

Crosscheck Purchase Agreement Terms of Service

INFORMATION SECURITY AND INTELLECTUAL PROPERTY

1.1 Information Security and HIPAA Compliance

(a) The parties shall ensure that Provider Finance Solution shall materially comply with all applicable data protection laws that are or may in the future be applicable under this Agreement, including but not limited to the Health Insurance Portability and Accountability Act of 1996.

Prior to or contemporaneously with the execution of this Agreement, the parties shall execute a “HIPAA Business Associates Agreement” substantially in the form attached as Exhibit B and incorporated by reference as if fully set forth at length, or an equivalent form which complies with the particular provisions of HIPAA applicable to the Provider Finance Solution (the “BAA”). The parties acknowledge and agree that the BAA is intended for the parties to comply with the “HIPAA Rules” set forth at 45 C.F.R. Parts 160 and 164. The BAA shall be coextensive with this Agreement and shall provide that Crosscheck Capital will at all times strictly adhere to the BAA and abide by HIPAA standards of care for all Patient and procedure data and security. Each Provider will have the right to audit Crosscheck Capital’s HIPAA compliance and require Crosscheck Capital to complete any audit requests as contained in the BAA. A default by Crosscheck Capital under the BAA shall constitute a default for purposes of this Agreement.

1.2 Intellectual Property and Privacy Law

(a) “Intellectual Property” means any worldwide common law and statutory rights in, arising out of, or associated with: (i) trademarks, service marks, brand names, domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names, and other indicia of origin, all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby, including all renewals of same; (ii) United States and foreign patents and utility models and applications thereof and all divisions, continuations, continuations-in-part, provisional, re-examinations and renewal applications; and including renewals, extensions and reissues; (iii) trade secrets, confidential information and know-how; (iv) databases and other compilations of information; (v) copyright registrations and applications, and all other rights corresponding thereto throughout the world, including mask rights and all renewals, extensions, restorations and reversions thereof; (vi) industrial designs, (vii) all moral and economic rights of authors and inventors, however denominated and (viii) any similar or equivalent rights to any of the foregoing (as applicable).

(b) Each party shall remain the owner of all Intellectual Property that it owns or controls as of this Agreement’s effective date.

(c) Each party agrees that it, its affiliates, subsidiaries, officers, directors, agents and representatives will not use in the course of their performance of their obligations under this Agreement, any Intellectual Property belonging to another person or entity without a valid license and agrees to bring to the attention of the other parties (i) all infringements or potential infringements of any rights in or to any Intellectual Property of any other person or entity, and (ii) all infringements or potential infringements of any rights in and to the Intellectual Property of the other party to this Agreement, in each case during the term of this Agreement.

1.3 GLBA Privacy Compliance. Each party will take all commercially reasonable measures to protect Consumer information, including any nonpublic personal information (as defined in the Gramm Leach Bliley Act, 15 U.S.C. §§ 6801 et. seq., and its implementing regulations) and shall comply with all

applicable privacy laws. The parties acknowledge and agree that they shall each establish administrative, technical and physical safeguards for Consumer information in their control or possession. Such safeguards shall be designed to: (i) ensure the security of such records and information, (ii) protect against any anticipated threats or hazards to the security or integrity of such records and information; (iii) ensure the proper disposal of such records and information, and (iv) protect against unauthorized access to or use of such records and information.

REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Crosscheck Capital. Crosscheck Capital hereby represents and warrants to Provider that, as of the date of execution of this Agreement and as of each Sale Closing Date:

