

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
Lafayette Division**

**IN RE:**

**CASE NO. 16-50740**

**PROGRESSIVE ACUTE CARE, LLC, et al.**

**CHAPTER 11**

**DEBTORS**

**JOINTLY ADMINISTERED**

**MOTION TO REJECT EXECUTORY CONTRACT**

**NOW INTO COURT**, comes Progressive Acute Care, LLC (“PAC” or “Debtor”), as debtor and debtor-in-possession, which seeks an order permitting the rejection of a certain executory contract in force as of the date this Chapter 11 case was commenced, attached as Exhibit “A” hereto, pursuant to Section 365(a) of Title 11 of the United States Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Bankruptcy Code”), and Rule 6006 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) (the “Motion”). In support thereof, the Debtor respectfully represents as follows:

**Background**

1.

On May 31, 2016 (the “Petition Date”), the Debtor filed a petition for voluntary relief under chapter 11 of the Bankruptcy Code. A creditors’ committee has been appointed in the administratively consolidated cases and, the debtors in each, including PAC, continue to operate their businesses in the ordinary course as debtors-in-possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2.

PAC is the owner and operator of three (3) community-based hospitals (“Hospitals”), ranging from 50-60 bed capacity, which provide inpatient, outpatient and emergency care,

primarily for residents of the immediate regions of the Hospitals. The Hospitals are located in Marksville, Oakdale and Winnfield. PAC is the sole member and manager of each of the three Hospital Debtors and the membership interests in the Hospital Debtors are its primary assets.

**Basis for Relief**

3.

The Debtor, by this Motion, seeks authority to reject, *nunc pro tunc* to the Petition Date, an executory contract entered into between the Debtor and Southern Scripts (the “Contract”), a copy of which is attached hereto as Exhibit “A”.

**Relief Requested**

4.

On June 1, 2015, the Debtor and Southern Scripts entered into a contract wherein Southern Scripts became the Pharmacy Benefit Manager for the Progressive Acute Care Medical Plan (the “Plan”).

5.

Section 365 permits a debtor-in-possession to reject executory contracts and unexpired leases which may burden the estate. The Debtor desires to formally reject the executory contract as it no longer needs the services contained in the Contract. Rejection of the Contract is in the best interest of the estate and its creditors as it will save the estate unnecessary rental expenses.

**WHEREFORE**, the Debtor respectfully requests that this Court enter an Order granting the relief requested herein and approving the rejection of the executory contract between it and Southern Scripts, *nunc pro tunc* to the Petition Date, and for such other and further relief as may be just and equitable.

Respectfully submitted by:

**STEFFES, VINGIELLO & McKENZIE, L.L.C.**

By: /s/ Noel Steffes Melancon

William E. Steffes (La. Bar No. 12426)

Barbara B. Parsons (La. Bar No. 28714)

Noel Steffes Melancon (La. Bar No. 30072)

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*Counsel for Progressive Acute Care, LLC,  
Progressive Acute Care Avoyelles, LLC,  
Progressive Acute Care Oakdale, LLC, and  
Progressive Acute Care Winn, LLC, Debtors*

**Plan Amendment and Summary of Material Modification (“SMM”)  
for the Progressive Acute Care Medical Plan  
Effective June 1, 2015**

**The Progressive Acute Care Medical Plan Document and Summary Plan Description is hereby amended as follows:**

The incumbent **Claims Administrator** has been **REPLACED** with:

**WebTPA**  
**Customer Service Phone Number:** (844) 380-4550  
www.webtpa.com

**Claims Mailing Address:**  
WebTPA  
P.O. Box 99906  
Grapevine, TX 76099-9706

**Appeal & Correspondence Mailing Address:**  
WebTPA  
P.O. Box 1808  
Grapevine, Texas 76099-1808

The **COBRA Administrator** is NetChex

The incumbent **Pharmacy Benefit Manager (PBM)** has been **REPLACED** with:

Southern Scripts  
(800) 710-9341  
www.southernscripts.net

The incumbent **Primary Provider Network** in Louisiana has been **REPLACED** with:

Verity HealthNet  
(225) 819-1135  
[www.verityhealth.com](http://www.verityhealth.com)

**AND**

PHCS/Multiplan National PPO Network as a wrap network  
[www.multipan.com](http://www.multipan.com)

The incumbent **Precertification/Utilization Review Organization** has been **REPLACED** with:

Communitas  
(844) 380-4550

**THERE WILL BE NO BENEFIT CHANGES AT THIS TIME.**

This plan amendment is hereby adopted as shown. In witness whereof, this instrument is executed for **Progressive Acute Care Group Benefits Plan**, effective June 1, 2015.

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DocuSigned by: <i>Wayne Thompson</i> 838BEA0E865447A	10/16/2015
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Name and Title	Date
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Witness Name and Title	Date

**IMPORTANT NOTICE:**

**By signing this page the employer agrees to all sections of this amendment as a basis for plan administration. Except as specifically stated above, nothing in this amendment shall alter or amend the summary plan description.**

**Lack of a signature page can lead to incomplete coding of the claim payment system, and inconsistencies in claims, appeal and external review processing.**

**Furthermore, Stop-loss policies do not provide coverage for plan terms or conditions unknown to them. Notice to the stop loss carriers is required.**

**Please sign and return to WebTPA as soon as possible.**

**Remember to keep a copy for your records, and also submit a copy of the signed amendment and current summary plan description to your stop loss carrier to prevent any possible lapse or gap in stop loss coverage.**

**Any modifications made to this amendment will cause it to become null and void and require that a new signature page be signed.**

*Confidential*



Communitas

powered by  **WebTPA**  
An AmWINS Group Company

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**WebTPA Employer Services, LLC**  
**Communitas, Inc.**  
**Administrative Services Agreement with**  
**Progressive Acute Care**

**June 1, 2015**

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## ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (the “Agreement”) is made and entered into as of this 1<sup>st</sup> day of June 2015 (the “Effective Date”) by and among **WebTPA Employer Services, LLC** (“WebTPA”), its affiliated entity **Communitas, Inc.**, a licensed utilization review agency (“Communitas”) (together, the “Administrators”) and **Progressive Acute Care** (“Employer”).

WHEREAS, Employer is a corporation that sponsors a self-funded employee welfare benefit plan (the “Plan”) within the meaning of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, the terms of which are provided in a plan document (the “Plan Document”); and

WHEREAS, Employer desires to make available a program of health care benefits under the Plan for its employees and their dependents (“Participating Member(s)”); and

WHEREAS, Employer wishes to contract with an independent third party to perform certain services with respect to the Plan as specified herein; and

WHEREAS, WebTPA provides administrative services and desires to contract with Employer to perform certain services with respect to the Plan as specified herein; and

WHEREAS, Communitas provides administrative services, including utilization review, case management, and chronic condition management (collectively referred to as “Care Management”) services, and desires to contract with Employer to perform certain services with respect to the Plan as specified herein; and

WHEREAS, Communitas and WebTPA are affiliated entities and desire to enter into this single Agreement with Employer, which contemplates the provision of separate services to Employer by each such Administrator as provided herein.

THEREFORE, in consideration of the premises and mutual covenants contained herein, Employer, WebTPA and Communitas agree to the following:

### ARTICLE I RELATIONSHIP OF PARTIES

#### 1.1 Independent Contractors.

- a) The parties and their respective representatives shall be deemed independent contractors for all purposes under this Agreement.
- b) This Agreement shall not be deemed or construed to create the relationship of employer or employee, partnership, or any type of joint venture relationship, between the parties.

- c) This Agreement is between Employer and each Administrator, and shall not be construed to create any rights or legal relationship between either Administrator and any Participating Members or beneficiaries of the Plan.
- d) Except as expressly set forth herein, no party or representative of a party shall have the authority to contract for or assume obligations of any nature in the name of the other party without that party's prior written consent.

### **1.2 Delegated Authority.**

Employer delegates to the Administrators only those powers and responsibilities which are specifically enumerated in this Agreement. This Agreement does not give either Administrator any discretionary responsibility or authority for the administration of the Plan nor assign Employer's "Plan Administrator" responsibilities under ERISA to either Administrator. Employer has the sole and final authority to contest, manage, and fund the Plan, and the Administrators do not assume any responsibility for the design of the Plan, the adequacy of its funding, or any act or omission or breach of duty by Employer. All final determinations as to a Participating Member's entitlement to benefit under the Plan are to be made by Employer, including any determination upon appeal of a denied claim for Plan benefits.

