

Exhibit A-3_2_Legal Statement Regarding Resident Bidder Status

LEGAL STATEMENT REGARDING RESIDENT BIDDER STATUS

Passport Health Plan, Inc., the acquirer of substantially all of the assets of University Health Care, Inc., (University Health Care) including the rights, duties, and obligations under Medicaid Managed Care Contract (MA 758 1600000002) between the Commonwealth of Kentucky and University Health Care, which expires June 30, 2020 (the “Medicaid Contract”), hereby claims “resident bidder” status pursuant to KRS §45A.494(2). Originally founded as a nonprofit, Medicaid managed-care organization operating under the trade name “Passport Health Plan,” University Health Care, its providers, its employees, and its community leaders, have, for over two decades, served the most vulnerable populations of the Commonwealth. This organization was founded for the express purpose of remedying the challenging health issues of the community throughout Louisville and the Commonwealth of Kentucky, and has worked tirelessly to serve that purpose ever since.

For a variety of reasons, in 2019, University Health Care, and its provider sponsors (which include University of Louisville Physicians, Inc., University Medical Center, Inc., Norton Healthcare, Inc., Louisville/Jefferson County Primary Care Association, Inc., and the Jewish Heritage Fund for Excellence, Inc.) commenced a competitive process to select a strategic affiliate, assessing multiple national and regional potential partners. Ultimately the Board of Directors and the provider-sponsors chose Evolent Health to become a partial owner of Passport and in doing so to provide expanded management and operational support for the health plan. This decision was based on Evolent Health’s national reputation as a leader in population health as well as its aligned mission focused on provider-driven and community-based care as the most effective strategy for engaging vulnerable populations.

Evolent Health and University Health Care’s provider sponsors hold all of the stock in Passport Health Plan, Inc., which was formed to provide the necessary capital and to acquire the assets of University Health Care. This transaction, which closed on December 30, 2019, was designed to comply with the Kentucky nonprofit corporation laws and also to retain University Health Care’s history, legacy, and service to the community and to the Commonwealth of Kentucky. The structure of Passport Health Plan’s acquisition of substantially all of the assets of University Health Care, including the Medicaid Contract under which Passport Health Plan

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currently operates, although not a “merger” in its truest sense, was carried out with the intent of preserving all that University Health Care had previously provided to the Commonwealth. Had it been possible to fully merge University Health Care with and into Passport Health Plan, there would be no debate as to Passport Health Plan’s qualification as a “resident bidder” under KRS §45A.494(2). However, the Kentucky Nonprofit Corporation Acts do not permit a nonprofit corporation to merge with and into a Kentucky business corporation. We submit, through this explanation, our sincere reasons for claiming “resident bidder” status nonetheless.

Kentucky courts have long recognized the theory of successor-in-interest liability as an exception to the generally accepted principle that an acquiring company is not liable for any debts or liabilities of the selling company. *See Pearson ex rel. Trent v. Nat’l Feeding Sys., Inc.*, 90 S.W.3d 46, 49 (Ky. 2002); *Am. Ry. Express Co. v. Commonwealth*, 228 S.W. 433 (Ky. 1920). Such exceptions are judicial replies to situations in which an asset transaction results in the selling company being financially incapable of satisfying the claims of its creditors or the victims of its torts. *See* 20 Am. Jur. Proof of Facts 2d 609 (Originally published in 1979); *see also Pearson ex rel. Trent*, 90 S.W.3d at 49-50. Judicial authorities allow for an exception when “the purchasing corporation is merely a continuation of the selling corporation.” *Pearson ex rel. Trent*, 90 S.W.3d at 49.