- (a) Due Qualification. Crosscheck Capital is duly qualified to do business as a foreign limited liability company in good standing and has obtained all necessary licenses and approvals in all jurisdictions in which the ownership or lease of property or the conduct of its business (including, without limitation, the purchase of the Contract Portfolios from Provider, the servicing of the Contracts as required by this Agreement, and its other obligations under this Agreement and the Contracts) requires such qualification except where the failure to qualify or obtain such licenses or consents would not reasonably be expected to have a materially adverse effect.
- (b) Valid Sale; Binding Obligations. This Agreement effects a valid sale, transfer and assignment of the purchased Contract Portfolios, enforceable against Crosscheck Capital.
- (c) Authority. Crosscheck Capital has all requisite power and authority to execute and deliver, and to perform all of its obligations under, this Agreement and all instruments and other documents executed and delivered by Crosscheck Capital in connection with this Agreement. The execution, delivery and performance of this Agreement by Crosscheck Capital does not require any consent, license or approval of any third party, including any governmental authority, that has not been obtained, or violate any provision of Crosscheck Capital's organizational documents.
- (d) Enforcement. This Agreement constitutes the legal, valid and binding obligation of Crosscheck Capital. This Agreement is enforceable against Crosscheck Capital in accordance with its terms, subject to (i) the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and (ii) the effect of general principles of equity which may limit the availability of equitable remedies (whether in a proceeding at law or in equity).
- (e) No Conflict. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, nor compliance with its terms and conditions, will conflict with, result in the breach of, or constitute a default under, any agreement or other instrument to which Crosscheck Capital is a party.
- (f) Litigation. There are no judgments, proceedings or investigations pending against Crosscheck Capital or, to the best of Crosscheck Capital's knowledge, threatened against Crosscheck Capital which could reasonably be expected to have a materially adverse effect on Crosscheck Capital's ability to perform its obligations under this Agreement.
- (g) Bankruptcy. Crosscheck Capital is solvent and no voluntary or involuntary bankruptcy petition has been commenced by or against Crosscheck Capital. Crosscheck Capital has not made an offer of assignment or compromise for the benefit of creditors. Crosscheck Capital will not be rendered insolvent by the consummation of the transactions contemplated by this Agreement.

2.2 Representations and Warranties of Provider. Provider represents and warrants to Crosscheck Capital that, as of the date of execution of this Agreement and as of each Sale Date:

(a) Due Qualification. Provider is duly qualified to do business, is in good standing and has obtained all necessary licenses and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including, without limitation, the solicitation or origination of Contracts, the sale of the Contract Portfolios to Crosscheck Capital and its other obligations under this Agreement and the Contracts) requires such qualification except where the failure to so qualify or obtain such licenses or consents would not reasonably be expected to have a materially adverse effect.

(b) Valid Sale; Binding Obligations. This Agreement effects a valid sale, transfer and assignment of the Contract Portfolios, purchased by Crosscheck Capital under this Agreement. This Agreement is enforceable against Provider and creditors of and purchasers from Provider.

(c) Authority. Provider has all requisite power and authority to execute and deliver and to perform all of its obligations under this Agreement and all instruments and other documents executed and delivered by Provider in connection with this Agreement. The execution, delivery and performance of this Agreement by Provider have been duly authorized by all necessary action on the part of Provider and do not require any consent, license or approval of any other third party, including any governmental authority, that has not been obtained, or violate any provision of Provider's organizational documents.

(d) Enforcement. This Agreement constitutes the legal, valid and binding obligation of Provider. This Agreement is enforceable against Provider in accordance with its terms, subject to (i) the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and (ii) the effect of general principles of equity which may limit the availability of equitable remedies (whether in a proceeding at law or in equity).

(e) No Conflict. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, nor compliance with its terms and conditions, will conflict with, result in the breach of, or constitute a default under, any agreement or other instrument to which Provider is a party.

(f) Litigation. There are no judgments, proceedings or investigations pending against Provider or, to the best of Provider's knowledge, threatened against Provider which could reasonably be expected to have a materially adverse effect on Provider's ability to perform its obligations under this Agreement.

(g) Bankruptcy. Provider is solvent and no voluntary or involuntary bankruptcy petition has been commenced by or against Provider. Provider has not made an offer of assignment or compromise for the benefit of creditors. Provider will not be rendered insolvent by the consummation of the transactions contemplated by this Agreement.

(h) Governmental Consents. The execution, delivery and performance by Provider of this Agreement and the transactions contemplated by this Agreement do not require any registration with, consent or approval of, notice to, or other action to, with or by any governmental authority, except for filings and recordings with respect to the security interest granted pursuant to Section 4.3, as of the date of this Agreement other than (i) those that have already been obtained and are in full force and effect, or (b) any consents or approvals the failure of which to obtain will not have a material adverse effect.

(i) Eligibility. Each Contract, and each Patient corresponding to such Contract, satisfies all of the eligibility criteria outlined in Exhibit A.

(j) **Payment of Taxes.** All United States federal income tax returns and all other material tax returns and reports required to be filed by Provider have been filed. All taxes shown on such tax returns to be due and payable and all other material taxes upon Provider and its properties, assets, income, businesses and franchises which are due and payable have been paid prior to the date on which any penalty or other liability may be added thereto for non-payment, except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on Provider's books in accordance with GAAP. To Provider's knowledge, none of Provider's tax returns are under audit or examination by any governmental authority and no notice of any audit or examination or any assertion of any claim for taxes has been given or made by any governmental authority as of the Sale Date.