### **1.3 Licensure/Compliance.**

Each Administrator agrees to comply with any applicable state licensing requirements in order to perform its duties under this Agreement, including, but not limited to, being (i) in the case of Communitas, duly licensed as a Utilization Review Agent in all jurisdictions requiring the same, and (ii) in the case of WebTPA, duly licensed as a Third Party Administrator in all jurisdictions requiring the same, and agrees to maintain such licenses throughout the Term of this Agreement. Notwithstanding anything else contained in this Agreement to the contrary, the parties agree to comply with all applicable law including applicable statutory accounting requirements, and no party shall take, nor be obligated to take, any action that it reasonably believes in good faith would violate, or would cause it to violate applicable law.

### **1.4 Communication.**

Each Administrator shall be entitled to rely, without further investigation or inquiry, upon any written, electronic, or oral information or communication from Employer or representatives of Employer to either Administrator.

### **1.5 Financial Responsibility.**

- a) Employer is solely responsible for the payment of all liabilities and obligations associated with the Plan, including, but not limited to, the payment of claims, expenses of administration of the Plan, and fees, fines, assessments, reinsurance contributions (under PPACA, Pub. L. No. 111-148, § 1341 (2010), as amended by PPACA, Pub. L. No. 111-148, § 10104(r) (2010)) or penalties



incurred in connection with the administration of the Plan (referred to herein collectively as “Plan Liabilities”).

- b) The Administrators provide administrative services only and neither Administrator will assume any financial risk or obligation with respect to claims for benefits and other expenses payable by Employer under the Plan or any financial risk or obligation with respect to the delivery of care by health care providers to individuals covered under the Plan. The parties agree that WebTPA shall not be obligated to disburse more in payment for claims or other obligations arising under the Plan than Employer shall have made available in the Employer’s designated account.
- c) This Agreement shall not be deemed to be a contract of insurance under any laws or regulations. The Administrators do not insure, guarantee, or underwrite the liability of Employer under the Plan and shall have no obligation to contribute funds to the Plan to satisfy Plan Liabilities.
- d) The Administrators shall have no duty to use or advance any of its funds for the payment of Plan benefits under any circumstances, specifically including but not limited to Medicare Secondary Payer claims, whether or not such claims are allowed by the Plan or are time-barred under the terms of the Plan document.

#### **1.6 Indemnification.**

- a) Employer will indemnify, defend, save, and hold each Administrator and its respective officers, directors, agents, attorneys and affiliates harmless from and against any and all claims, suits, actions, liabilities, Plan Liabilities, losses, fines, penalties, damages, and expenses of any kind related to the Plan including, but not limited to direct, incidental, consequential, exemplary or punitive damages, expense and fees, including court costs, defense costs, arbitration costs, and attorneys’ fees (collectively, “Damages”) asserted against or incurred by such Administrator, to the extent that such Damages are caused by, arise from or are based on:
  - i. the Employer’s negligence, willful misconduct, or violation of any common law, statute or governmental regulation in the performance of its duties under this Agreement or in the administration of the Plan;
  - ii. a release of (i) Protected Health Information (PHI) by Communitas to the employer and (ii) claims data by WebTPA to the Employer, or if such release is at the request of the Employer, to any other entity or person;
  - iii. an interpretation of the Plan, a decision concerning eligibility, coverage or benefits payable under the Plan, or a determination of an appeal;

- iv. any breach of this Agreement by the Employer;
  - v. any claim for benefits under the Plan;
  - vi. any claim by any health care provider related to payment or reimbursement for services provided to a current or former Participating Member, including but not limited to claims under network provider agreements, or for forfeiture of network discounts, “prompt pay” penalties, or interest; or
  - vii. **ANY ACT OR OMISSION, INCLUDING ANY NEGLIGENT ACT OR OMISSION, OF COMMUNITAS OR WEBTPA, EXCEPT IF SUCH ACT OR OMISSION IS FOUND BY A COURT OF COMPETENT JURISDICTION TO CONSTITUTE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR CRIMINAL CONDUCT.**
- b) Communitas will indemnify, defend, save, and hold Employer and its officers, directors, agents, attorneys and affiliates harmless from and against any and all Damages asserted against or incurred by Employer, to the extent that such Damages are caused by, arise from or are based on Communitas’ gross negligence, willful misconduct, or criminal conduct; provided, however, that Communitas shall not be liable for Damages incurred by Employer resulting from any actions taken by Communitas at the specific direction of Employer.
  - c) WebTPA will indemnify, defend, save, and hold Employer and its officers, directors, agents, attorneys and affiliates harmless from and against any and all Damages asserted against or incurred by Employer, to the extent that such Damages are caused by, arise from or are based on WebTPA’s gross negligence, willful misconduct, or criminal conduct; provided, however, that WebTPA shall not be liable for Damages incurred by Employer resulting from any actions taken by WebTPA at the specific direction of Employer.
  - d) The parties agree that the party seeking indemnification (“Indemnified Party”) will provide the other party (“Indemnifying Party”) written notice within thirty (30) days of receiving notice of a claim potentially giving rise to indemnification hereunder and will provide the other party an opportunity to control the defense of such claim; provided, however, that the failure to notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to any Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such action is prejudiced by the indemnifying party’s failure to give such notice. Notwithstanding the foregoing, the Indemnifying Party shall not make any settlement of any claim on behalf of the Indemnified Party without the prior written consent of the

Indemnified Party, which consent shall not be unreasonably withheld or delayed.

- e) Employer will be responsible for making payments (i) to Communitas or its affiliates for third party services and (ii) to WebTPA for network and other third party services on behalf of Employer, as outlined in Exhibit B. In the case of Communitas, once those payments have been received Communitas or its affiliates will be responsible for paying these fees to the appropriate third party on behalf of Employer (as examples, these fees may include but are not limited to access fees for centers of excellence networks, third party medical review and independent review organization fees as required by law). In the case of WebTPA, once those payments have been made WebTPA will remit for payment all fees relating to network and other third party services on behalf of Employer.

### **1.7 Responsibilities of the Parties.**

Subject to the terms and conditions of this Agreement and any subsequent amendments hereto, from and after the date hereof and until the termination or expiration of this Agreement pursuant to Article VII, each of WebTPA and Employer will be responsible for its respective Plan services as described in Exhibit A.

### **1.8 Plan Document.**

Services provided under this Agreement will be performed in accordance with the Plan Document, which sets forth the eligibility and benefit provisions of the Plan as required by ERISA and other applicable law.

## **ARTICLE II COMMUNITAS' RESPONSIBILITIES**

As indicated in EXHIBIT B of this Agreement, Communitas shall have some or all of the following responsibilities to Employer during the Initial Term and any applicable Renewal Terms (defined herein). Communitas shall use commercially reasonable efforts to perform its duties under the Agreement.

Notwithstanding the Plan Document, covered services therein, or member eligibility, the determination of medical necessity by the Utilization Review Agent and/or the input of Care Management Services or chronic care management providers shall not prevent the treating provider as having complete authority for the selection and provision of services to be rendered to Participating Members.

### **2.1 Utilization Review.**

The utilization review program is a process for evaluating the appropriateness and care setting for proposed and ongoing inpatient medical, surgical and/or behavioral health services for eligible Participating Members, and generally includes the following care settings: acute care facility, hospice, long term acute care (LTAC), mental health,

substance abuse, rehabilitation, and skilled nursing facility (SNF). Communitas shall review actual or scheduled admissions and/or medical services using clinical criteria, and shall determine medical necessity and conduct concurrent reviews based on information provided by members and health care providers. Services requiring pre-certification by the utilization review process shall be as mutually agreed upon by Communitas and Employer.

## **2.2 Case Management.**

Case Management is a collaborative process to assess, plan, implement, coordinate, monitor and evaluate a Participating Member's health needs, typically performed by licensed health care professionals using telephonic and other communication means to promote higher quality and cost effective health outcomes. When Communitas identifies a case that, in its opinion, would benefit from Case Management, such services shall be provided unless directed not to do so by the Employer.

