the Attorney General is a party, represent the entire agreement among the Parties and supersede all proposals or other prior agreements, oral or written, and all other communications among the Parties relating to the matters described herein.

## **15. No Effect on Authority of Attorney General or Court Jurisdiction.**

The Attorney General's rights and privileges provided in this contract are in addition to the Attorney General's existing powers. Nothing in this contract shall be construed to impair or restrict the authority of the Attorney General or the jurisdiction of any court with respect to any matter.

## **16. Authority to Bind Principal**

Each individual who signs this contract covenants that he or she has power to bind the principal.

*Signatures appear on next page.*

In Witness Whereof, the parties hereto execute this Agreement as of the date first written above.

**Marquette General Hospital, Inc. (“MGH”)**

By: /s/ Jerry L. Worden  
Jerry L. Worden  
Its: Sr. Vice President and Chief Financial Officer  
Dated: 8/29/12

**Superior Health Foundation (“Foundation”)**

By: /s/ James LaJoie  
James LaJoie  
Its: Executive Director  
Dated: 8/29/12

**DLP Marquette Holding Company, LLC (“DLP”)**

By: /s/ Paul Hannah  
Paul Hannah  
Its: Authorized Representative  
Dated: 8/29/12

**LifePoint Hospitals, Inc. , a Delaware corporation**

The undersigned, LifePoint Hospitals, Inc., a Delaware corporation, executes this Agreement solely for the purpose of agreeing to assure the Post-Closing Covenants obligations of DLP under this Agreement.

By: /s/ Leif Murphy  
Leif Murphy  
Its: Executive Vice President  
Dated: 8/29/12

**Attorney General**

By: /s/ Carol Isaacs – Chief Deputy Attorney General  
William Schuette, Attorney General, or his designee  
Dated: 8/29/12

**EXHIBIT 1  
TO  
MONITORING AND COMPLIANCE AND ENFORCEMENT AGREEMENT**

**LIST OF GOVERNMENT AND OTHER REPORTS TO BE FURNISHED  
BY DLP TO FOUNDATION PURSUANT TO SECTION 3.B.i**

1. Medicare Cost Report- CMS Form 2552-96 (Annual)
2. Medicaid Cost Report - Michigan Medicaid Filed Data Report (Annual)
3. Medicaid - MIP Quarterly Report
4. Medicare -Interim Rate Review (Annual)
5. Annual MHA Community Benefits Survey - A listing of all programs and services that address identified community health-related needs.
6. Annual AHA Survey
7. Michigan Certificate of Need Annual Survey - Annual summary of all surgical, open heart. PET, CT, MRI, Litho, cardiac catheterization and MRT procedures, provided such covered clinical service was operational during the year for which the Annual Survey is completed, plus licensed beds, and emergency department visits and admissions
8. PSO (Patient Safety Organization) events -MHA
9. NHSN - CDC Infectious disease data reported to CDC in a national data base
10. HCAFITS-Patient satisfaction data
11. NDNQI - Falls, Pressure Ulcers, Nurse staffing
12. Readmissions - IHI, State of Michigan (Readmission data sent to MI-IA/MPRO as part of the IHI STAAR project)
13. CDAC - CMS audit of Core Measures submissions
14. New Hires Report-Monthly-State
15. Job Openings and Labor Turnover Report - US Dept of Labor
16. Report on Capital Investment Commitment expenditures (Annual)

17. Report on Physician Recruitment Commitment expenditures (Annually for five years from the date hereof)
18. Michigan Inpatient Database and Michigan Outpatient Database—MHA (Patient case level data for inpatient and outpatient surgery cases)
19. MHA Keystone – Surgery, ICU, Cath UTI, VAP, BSI, Hand hygiene, HAI
20. Medpar data – finance data; state and feds

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