(k) **No Material Adverse Effect.** Since the effective date of this Agreement, no event, circumstance or change has occurred that has had or may reasonably be expected to have, individually or in the aggregate, a materially adverse effect on the business, operations or financial condition of Provider.

(l) **Title to Contract Portfolio.** Provider has good and marketable title to, and is the sole owner of, each of the Contracts and all other property comprising the corresponding Contract Portfolio to be conveyed to Crosscheck Capital on the applicable Sale Date. Each Contract Portfolio purchased by Crosscheck Capital under this Agreement shall be conveyed to Crosscheck Capital free and clear of all liens, claims, encumbrances and other charges whatsoever. At each sale Date, no Contract Portfolio then being acquired by Crosscheck Capital will be subject to any agreement to assign, convey and/or transfer such Contract Portfolio, in whole or in part, except as set forth in this Agreement.

(m) **Full Conveyance.** Provider shall convey to Crosscheck Capital its entire interest in each Contract Portfolio to be conveyed on the applicable Sale Date, free and clear of any liens and encumbrances. The transfer of each Contract Portfolio to Crosscheck Capital at such Sale Date will be treated by Provider for financial accounting, reporting and all other purposes as a sale of assets.

(n) **Solvency of Provider.** Provider is solvent and the sale of each Contract Portfolio to be conveyed on the applicable Sale Date under this Agreement will not cause Provider to become insolvent. No sale of any Contract Portfolio is undertaken with the intent to hinder, delay or defraud any of Provider's creditors, is in the ordinary course of business and constitutes and will continue to constitute a practical and reasonable course of action designed to improve the financial condition of Provider. Crosscheck Capital may request at any time, and Provider shall provide within 14 days, all such financial statements, reports, and certificates requested by Crosscheck Capital to ensure the solvency of Provider. Financial statements include, but are not limited to, balance sheets and related statements of income and cash flows. Financial statements are to be prepared in accordance with GAAP. If Crosscheck Capital determines, in its sole discretion, that Provider, is not financially solvent after a review of the financial statements, reports, and certificates obtained, it may terminate the Agreement immediately with notice to Provider.

(o) **Set-Off.** Each Contract part of a Contract Portfolio on the applicable Sale Date has not been compromised, adjusted, extended, satisfied, subordinated, rescinded, set-off or modified by Provider since its, nor are such Contracts subject to compromise, adjustment, extension, satisfaction, subordination, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deduction, reduction, termination or modification by Provider or the Patient thereunder.

(p) **Origination of Contracts.** Each Contract in the applicable Contract Portfolio purchased by Crosscheck Capital under this Agreement was originated, marketed, serviced and collected in accordance with the contract terms documented in Exhibit C, Part II. Provider represents and warrants that it has verified the identity of all Patients prior to originating any Contract with that Patient. Provider represents and warrants that each Patient was of legal age and competency to execute the Contract at the time of

execution. Provider represents and warrants that it has complied with all applicable federal and state fair credit and nondiscrimination laws when offering the Contracts to Patients and has not discriminated against any Patients based upon race, color, religion, national origin, sex, marital status, age (provided the Patient has the capacity to enter into a binding contract), the fact that all or part of the Patient's income derives from any public assistance program, the fact that the Patient has in good faith exercised any right under the Consumer Credit Protection Act or other basis prohibited by applicable law when offering the Contracts or any promotion financing terms with respect to the Contracts.

(q) **Compliance with Applicable Laws.** Each Contract purchased by Crosscheck Capital under this Agreement has been originated in compliance with, and Provider is in compliance with, all applicable federal and state laws, including, without limitation, all applicable usury laws. There were no false, misleading, deceptive or abusive acts or practices by Provider in connection with any Contract.

(r) **Lawful Assignment; No Consent Required.** No Contract purchased by Crosscheck Capital under this Agreement has been originated in, or is subject to the laws of, any jurisdiction under which the sale, transfer, and assignment of such Contract shall be unlawful, void, or voidable. Provider has not entered into any agreement with any Patient that prohibits, restricts or conditions the assignment of any portion of a Contract purchased by Crosscheck Capital. No notice to or consent by any Patient or other person is required under any agreement or applicable law to render the sale, transfer, assignment or pledge of any Contract sold to Crosscheck Capital valid under this Agreement.