## **2.3 Chronic Condition Management (Disease Management).**

Chronic Condition or Disease Management (CCM) is a series of programs that include the identification of members with chronic conditions and/or certain acute conditions from which the overall health of a population may be improved by the application of and/or education regarding evidenced-based medical care guidelines. Participating Members identified for a contracted chronic condition management program may receive education materials and/or counseling outreach. Chronic Condition Management programs differ by condition or disease state, may vary by contracted Employer based on group specific needs and conditions, and may change in approach over time. The general goals include the identification and engagement of Participating Members who may benefit from such programs, educate and encourage compliance with established medical protocols and guidelines, receive appropriate preventive care services, and to serve as a liaison between member and health care providers. A list of Chronic Condition Management programs to be provided by Communitas and pricing for these services is indicated on Exhibit B.

## **2.4 Plan History (Records and Files).**

- a) Both Communitas and Employer shall maintain or cause to be maintained, in accordance with applicable law and its document retention policies (including policies relating to backup computer files and maintaining facilities and procedures for safekeeping and retaining documents), books and records of relevant Plan transactions (including prior-authorization, medical review, and case management).
- b) After the termination of the Agreement, Communitas shall provide reasonable access to Employer to the Plan records and assist in the transfer of this information to Employer or its designee. All costs associated with the copying and transfer of the Plan records shall be paid by Employer.

**2.5 Reporting.**

Communitas shall provide Employer with the Communitas standard set of reports on either a monthly or quarterly basis.

**2.6 Confidentiality.**

- a) Communitas shall take all reasonable precautions to prevent the unauthorized disclosure of confidential information to parties unrelated to the Plan's administration except as required by a regulatory authority or court or legal process. Notwithstanding the foregoing, Communitas may share with WebTPA any confidential information it receives from Employer in furtherance of the purposes of this Agreement.
- b) Communitas shall maintain commercially reasonable computer data safeguards (such as access codes, passwords, secure physical location, secure data back-up and firewall software) in order to protect against unauthorized access, acquisition, deletion or alteration of data.
- c) Unless otherwise directed, Communitas shall make all administrative data accessible to those members of Employer's workforce who are directly involved in the administration of the Plan, subject to compliance with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") privacy and security regulation.
- d) Communitas shall comply with HIPAA privacy and security requirements as outlined in EXHIBIT C, attached hereto.

**ARTICLE III  
WEBTPA'S RESPONSIBILITIES**

WebTPA shall have the following responsibilities during the Initial Term and any applicable Renewal Term (defined herein). WebTPA shall use commercially reasonable efforts to perform its duties under the Agreement.

**3.1 Eligibility.**

- a) Provide enrollment forms for each employee to Employer.
- b) Provide to Employer member identification cards for each Participating Member.
- c) Maintain Plan records based on eligibility information submitted by Employer as to the dates on which a Participating Member's coverage commences and terminates.
- d) Support enrollment and eligibility management.

### **3.2 Plan Documentation.**

- a) Provide a “sample” Summary Plan Description (the “SPD”) to Employer. However, Employer exclusively retains all responsibility and liability associated with the Plan Document and the SPD, including compliance with all applicable federal and state laws and regulations. WebTPA does not provide legal services and makes no representations or warranties as to the legality or appropriateness of the Plan Document or the SPD. Employer should consult its own counsel concerning the legal aspects of the Plan and the SPD.
- b) Maintain Plan records of Plan coverage applicable to each Participating Member based on information submitted by Employer.
- c) Support the receipt of claims and supporting documentation via paper and electronic means.

### **3.3 Benefit Determination.**

- a) Initially determine benefits payable per claim in accordance with the Plan Document. In circumstances in which benefit determination requires an interpretation of the Plan or the exercise of discretion, WebTPA will contact Employer and request guidance as to Plan interpretation. If Employer does not respond in writing within seven (7) days, WebTPA will continue pending or deny the claim/benefit as if it were under the direction of the Employer to deny the claim.
- b) Determine third party liabilities or responsibilities related to submitted charges.
- c) WebTPA shall refer to Employer or its designee, for final determination, any claim for benefits or coverage that is appealed after initial adverse determination by WebTPA or any class of claims that Employer may specify, including: (a) any question of eligibility or entitlement of the claimant for coverage under the Plan; (b) any question with respect to the amount due; or (c) any other appeal.

### **3.4 Claim Payment and Notification.**

- a) Provide a sample claim form to Employer to utilize in submitting claims to WebTPA.
- b) Notify appropriate provider and/or Participating Member if additional information is required in order to process a claim.
- c) Pay claims from Employer’s designated account. WebTPA does not insure, underwrite, or assume the liability of Employer for any claim payment or plan expenses.

- d) Provide notice to Participating Members and applicable providers as to benefit determinations under the Plan, including, without limitation, payment, adjustment, denial, or pending claims.
- e) In the event that WebTPA makes overpayments for claims paid in good faith, upon determination of error by WebTPA, it will notify Employer of such error and make reasonable efforts to recover any such overpayments; however, WebTPA is not liable for any such overpayments that are not recovered.

### **3.5 Subrogation and Coordination of Benefits.**

- a) If agreed upon by the parties, WebTPA may pursue rights of subrogation and recovery on behalf of the Plan. WebTPA reserves the right to subcontract such subrogation services and Employer agrees to cooperate with WebTPA or any such subcontractor and provide necessary information to assist in the recovery effort.
- b) Follow industry standards and the applicable provisions of the Plan Document for coordination of benefits. In some cases, WebTPA may require assistance of Employer in gathering of information regarding other coverage.

### **3.6 Plan History (Records and Files).**

- a) Each of WebTPA and Employer shall maintain or cause to be maintained, in accordance with applicable law and its document retention policies (including policies relating to backup computer files and maintaining facilities and procedures for safekeeping and retaining documents), books and records of all Plan transactions (including Participating Member eligibility, claim submission, benefit determination, and claim payment).
- b) After termination of the Agreement, WebTPA shall provide reasonable access to Employer to the Plan records and assist in the transfer of this information to Employer or its designee. All costs associated with the copying and transfer of the Plan records shall be paid by Employer.

### **3.7 Customer Service.**

- a) Provide a customized toll-free Customer Service phone line with live Customer Service Representatives during normal business hours, as determined by WebTPA, Monday through Friday (with the exception of WebTPA holidays).
- b) Provide complete implementation and ongoing access to member and employer online portals, which allow online access to Plan information twenty four hours a day, seven (7) days a week, with the exception of system maintenance or a loss of access outside the control of WebTPA.
- c) Document communication in electronic form with applicable parties.

**3.8 Reinsurance/Stop Loss.**

- a) Determine applicability of each claim to all stop loss policies that provide coverage to the Plan (if applicable) that have been provided to WebTPA.
- b) Assist in the collection of necessary Plan information required for filing of a stop loss claim.
- c) Perform any other duties reasonably requested of it under the terms of Employer's stop loss policy.
- d) Under no circumstance is WebTPA financially or otherwise responsible or liable for the payment or denial of a stop loss claim or the payment of premiums to stop loss insurers. WebTPA is not liable for any claims arising from the submission of stop-loss claims.

**3.9 Billing and Fee Payment.**

- a) Calculate fees associated with third party services administered or managed by WebTPA in accordance with applicable contract terms and detailed in EXHIBIT B (referred to herein as "Web TPA Administrative Fees").
- b) Submit request for payment of third parties to Employer for approval.
- c) Upon receipt of approval, pay third party billings from the claims payment account, which is an account established by and owned by the Employer for payment or reimbursement for claims, which is also an asset of the Employer ("Claims Payment Account").

**3.10 Reporting.**

- a) Provide Employer with the WebTPA standard set of reports on either a monthly or quarterly basis.
- b) Provide Employer with a payment register for each payment run.
- c) Provide Employer with access to its Plan data in either a text file or Microsoft™ database format, subject to the applicability of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") privacy regulations.
- d) If requested by Employer, provide additional reporting at standard hourly rates.
- e) Provide information managed by WebTPA to Employer necessary for Employer to complete its reporting requirements under ERISA, PPACA, and the Internal Revenue Code ("IRC").