Chief Judge Heyburn of the Western District of Kentucky, recognizing that “few Kentucky cases discuss the doctrine in depth, [and] few other cases provide comprehensive analysis,” pulled together the most comprehensive list of case law on successor liability and articulated the rules and multi-factor tests. *Dixstar v. Gentec Equip.*, No. CIV.A. 3:02CV-45-H, 2004 WL 3362501, at *1, *3-4 (W.D. Ky. Feb. 11, 2004) (applying Kentucky law). A Kentucky court must balance six factors when determining whether an acquiring company is considered a “mere continuation” of the selling company, and therefore, should be considered a successor-in-interest of the seller: (1) continuity of shareholders and ownership, management, personnel, physical location, and business operations, (2) whether sufficient consideration was given, particularly whether stock was given in exchange, (3) whether the predecessor ceased business operations and was dissolved shortly after the new company was formed, (4) whether the successor company paid any outstanding debts on behalf of the previous company in order to continue business without interruption, (5) the buyer’s intent or purpose when the new company was formed, and (6) whether

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the successor held itself out to the public as a continuation of the previous company. *Dixstar*, 2004 WL 3362501, at *4.

Applying the factors used to determine successor-in-interest liability by Kentucky courts here, Passport Health Plan's acquisition of substantially all of the assets of University Health Care should result in Passport Health Plan being considered a successor-in-interest, and therefore, qualifying as a "resident bidder" – just as if University Health Care had retained the Medicaid Contract and were submitting this bid for itself. There are several factors supporting this conclusion, which include, without limitation, the following:

- First, Passport Health Plan, with respect to the Cabinet for Health and Family Services and the Department for Medicaid Services, acknowledged and agreed in a letter dated December 30, 2019, that, in connection with the assignment of the Medicaid Contract to Passport Health Plan, Passport Health Plan would assume all liabilities of University Health Care under the Medicaid Contract whether arising prior to or after such assignment. This evidences Passport Health Plan's intent to act as a successor-in-interest of University Health Care with respect to the Medicaid Contract.
- Second, University Health Care's provider-sponsors have retained a significant ownership interest in Passport Health Plan, holding thirty percent (30%) of its stock and exercising an approximate fifty/fifty governance split.
- Third, Passport Health Plan continues University Health Care's Medicaid business operations with nearly all of the same employees and at the same locations. In fact, Passport Health Plan continues University Health Care's Medicaid business operations under the existing Medicaid Contract. Passport Health Plan continues University Health Care's Medicaid business operations having been assigned all of University Health Care's provider and subcontractor agreements. Passport Health Plan continues University Health Care's Medicaid business operations by serving the same approximately 300,000 members formerly served by University Health Care. Passport Health Plan continues University Health Care's Medicaid business operations with the same key management personnel still guiding the organization.

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- Fourth, while University Health Care remains an active nonprofit corporation as of the date of this submission, its operations are limited to managing a Medicare Advantage plan serving approximately 2,500 individuals and holding title to certain real estate assets in Louisville. Once those assets are ready to be transferred to Passport Health Plan, University Health Care will likely wind down and dissolve within a short period of time thereafter.
- Fifth, Passport Health Plan holds itself out to the community and to the Commonwealth of Kentucky as a continuation of University Health Care by adopting University Health Care's trade name. Passport Health Plan's members and providers should expect no change in the level of service and care shown to them. In fact, many may not even be aware of the change in organizational structure.
- Sixth, and finally, is the fact that Passport Health Plan has retained University Health Care's ambitious plans to pursue a new headquarters in west Louisville.

When then Governor Steve Beshear signed legislation providing Kentucky-based businesses preference as they compete for contracts with the Commonwealth of Kentucky, he declared that the Commonwealth "must use every tool available. . .to allow Kentucky businesses to earn valuable contracts that keep Kentuckians working." Kentucky Governor's Message, 5/24/2010. Passport Health Plan, through its acquisition of substantially all of University Health Care's assets and through this bid response for a new Medicaid contract with the Commonwealth of Kentucky, aspires to keep the providers, employees, and community leaders hard at work serving the vulnerable populations of our society that these same providers, employees, and community leaders have been serving for over two decades.

Given the extensive nature of Passport Health Plan's continuation of University Health Care, it is clear that Passport Health Plan is, by all counts, a "mere continuation", and therefore, should be treated as a "resident bidder" under KRS §45A.494(2). Nevertheless, if the Commonwealth of Kentucky concludes differently that Passport Health Plan is a not a "mere continuation" of University Health Care, and therefore, that it does not qualify for "resident bidder" status, then we hereby withdraw our claim of "resident bidder" status and submit the remainder of our bid for your diligent review and consideration.