(s) **No Other Interests.** +. Provider has not authorized the filing of and is not aware of any financing statements filed against Provider that include a description of collateral covering any Contracts offered for sale under this Agreement, other than any financing statement relating to the security interest granted to Crosscheck Capital. Provider is not aware of any judgment or tax lien filings against Provider.

(t) **Organization and Good Standing.** Provider has been duly organized and is validly existing and in good standing under the laws of the State where Provider is registered. Provider has the power and authority to own its properties as such properties are currently owned and to conduct its business as such business is currently conducted. Provider had at all relevant times, and now has, power, authority and legal right to solicit, own and sell the Contract Portfolios transferred to Crosscheck Capital and to perform its other obligations under this Agreement and any other Contract Documents to which it is a party.

(u) **Investment Company Status.** Provider is not an "investment company" registered or required to be registered under the Investment Company Act.

2.3 Grant of Security Interest; Assignment of Benefit.

(a) It is intended that the transactions contemplated by this Agreement constitute absolute conveyances of each Contract Portfolio purchased by Crosscheck Capital under this Agreement, and not a grant of a security interest by Provider to secure a retail installment contract by Crosscheck Capital. If, notwithstanding the intention of the parties, the sale by Provider of a Contract Portfolio shall (i) be characterized as a secured loan and not a sale or (ii) be ineffective or unenforceable for any reason, then this Agreement shall be deemed to constitute a "security agreement" under the UCC and other applicable law and Provider grants to Crosscheck Capital a "security interest" under the UCC in all of Provider's right, title and interest in, to and under the Contracts and other items comprising each Contract Portfolio sold or purported to be sold by Crosscheck Capital hereunder, now existing or hereafter acquired, to secure a loan in an amount equal to the aggregate purchase price paid by Crosscheck Capital for such Contract Portfolios, together with interest thereon equal to all interest and other amounts accruing under the purchased Contract Portfolios, and each of Provider's other payment obligations under this

Agreement. For this purpose and without being in derogation of the parties' intention that the sale of a Contract Portfolio by Provider to Crosscheck Capital hereunder shall constitute a true sale thereof, in addition to the rights and remedies provided to a secured creditor under the UCC and other applicable laws (including the absolute right to file one or more UCC financing statements and to take other steps necessary to perfect its interests as a secured creditor), Crosscheck Capital and its assigns shall have the rights and remedies under this Agreement, which rights and remedies shall be cumulative. The provisions of this paragraph shall survive the termination of this Agreement.

2.4 Additional Remedies. Upon discovery by either Provider or Crosscheck Capital of a breach of any of the foregoing representations and warranties, the party discovering such breach shall give prompt written notice to the other party and provide the breaching party an opportunity to cure such breach in all material respects. Within five (5) business days of the receipt of written notice of any breach, the breaching party shall, in the non-breaching party's sole discretion, (i) cure such breach in all material respects; and (ii) in the event of breach by Provider, repurchase such Contract Portfolio, or any property acquired in respect thereof from Crosscheck Capital for an amount equal to the Purchase Price net of any payments received from Patients. Provider shall deliver the full amount of the Purchase Price net of any payments received from Patients to Crosscheck Capital by ACH or wire transfer of immediately available funds to an account specified by Crosscheck Capital. Upon the repurchase of a Contract Portfolio, Crosscheck Capital shall take all actions necessary for the reassignment of the related Contract Portfolio to Provider and return to Provider the related Contracts corresponding to such Contract Portfolio.

MISCELLANEOUS PROVISIONS

3.1 Binding Nature of Agreement; Assignment. This Agreement shall be binding upon and inure to benefit of the parties hereto and their respective successors and permitted assigns. Neither Provider nor Crosscheck Capital shall assign all or any portion of its rights or delegate all or any portion of its obligations under this Agreement without the prior written consent of the other party.

3.2 Amendment. This Agreement may be amended solely by a written agreement executed by the parties.

3.3 Notices. All notices, requests, demands or other communications to be given pursuant to the terms of this Agreement shall be in writing and effective (i) when delivered, if personally delivered, (ii) when receipt is electronically confirmed, if faxed or emailed or (iii) one day after deposit with a nationally-recognized overnight mail service or courier, or when mailed first class, postage prepaid, in each case to the intended recipient at the address set forth in the Contract Purchase Agreement. Any party may change the address to which notices, requests, demands, claims and other communications are to be delivered by giving the other parties notice in the manner set forth in this Agreement.