**3.11 Confidentiality.**



- a) Take all reasonable precautions to prevent the unauthorized disclosure of confidential information to parties unrelated to the Plan's administration except as required by a regulatory authority or court or legal process. Notwithstanding the foregoing, WebTPA may share with Communitas any confidential information it receives from Employer in furtherance of the purposes of this Agreement.
- b) Maintain commercially reasonable computer data safeguards (such as access codes, passwords, secure physical location, secure data back-up and firewall software) in order to protect against unauthorized access, acquisition, deletion or alteration of data.
- c) Unless otherwise directed, make all administrative data accessible to those members of Employer's workforce who are directly involved in the administration of the Plan, subject to compliance with the HIPAA privacy and security regulation.
- d) Comply with HIPAA privacy and security requirements as outlined in EXHIBIT C, attached hereto.

### **3.12 Medicare Secondary Payer Reporting.**

File such reports with the Centers for Medicare and Medicaid Services ("CMS") as may be required by Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 and enabling regulations in order to enable Medicare to determine whether the Plan is primary to Medicare. Employer shall provide to WebTPA such data elements as may be required to fulfill these requirements, including without limitation social security numbers or health insurance claim numbers for Participating Members for identification purposes by CMS. All information shall be provided by Employer in a timely fashion consistent with CMS requirements.

## **ARTICLE IV EMPLOYER'S RESPONSIBILITIES**

Employer shall have the following responsibilities during the Initial Term and any applicable Renewal Terms (defined herein) and shall furnish all information requested by either Administrator as determined necessary to perform such Administrator's obligations hereunder.

### **4.1 Fees.**

- a) Timely pay (i) Communitas for services rendered and administrative fees (the "Communitas Fees") and (ii) to WebTPA for services rendered and Web TPA Administrative Fees (the "WebTPA Fees" and, together with the Communitas Fees, the "Fees"), in accordance with EXHIBIT B. All Fees are due within 21 days from the date of invoice.

- b) Grant WebTPA (or such other designated third party administrator of Employer) the authority to draft from the Claims Payment Account any Fees due to an Administrator prior to application of the funds for any other purpose.
- c) Allow for an adjustment to any Fee in the event that Employer's actual Dependent Ratio exceeds the Expected Plan Dependent Ratio by ten-percent (10%), which is mutually agreed to by (i) in the case of any Communitas Fee, Communitas and Employer and (ii) in the case of any WebTPA Fee, WebTPA and Employer. Employer's Expected Plan Dependent Ratio as of the effective date of the Agreement is: **2.9 [(Employees + Dependents)/Employees]**
- d) Allow for an adjustment to any Fee in the event that Employer's actual Plan Participation decreases below ninety-percent (90%) of Expected Plan Participation, which is mutually agreed to by (i) in the case of any Communitas Fee, Communitas and Employer and (ii) in the case of any WebTPA Fee, WebTPA and Employer. Employer's Expected Plan Participation as of the effective date of the Agreement is: **506 Employees and 983 Dependents.**

#### 4.2 Benefit Determination, Funding, and Liability.

- a) Retain all responsibilities of employer, Plan administrator, plan sponsor, and named fiduciary, as these terms are defined or used in ERISA. As such, Employer retains full discretionary control, authority, and responsibility in the maintenance of a compliant Plan Document, including amending the Plan to ensure ongoing compliance with applicable law, the determination of benefits, and the funding, operation and administration of the Plan. Further, Employer is responsible for all notices required for compliance under applicable law and any other welfare benefit Plan documents including related compliance.
- b) Establish, maintain, and fund a Claims Payment Account for the payment of all Plan Liabilities.
- c) Pay claims or grant WebTPA (or another duly licensed third party administrator) the authority to pay claims out of the Claims Payment Account pursuant to the Plan Document.
- d) Pay or grant WebTPA (or another duly licensed third party administrator) the authority to pay administrative expenses out of the Claims Payment Account pursuant to Exhibit B of this Agreement.
- e) Provide WebTPA with all necessary documentation and authority necessary to act as signatory on the Claims Payment Account. Employer understands that financial liability for all claims and all payments made under the Plan and in conjunction with this Agreement is the responsibility of Employer. WebTPA shall have no financial obligation or responsibility relating to the payment of benefits under the Plan.

- f) Employer shall be responsible for compliance with all applicable federal and state laws, including but not limited to duty to: ensure compliance with COBRA; perform required nondiscrimination testing; amend the Plans as necessary to ensure ongoing compliance with applicable law; file any required tax or governmental returns (including Form 5500 returns) related to the Plans; determine if and when a valid election change has occurred; handle Participant claim appeals; execute and retain required Plan and claims documentation; and take all other steps necessary to maintain and operate the Plan in compliance with applicable provisions of the Plans, ERISA, HIPAA, the Affordable Care Act, the IRC and other applicable federal and state laws.

#### **4.3 Eligibility.**

- a) Provide the Administrators with current and accurate Plan eligibility and coverage records.
- b) Verify Participating Member eligibility in a timely manner.
- c) Identify and provide in writing to the Administrators all Participating Members' terminations on a timely basis. The Administrators are not obligated to reimburse its respective Fees on terminations reported more than 90 days after the actual termination date.
- d) Limit participation in the Plan to Employer's employees and employees of other entities within the same Controlled Group of business as defined by the IRC, and those employees' dependents, retirees and former employees.

#### **4.4 Taxes and Other Fees.**

Pay any and all taxes, licenses, and fees levied, if any, by any local, state, or federal authority in connection with the Plans and the administration of the Plan, including but not limited to taxes, licenses and fees imposed under the IRC (including the fee imposed under IRC § 4375 and § 4376 to fund the Patient-Centered Outcomes Research Trust Fund), ERISA, HIPAA, and the Public Health Safety Act. The Administrators are not responsible for the filing of any required forms.

### **ARTICLE V REPRESENTATIONS AND WARRANTIES**

#### **5.1 Representations and Warranties.**

Each party represents and warrants to the other parties that: i) that such party is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which such party is organized, and has all requisite legal power and authority to own, lease, operate and conduct its business as it is now being conducted; (ii) that all necessary and appropriate action has been taken by such party with respect to the approval, execution and delivery of this Agreement, and that this Agreement

constitutes the valid and binding obligation of such party and is enforceable against such party in accordance with its terms; (iii) that neither the execution, delivery or performance by party nor the consummation of the transactions contemplated hereby or compliance with any other provisions hereof will violate, conflict with or result in a breach of any provisions of the governing corporate documents of such party, any indebtedness, license, franchise, permit, lease, contract, agreement or other instrument of commitment or obligation to which such party or any of its properties may be bound or affected, or violate any order, writ, injunction, decree, judgment ruling, law, rule or regulation of any court or governmental authority, United States or foreign, applicable to such Party; (iv) that no consent, approval or authorization of, notice or declaration to, or filing a registration with, any third party or governmental or regulatory authorities is necessary in connection with the execution, delivery and performance of this Agreement; and (v) that such party has not, in any material respect, violated any applicable law, regulation or order of any jurisdiction or any other requirement of any governmental, regulatory or administrative agency or authority or court or their tribunal that would impair the rights granted by such party hereunder.

## ARTICLE VI MISCELLANEOUS

### 6.1 Entire Agreement.

This Agreement, together with all addenda, exhibits, and appendices, supersedes any and all prior representations, conditions, warranties, understandings, proposals, or other agreements between Employer and the Administrators, oral or written, in relation to the services and systems of the Administrators, which are rendered or are to be rendered in connection with its assistance to Employer in the administration of the Plan. This Agreement, together with the aforesaid addenda, exhibits, and appendices, constitutes the entire Agreement of whatsoever kind or nature existing between or among Employer and the Administrators. Neither Communitas and Employer on the one hand, nor WebTPA and Employer on the other hand, shall be liable or bound to such other party in any manner with respect to such prior representations, conditions, warranties, understandings, proposals, or other agreements except as specifically set forth herein. This Agreement shall not be modified or amended except in writing signed by the parties, except that either (i) Communitas and Employer or (ii) WebTPA and Employer, as applicable, may agree to modify or amend this agreement in a writing signed by such parties without the agreement of the other Administrator to the extent that such modification or amendment does not affect the rights or obligations of such Administrator under this Agreement.

### 6.2 Applicable Law.

This Agreement and the legal relations between the parties to the extent arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to any principles of conflicts of law that would require the application of the laws of a different state.

### 6.3 Arbitration.

In the event of any dispute or claim arising out of or relating to the making, performance or interpretation of this Agreement including, but not limited to, a claim for indemnification pursuant to Section 1.6 (“Dispute”), the parties agree to first submit such Dispute to mediation. Each party will notify the other, in writing, of the name of its representative(s) who will have primary responsibility for communications with the other party. The decision of the representatives, if applicable, shall be final and binding upon the parties. If the parties are unable to resolve any Dispute through mediation, the parties agree that such Dispute shall be determined by binding arbitration pursuant to the Federal Arbitration Act (“FAA”). Arbitration shall take place in the County in which Respondent to the Arbitration Demand resides, as set forth in the Contact Information for Notice in this Agreement. Arbitration shall be before a single arbitrator jointly agreed upon by the parties. If the parties are unable to agree upon an arbitrator, the arbitrator shall be chosen in accordance with the American Arbitration Association Commercial Arbitration Rules (“AAA Rules”). The arbitration shall be administered by AAA pursuant to the AAA Rules. The arbitrator shall apply the internal laws of the State of Texas. The arbitrator’s award shall be in writing and shall set forth the findings and conclusions upon which the arbitrator based the award. The prevailing party in any such arbitration shall be entitled to recover its reasonable attorney’s fees, costs and expenses incurred in connection with the arbitration.

### 6.4 Assignment.

Each Administrator may assign or otherwise transfer its respective rights and interests, and may delegate its respective obligations under this Agreement, or any portion thereof without the prior written consent of Employer. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

### 6.5 Third Party Services.

- a) The work to be performed by each Administrator under this Agreement may be performed directly by it or wholly or in part through a subsidiary or affiliate of such Administrator.
- b) In situations in which third party services are selected by Employer and contracted through and managed by (i) Communitas (e.g., independent review organization) or (ii) WebTPA (e.g., network access), such Administrator will notify Employer of rate and service changes imposed by the third party. Each Administrator reserves the right to modify its billings in the amount of any third party rate adjustments, without modification to this Agreement.
- c) Employer is responsible for the payment of any third party services selected by Employer and as identified in the attached Exhibits, as may be amended from time to time.

**6.6 Severability.**

- a) If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- b) Either Administrator may, upon written notice to Employer and the other Administrator, sever the terms of this Agreement such that all rights and obligations as between (i) Communitas and Employer, on the one hand (the “Communitas Provisions”), and (ii) WebTPA and Employer, on the other hand (the “WebTPA Provisions”), will be separated into two separate agreements with one such agreement containing the Communitas Provisions and being between Communitas and Employer, and the other such agreement containing the WebTPA Provisions and being between WebTPA and Employer (an “Agreement Severance”). Upon the occurrence of an Agreement Severance, Employer will execute such new agreements with each Administrator, respectively, in order to reflect the occurrence of such Agreement Severance.

**6.7 Change Order.**

- a) Any request for a change to the obligations or responsibilities by an Administrator set forth in this Agreement (“Change”) must be submitted by Employer to such Administrator in writing (a “Change Request”) which such Administrator will promptly evaluate. Every Change Request shall contain a detailed description of the Change being requested. Upon receipt of a Change Request, each Administrator agrees to accept or reject in writing such Change Request within thirty (30) days, and if such Change Request is approved, the applicable Administrator shall supply Employer all information in such detail reasonably requested by Employer and necessary to confirm or determine the amount of such additional or adjusted Fees, costs and/or expenses associated with any such Change.

- b) No Change shall be effective unless and until it is approved by the applicable Administrator and Employer in a written amendment to this Agreement signed by an authorized representative of such Administrator and Employer. Furthermore, the reimbursement of any Fees associated with any Change shall be subject to the provisions set forth in Section 4.1 and in accordance with EXHIBIT B.
- c) Each Administrator shall continue with its agreed upon responsibilities as set forth in this Agreement during the pendency of any Change Request.

#### **6.8 Non Solicitation.**

Employer agrees that during the Term of this Agreement and for two (2) years thereafter, Employer shall not directly or indirectly, either for itself or any other person or entity, induce or attempt to induce any employee of either Administrator to leave their employment or engagement with such Administrator, or employ or otherwise engage, any of the employees, consultants, agents or independent contractors of either Administrator (for this purpose the terms “employees,” “consultants,” “agents,” and “independent contractors” shall include any persons having such status with regard to the applicable Administrator at any time during the twelve (12) months preceding any solicitation in question). This section expressly survives any termination of this Agreement.

#### **6.9 Notice.**

All notices required to be given to another party by this Agreement shall, unless otherwise specified in writing, be deemed to have been given three (3) days after deposit in U.S. Mail, first class postage prepaid, certified mail, return receipt requested and addressed as provided herein:

To WebTPA at:

WebTPA Employer Services, LLC.  
8500 Freeport Parkway South  
Suite 400  
Irving, TX, 75063  
Attn: Joe Pascullo

To Communitas at:

Communitas, Inc.  
8500 Freeport Parkway South  
Suite 400  
Irving, TX 75063  
Attn: Joe Pascullo

To Employer at:

Progressive Acute Care  
2210 7<sup>th</sup> Street, Suite B  
Mandeville, LA 70471

Attn: \_\_\_\_\_

#### **6.10 LIMITATION OF LIABILITY.**

THE CUMULATIVE LIABILITY OF EITHER ADMINISTRATOR TO EMPLOYER FOR ANY ACTUAL OR ALLEGED LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, ATTORNEYS' FEES, OR DAMAGES FOR ANY CAUSE WHATSOEVER ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, INDEMNITY OR ANY OTHER LEGAL THEORY, SHALL NOT EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID UNDER THIS AGREEMENT BY EMPLOYER TO SUCH ADMINISTRATOR DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING EMPLOYER'S CLAIM; PROVIDED THAT NOTHING IN THE PRECEDING SENTENCE SHALL LIMIT EITHER ADMINISTRATOR'S LIABILITY FOR ITS CRIMINAL CONDUCT, OR FRAUD. SAVE AND EXCEPT FOR THE INDEMNIFICATION SET OUT IN SECTION 1.6(B) (WITH RESPECT TO COMMUNITAS) AND SECTION 1.6(C) (WITH RESPECT TO WEBTPA), NEITHER ADMINISTRATOR SHALL BE LIABLE TO EMPLOYER UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR THE APPLICABLE ADMINISTRATOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **6.11 Force Majeure.**

Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.



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## ARTICLE VII DURATION OF AGREEMENT

### 7.1 Term.

- a) This Agreement shall be effective for an initial period of two (2) years commencing on the Effective Date (the “Initial Term”). Thereafter, this Agreement shall automatically renew upon the same terms and conditions each year for successive one-year periods (each a “Renewal Term”) unless modified or terminated as described below.
- b) After the Initial Term, either Administrator may modify its services and fees associated with this Agreement by providing sixty (60) days prior written notice thereof.
- c) Neither Administrator shall have any duty or obligation with respect to any claims incurred prior to the Effective Date (“Prior Reimbursement Requests”) and/or administrative services arising prior to the Effective Date, regardless of whether such services are to be performed after the Effective Date (“Prior Administration”). The Administrators have no responsibility with respect to Prior Reimbursement Requests or Prior Administration; Employer is responsible for processing Prior Reimbursement Requests (including related run-out claims) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal requirements; and Employer shall indemnify and hold each Administrator harmless for any liability relating to Prior Reimbursement Requests and/or Prior Administration.

### 7.2 Termination.

- a) This Agreement may be terminated in full by either Employer or the Administrators at any time, upon giving 120 days prior written notice to the other parties unless all parties agree to waive such advance notice requirement. In addition, (i) the Communitas Provisions may be terminated by either Employer or Communitas and (ii) the WebTPA Provisions may be terminated by either Employer or WebTPA (in either case, a “Partial Termination”), at any time, upon giving 120 days written notice to the other party unless both such parties agree to waive such advance notice requirement. Those Communitas Provisions or WebTPA Provisions not terminated pursuant to such a Partial Termination will remain in full force and effect unless previously terminated and, if requested by the Administrator whose services were not terminated, Employer will execute a new agreement with such Administrator in order to reflect the occurrence of such Partial Termination and the continuation of the surviving terms.
- b) If this Agreement or any portion thereof is terminated during the Initial Term, Employer is responsible for payment of all Fees that would be due to the

Administrator(s) whose services were terminated during the entire Initial Term of this Agreement.

- c) In addition to the terms of Section 7.2(b), in the event where the prior written notice requirements are not met, the Administrator(s) whose services were terminated shall be entitled to an additional amount equal to four (4) month's Fees owed to such Administrator, and any Fees already billed by such Administrator and due by Employer.
- d) Regardless of termination, each Administrator's involvement in the payment of run out claims at the request of Employer, is separate from the termination provision of this Agreement and is not counted in any calculation of the required notice period.
- e) Either Employer or any Administrator may terminate this Agreement if another party to the Agreement is in default in performing any of the material responsibilities outlined in this Agreement and owed to such terminating party, and does not cure those defaults within ten (10) business days of receiving written notice outlining such alleged default.
- f) Upon the effective date of termination, the Administrator(s) whose services are terminated shall have no further duties or responsibilities under this Agreement. If desired by Employer, such Administrator may negotiate a short-term extension of this Agreement in order to facilitate the payment of claims remaining unpaid at the time of termination under the Plan.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first indicated above.

**WebTPA Employer Services, LLC:**

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

**Progressive Acute Care**

DocuSigned by:  
 By: Wayne Thompson  
 Name: wayne Thompson  
 Title: CFO

**Communitas, Inc.**

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT A  
RESPONSIBILITY MATRIX**

<b>Responsibility</b>	<b>Employer</b>	<b>WebTPA</b>
◆ <b>Production and Design of Summary Plan Description (“SPD”)</b>		<b>X</b>
◆ <b>Generation of Electronic SPD</b>		<b>X</b>
◆ <b>Cost of Printing Hard Copy SPDs</b>		
◆ Initial SPD production for open enrollment	<b>X</b>	
◆ Subsequent SPD printing – new hires and status change only	<b>X</b>	
◆ Future Reprints	<b>X</b>	
◆ <b>Cost of Mailing Hard copy SPDs</b>	<b>X</b>	
◆ <b>Cost of Printing and Mailing Group ID Cards</b>		
➤ Initial ID Cards		<b>X</b>
➤ Subsequent ID Cards – new hires and status change only		<b>X</b>
➤ Future Reprints	<b>X</b>	
◆ <b>Cost of Printing and Mailing EOB, EOP and Claim Checks</b>		<b>X</b>
◆ <b>Development of Standard Enrollment Forms*</b>		<b>X</b>
◆ <b>Obtaining Prior Claim Administrator Plan History</b>	<b>X</b>	
◆ <b>Signing Claim Checks</b>	<b>X</b>	
◆ <b>Bank Account Reconciliation</b>	<b>X</b>	
◆ <b>Cost of Obtaining Medical Information, Bank Fees, Attorney Fees and other Legal Expenses</b>	<b>X</b>	
◆ <b>Preparation of Schedule C – Form 5500</b>	<b>X</b>	<b>X</b>
◆ <b>Preparation of Form 1099s</b>		<b>X</b>

## EXHIBIT B FEES AND SERVICES

Employer shall pay the following fees in accordance with Section 4.1 of the Agreement. For purposes of this Exhibit B, the term PEPM shall mean "Per Employee Per Month."

WebTPA's Administration fees are guaranteed for the Initial Term of the Agreement with no more than a 5% increase for the first Renewal Term. Fees payable to other vendors are subject to change.

<b>WEBTPA FEES AND SERVICES</b>	
<b>RUN IN ADMINISTRATION</b>	
June 1, 2015 – August 31, 2015	\$20.25 PEPM
<i>(After 8/31/2015, the parties will re-evaluate to determine ongoing run-in fees)</i>	
<b>WebTPA CLAIMS ADMINISTRATION</b>	
Medical Claims	\$20.25 PEPM
<b>NETWORK ACCESS</b>	
Network 1	Verity HealthNet
Access Fee	\$3.00 PEPM
Network 2	PHCS
Access Fee	\$4.60 PEPM
Wrap Network	Multiplan
Access Fee	25% of Savings
<b>SUBROGATION</b>	
Vendor	NexClaim
Fee	30% of recoveries
<b>HOSPITAL AUDIT/NON-NETWORK NEGOTIATIONS</b>	
Vendor	Verity HealthNet
Fee	Included in Network Access Fee
<b>DIALYSIS MANAGEMENT SERVICES</b>	
Vendor	Verity HealthNet
Fee	Included in Network Access Fee
<b>REPORTING/ANALYTICS</b>	
Vendor	Verisk Health
Base Reporting Package	Included in Medical Admin Fee
<b>BROKER FEE</b>	
Vendor	Gallagher Benefit Services
Fee	\$3.00 PEPM

<b>SUMMARY OF BENEFITS AND COVERAGE</b>	
Production of electronic SBC document (Price does not include distribution)	\$1,750 – Initial Plan Design \$500 per Subsequent Plan Design(s)

<b>COMMUNITAS FEES AND SERVICES</b>		
<b>SERVICES</b>	<b>Purchased (Yes/No)</b>	<b>FEES</b>
Utilization Management (Prior Authorization)	Yes	\$3.50 PEPM
Case Management	Yes	\$175.00 Per Hour
Maternity Management Program	No	
Chronic Condition Management	Yes	\$5.00 PEPM
Early Cancer Detection and Outreach	No	
Health Coaching	No	
Referral Management	Yes	Included in UR Fee

## EXHIBIT C BUSINESS ASSOCIATE AGREEMENT

This Agreement is effective June 1, 2015 between **Progressive Acute Care** (the “Covered Entity”), **Communitas, Inc.**, a Texas corporation and **WebTPA Employer Services, LLC**, a Texas limited liability company (each, the “Business Associate”).

Covered Entity is receiving and Business Associate is providing services in connection with the operation of Covered Entity, pursuant to the terms of an agreement between them dated June 1, 2015 (the “Services Agreement”). This Agreement sets forth certain terms that apply to the relationship between Covered Entity and Business Associate that arises out of the Services Agreement, and which are required by the Health Insurance Portability and Accountability Act, Public Law 104-191, as amended (“HIPAA”). The terms of this Agreement shall be interpreted and applied consistently with HIPAA. In the event no effective date is entered above, this Agreement will be effective as of the date the Agreement is executed.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties intend to be legally bound and agree as follows:

### SECTION 1 DEFINITIONS

Unless otherwise specified in this Agreement, all capitalized terms not otherwise defined shall have the meanings established for purposes of Title 45, Parts 160, 162 and 164, of the United States Code of Federal Regulations, as amended from time to time. For purposes of clarification, the following terms are defined as set forth herein below:

- 1.1 “Breach”** means the acquisition, access, use, or disclosure of protected health information in a manner not permitted which compromises the security or privacy of such information. In this context, “compromises the security or privacy” means there is a significant risk of financial, reputational, or other harm to the individual. Breach does not include the three exceptions contained in 45 C.F.R. § 164.402(1).
- 1.2 “Breach Notification Rule”** means the HIPAA Regulations pertaining to breaches of Unsecured PHI as codified in 45 C.F.R. Parts 160 and 164.
- 1.3 “Discovery”** means the first day on which a Breach is known to Business Associate (including any person, other than the individual committing the breach, that is a workforce member or other agent of Business Associate), or by exercising Reasonable Diligence would have been known to Business Associate, to have occurred.

- 1.4 **“Electronic PHI” or “EPHI”** means PHI that is transmitted by or maintained in electronic media.
- 1.5 **“Electronic Transactions Rule”** shall mean the final regulations issued by the Department of Health and Human Services (“HHS”) concerning standard transactions and code sets under 45 CFR Parts 160 and 162.
- 1.6 **“Privacy Rule”** means the HIPAA Regulations as codified in 45 C.F.R. Parts 160 and 164.
- 1.7 **“Protected Health Information” or “PHI”** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment of the provision of health care to an individual; and (ii) that identifies the individual, or with respect to which there is reasonable basis to believe the information can be used to identify the individual, and has the meaning given to such term in the Privacy Rule.
- 1.8 **“Security Incident”** has the meaning set out in the Security Rule. Generally, a “Security Incident” means any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or systems operations in an electronic information system.
- 1.9 **“Security Rule”** means the Security Standards and Implementation Specifications at 45 C.F.R. Parts 160 and 164.
- 1.10 **“Unsecured PHI”** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of either the encryption method or the destruction method, as defined in Department of Health and Human Services (“HHS”) guidance published on April 27, 2009 (74 FR 19006) and modified by guidance published on August 24, 2009 (74 FR 42740). Unsecured PHI can include information in any form or medium, including electronic, paper, or oral.

## SECTION 2 PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 2.1 **General Permitted Uses and Disclosures.** Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule (or Covered Entity’s policies and procedures) if done by Covered Entity. Business Associate will, in its performance of the functions, activities, services, and operations specified above or detailed in the Services Agreement, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity’s PHI

- reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. Business Associate and Covered Entity acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), passed as part of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and government guidance of the definition.
- 2.2 Permitted Uses and Disclosures for Legal Responsibilities.** Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- 2.3 Permitted Uses and Disclosures for Administration.** Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which he/she is aware in which the confidentiality of the information has been breached.
- 2.4 Permitted Uses and Disclosures for Data Aggregation.** Except as otherwise limited in this Agreement, Business Associate may use PHI to provide to Covered Entity Data Aggregation services that relate to the health care operations of Covered Entity.
- 2.5 Permitted Uses and Disclosures to Federal and State Authorities.** Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with Federal and State laws and regulations, provided that Business Associate believes in good faith that Covered Entity had engaged in conduct that is unlawful or otherwise violates professional or clinical standard, or that the care, services, or conditions provided by Covered Entity potentially endangers one or more patients, workers, or the public and the disclosure is to a health oversight agency or public health authority, or an attorney retained by or on behalf of Business Associate.
- 2.6 Permitted Uses and Disclosures for Health Oversight Activities.** Business Associate may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other appropriate oversight activities, including those necessary for oversight of Government benefit programs for which health information is relevant to beneficiary eligibility.



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### SECTION 3 OBLIGATIONS OF BUSINESS ASSOCIATE

- 3.1 Use of PHI.** Business Associate shall not use or further disclose PHI other than as expressly permitted or required by this Agreement or as required by law. However, Business Associate may use PHI for the purpose of managing its internal business processes relating to its functions under this Agreement. Finally, Business Associate shall require that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to comply with the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.2 Disclosure of PHI.** Business Associate shall:
- (a) not disclose PHI to any person other than employees or subcontractors of Business Associate, except as approved by Covered Entity in writing. Any such disclosure to a subcontractor shall be made only upon the execution of a separate business associate agreement by the subcontractor and the Business Associate to be bound by the provisions of this Agreement, for the express benefit of Business Associate and Covered Entity;
  - (b) not disclose PHI to its employees unless Business Associate has advised them of Business Associate's obligations under this Agreement, and the consequences for employees and for Business Associate of violating them. Business Associate shall take appropriate disciplinary action against any employee who uses or discloses PHI in contravention of this Agreement; and
  - (c) disclose PHI to any person other than employees or subcontractors of Business Associates only according to the Notice of Privacy Practices provided to Business Associate by Covered Entity.
- 3.3 Appropriate Safeguards.** Business Associate shall use appropriate safeguards and comply, when applicable, with the Security Rule with respect to EPHI, to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall provide Covered Entity with such information concerning such safeguards as Covered Entity may from time to time request.
- 3.4 Compliance with the Security Rule.** The Business Associate will comply, when applicable, with the Security Rule with respect to EPHI.
- 3.5 Subcontractors.** Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to comply with the applicable requirements of the Security Rule by entering into a contract or other arrangement that complies with the Privacy Rule, Security Rule, Breach Notification Rule, and this Agreement.

- 3.6 Delegation of Covered Entity's Duties.** To the extent Business Associate is to carry out Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule in performance of such obligations.
- 3.7 Access to Networks.** Business Associate agrees that while present at any Covered Entity facility and/or when accessing the Covered Entity's computer network(s), it and all of its employees, agents, representatives and subcontractors shall at all times comply with any network access and other security practices, procedures and/or policies established by the Covered Entity including, without limitation, those established pursuant to HIPAA's Security Rules.
- 3.8 Reporting.** Business Associate shall provide Covered Entity with information regarding all unauthorized uses and disclosures of PHI by Business Associate, its employees or subcontractors not permitted by this Agreement and of which it becomes aware, including Breaches of Unsecured PHI as required by the Breach Notification Rule, and the remedial action taken or proposed to be taken with respect to such prohibited use or disclosure.
- 3.9 Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 3.10 Access to PHI.** Business Associate shall, at the request of Covered Entity, provide PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements of an individual's right of access and requests for access to his or her PHI. For PHI contained in an electronic health record, the Business Associate must provide a copy in an electronic format, if requested by the Covered Entity or the individual.
- 3.11 Accounting of Disclosures.** Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI; and provide to Covered Entity or an individual, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI by providing the requested documentation of disclosures promptly to Covered Entity.

If it is determined that the Business Associate maintains an electronic health record as defined by the HITECH Act, the Business Associate will, in addition to documenting disclosures for purposes other than for treatment, payment, or health care operations, document disclosures for the purposes of treatment, payment, or health care operations in accordance with the provisions of the HITECH Act.

- 3.12 Amendment to PHI.** Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to at the request of Covered Entity or an individual, and in the time and manner designated by Covered Entity.
- 3.13 Unauthorized Uses and Disclosures.** In the event Business Associate becomes aware of a Security Incident involving EPHI, by itself or any of its agents or subcontractors, Business Associate shall promptly notify Covered Entity, in writing, of such Security Incident. Covered Entity and Business Associate agree to act together in good faith to take reasonable steps to investigate and mitigate any harm caused by such unauthorized use or Security Incident.
- 3.14 Breach of Unsecured PHI.** When a Breach of Unsecured PHI occurs, the Business Associate shall notify the Covered Entity without unreasonable delay and in no case later than sixty (60) calendar days after Discovery. The notification shall include the identification of each individual affected or reasonably believed by the Business Associate to be affected by the Breach. In addition, the Business Associate will provide the Covered Entity with any information that the Covered Entity needs for the required notifications under the Breach Notification Rule without unreasonable delay. The Business Associate will be responsible for the reasonable costs of the Covered Entity that are incurred due to a Breach that occurs while the Business Associate is responsible for the privacy and security of the information.
- 3.15 Sale of PHI.** Business Associate is prohibited from exchanging PHI for direct or indirect remuneration without obtaining the individual's authorization, unless an exception applies pursuant to 45 CFR 164.502(a).
- 3.16 Marketing.** The Business Associate may receive financial remuneration and use or disclose PHI for marketing communications that:
- (a) are refill reminders or other communications about a drug or biologic that is currently being prescribed for an individual, but only if any financial remuneration received by the Business Associate in exchange for making the communication is reasonably related to the Business Associate's cost of making the communication; or
  - (b) are made by the Plan with a HIPAA-compliant authorization from the individual.

Business Associate may also make communications for treatment of an individual by a health care provider, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual, or for case management or care coordination, contacting of individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of

- treatment, but may not receive financial remuneration for such communications. For the purposes of this Section 3.16, financial remuneration means direct or indirect payment from or on behalf of a third party whose product or service is being described. Direct or indirect payment does not include any payment for treatment of an individual.
- 3.17 Compliance.** Business Associate shall make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, documentation required by the Security Rule relating to safeguards, and documentation required by the Breach Notification Rule available to Covered Entity, or to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule, Security Rule, and Breach Notification Rule.
- 3.18 Compliance With Electronic Transactions Rule.** If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any of its own subcontractors it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by HHS with respect to Transactions.
- 3.19 Amendment of Agreement.** Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Business Associate, amend this Agreement in such manner as Covered Entity determines necessary to comply with such law or regulation.

## SECTION 4 OBLIGATIONS OF COVERED ENTITY

- 4.1 Obligations of Covered Entity.** The Covered Entity shall:
- (a) provide Business Associate with a copy of its Notice of Privacy Practices, and will notify Business Associate of any limitation(s) in its Notice of Privacy Practices, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
  - (b) notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI;
  - (c) notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity agreed to with an individual, to the extent that such restriction

may affect Business Associate's use or disclosure of PHI. The Covered Entity is required to agree to a restriction, and the Business Associate must comply with the restriction, in the case of a disclosure to a health plan for payment or health care operations (and is not for the purposes of carrying out treatment) and the PHI pertains solely to a health care item or service for which the health care provider involved has been paid by the patient or participant in full and not by the health plan; and

- (d) ensure that it has properly executed business associate agreements with all other entities that create, receive, maintain, or transmit PHI on behalf of Covered Entity. The Business Associate may rely on Covered Entity's representation that it has properly executed such agreement in the case that Covered Entity directs Business Associate to exchange, transfer or accept PHI with a separate business associate of the Covered Entity. Additionally, if any subcontractor is working on behalf of a separate business associate who is assisting the Covered Entity, Business Associate may rely on Covered Entity's representation that the separate business associate has properly executed a subcontractor agreement that complies with HIPAA with such subcontractor; and
- (e) notify Business Associate if an individual has requested that PHI be provided directly to a third party pursuant to a written request signed by the individual that clearly identifies the third party.

## SECTION 5 REQUESTS BY COVERED ENTITY

- 5.1 Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

## SECTION 6 TERM AND TERMINATION

- 6.1 Term.** The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is not feasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.
- 6.2 Business Associate's Failure to Comply with HIPAA Obligations.**
- (a) **Opportunity to Cure: Termination.** If Business Associate notifies Covered Entity, or Covered Entity otherwise has reason to believe, that Business

Associate has violated a material term of any of the requirements set forth in this Agreement and Covered Entity determines that a cure of such violation is possible, not later than five (5) business days following Covered Entity's request, the Parties shall meet (in person or by telephone) to discuss Covered Entity's concerns. Following such meeting, Business Associate shall advise Covered Entity whether it agrees or disagrees with Covered Entity's concerns. If Business Associate agrees with Covered Entity's concerns, not later than five (5) business days after such meeting, Business Associate shall propose to Covered Entity a course of action to address Covered Entity's concerns (a "Corrective Plan") and, if necessary, the Parties thereafter shall engage in good faith discussions in an effort to reach agreement on the terms of the Corrective Plan. If Business Associate materially fails to implement the terms of the mutually agreed Corrective Plan, then, in addition to any other rights and remedies that may be available to Covered Entity, upon written notice to Business Associate, Covered Entity shall have the right to terminate the Agreement in its entirety. If Business Associate disagrees with Covered Entity's concerns, then the Parties will engage in good faith discussions at successively higher levels of management until the dispute has been resolved. Notwithstanding the foregoing, if the Parties are unable to reach agreement on the terms of the Corrective Plan or otherwise are unable to reach agreement with respect to Covered Entity's concerns within sixty (60) calendar days following Covered Entity's initial request for a meeting as described above, and Covered Entity has determined that Business Associate has violated a material term of any of the requirements set forth in this Agreement then, upon written notice to Business Associate, Covered Entity shall have the right to terminate the Agreement in its entirety.

- (b) No Opportunity to Cure: Termination. If Business Associate notifies Covered Entity, or Covered Entity otherwise has reason to believe, that Business Associate has violated a material term of any of the requirements set forth in this Agreement and the Covered Entity believes that a cure of such violation is not possible, then Covered Entity shall have the right upon written notice to Business Associate to terminate the Agreement in its entirety. If Covered Entity determines that the termination of the Agreement is not feasible, it shall report the violation to the Secretary of Health and Human Services.

### **6.3 Covered Entity's Failure to Comply with HIPAA Obligations.**

- (a) Opportunity to Cure: Termination. If Covered Entity notifies Business Associate, or Business Associate otherwise has reason to believe, that Covered Entity has violated a material term of any of the requirements set forth in this Agreement and Business Associate determines that a cure of such violation is possible, not later than five (5) business days following Business Associate's request, the Parties shall meet (in person or by telephone) to discuss Business Associate's concerns. Following such meeting, Covered Entity shall advise

Business Associate whether it agrees or disagrees with Business Associate's concerns. If Covered Entity agrees with Business Associate's concerns, not later than five (5) business days after such meeting, Covered Entity shall propose to Business Associate a course of action to address Business Associate's concerns (a "Corrective Plan") and, if necessary, the Parties thereafter shall engage in good faith discussions in an effort to reach agreement on the terms of the Corrective Plan. If Covered Entity materially fails to implement the terms of the mutually agreed Corrective Plan, then, in addition to any other rights and remedies that may be available to Business Associate, upon written notice to Covered Entity, Business Associate shall have the right to terminate the Agreement in its entirety. If Covered Entity disagrees with Business Associate's concerns, then the Parties will engage in good faith discussions at successively higher levels of management until the dispute has been resolved. Notwithstanding the foregoing, if the Parties are unable to reach agreement on the terms of the Corrective Plan or otherwise are unable to reach agreement with respect to Business Associate's concerns within sixty (60) calendar days following Business Associate's initial request for a meeting as described above, and Business Associate has determined that Covered Entity has violated a material term of any of the requirements set forth in this Agreement then, upon written notice to Covered Entity, Business Associate shall have the right to terminate the Agreement in its entirety.

- (b) No Opportunity to Cure: Termination. If Covered Entity notifies Business Associate, or Business Associate otherwise has reason to believe, that Covered Entity has violated a material term of any of the requirements set forth in this Agreement and the Business Associate believes that a cure of such violation is not possible, then Business Associate shall have the right upon written notice to Covered Entity to terminate the Agreement in its entirety. If Business Associate determines that the termination of the Agreement is not feasible, it shall report the violation to the Secretary of Health and Human Services.
- 6.4 Effect of Termination.** Except as provided in the following paragraph, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity that it maintains in any form or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. Business Associate shall retain no copies of the PHI.

In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

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## SECTION 7 MISCELLANEOUS

- 7.1 Amendment and Addenda.** The parties agree to amend this Agreement from time to time as necessary for Covered Entity to comply with the requirements of HIPAA. Any addenda attached as an appendix to this Agreement shall be an integral part of this Agreement, and this Agreement and any such addenda shall be interpreted as one and the same instrument unless otherwise stated in such addenda.
- 7.2 Indemnification.** Business Associate will indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or related to any third-party claim based upon any breach of this Agreement by Business Associate or similar breach by other recipients of PHI ("Claim"). If Business Associate assumes the defense of a Claim, Covered Entity shall have the right, at its expense, to participate in the defense of such Claim, and Business Associate shall not take any final action with respect to such Claim without the prior written consent of Covered Entity. Covered Entity will indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or related to any third-party claim based upon any breach of this Agreement by Covered Entity or similar breach by other recipients of PHI ("Claim"). If Covered Entity assumes the defense of a Claim, Business Associate shall have the right, at its expense, to participate in the defense of such Claim, and Covered Entity shall not take any final action with respect to such Claim without the prior written consent Business Associate.
- 7.3 Survival.** The respective rights and obligations of Business Associate under Section 6.4 of this Agreement shall survive the termination of this Agreement.
- 7.4 Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA.
- 7.5 Counterpart Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together constitute one and the same instrument.
- 7.6 No Third-Party Beneficiaries.** The parties agree that there shall be no incidental or intended third-party beneficiaries under this agreement. Nor shall any other person or entity have rights arising from the same.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties have caused this Business Associate Agreement to be duly executed effective as of the date first written above.

**WebTPA Employer Services, LLC**  
Business Associate

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

**Progressive Acute Care**  
Covered Entity

DocuSigned by:  
By: Wayne Thompson  
Name: Wayne Thompson  
Title: CFO

**Communitas, Inc.**  
Business Associate

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