3.4 Confidentiality.

(a) "Confidential Information" means all documents, instruments, proprietary and technical knowledge, data or information in tangible or intangible form relating to business, product, marketing, licensing or sales activities, policies, practices, outlooks, studies, reports, analyses, strategies or forecasts, finances, revenue, pricing, costs or profits, released or unreleased products including, but not limited to, software, hardware, development, research, designs, specifications, performance characteristics, code, formulas, algorithms, data, techniques, processes, inventions, testing strategies, industry, patient or consumer information, and third party confidential information provided by either party (in such capacity, the "Disclosing Party") and/or any affiliate, director, officer, manager, shareholder, co-investor, member,

advisor, agent, employee, financial advisor, consultant, attorney, accountant, financing source or other authorized representative (each a “Representative” and collectively the “Representatives”) of the Disclosing Party to the other party (in such capacity, the “Receiving Party”) or any Representative of the Receiving Party in whatever manner or form.

(b) Except as otherwise expressly provided in this Agreement, the Receiving Party agrees to retain the Confidential Information in strict confidence with at least the same level of care as it protects its own confidential information of similar nature, but not less than a reasonable and prudent level of care, from the date of receipt of the Confidential Information. The Receiving Party agrees not to disclose the Confidential Information to any third party, except as previously approved in writing by the Disclosing Party. The Receiving Party will use and reproduce the Confidential Information solely for the purpose of (i) evaluating any proposed transactions between the parties or (ii) performing any transactions the parties agree to undertake. The Receiving Party may permit access to Confidential Information by certain Representatives who have a reasonable need to know such Confidential Information; provided, that the Receiving Party will (i) inform such Representatives of the confidential nature of the Confidential Information and (ii) be responsible for any breach of this Agreement by such Representatives. In the event of a breach of this Agreement by Receiving Party or any of its Representatives, the Receiving Party agrees to provide notice to the Disclosing Party within one (1) business day of the discovery of such breach by Receiving Party.

(c) The Receiving Party’s obligations under this Agreement with respect to any portion of the Confidential Information shall not apply if: (i) such Confidential Information was in the public domain when it was communicated to the Receiving Party; (ii) such Confidential Information becomes publicly known from a source having the right to disclose such Confidential Information and through no wrongful act on the part of the Receiving Party or any of its Representatives; (iii) such Confidential Information was in the Receiving Party’s possession free of any obligation or restriction of confidence at the time of disclosure by the Disclosing Party or any of its Representatives; (iv) such Confidential Information was wholly and independently developed by the Receiving Party or any of its Representatives without reference to or use of any Confidential Information subject to this Agreement and without breach of this Agreement or (v) such Confidential Information is required to be disclosed in response to a valid order by a court or other governmental agency of competent jurisdiction (solely with respect to such disclosure); provided, that (a) the Receiving Party shall use its best-efforts to provide the Disclosing Party with prior notice of such disclosure in order to permit the Disclosing Party to seek, at its sole expense, an appropriate protective order or confidential treatment of such Confidential Information and (b) the Receiving Party shall supply only that portion of the Confidential Information that is legally required to be disclosed to such court or governmental agency in accordance with the applicable order. Notwithstanding the foregoing, the Receiving Party may disclose the Confidential Information without prior notification to the Disclosing Party with respect to routine disclosures to regulatory authorities having jurisdiction over the Receiving Party or its Representatives; provided, that such disclosures are not made in connection with any investigation or inquiry concerning any proposed, ongoing or consummated transaction between the Parties, and provided further, that the Receiving Party shall provide notice to the Disclosing Party after such disclosures are made.

(d) Upon the earlier of the expiration or termination of this Agreement, the Disclosing Party, in their sole discretion, may direct the Receiving Party to destroy or return all or any portion of the Confidential Information. Upon request by the Disclosing Party, the Receiving Party shall provide a written certification that all Confidential Information in the possession of the Receiving Party and any of its Representatives has been destroyed or returned. Notwithstanding the foregoing, the Receiving Party shall

be entitled to retain a copy of any Confidential Information required to be retained by the Receiving Party under applicable law or under any recordkeeping or document retention policies of the Receiving Party.

3.5 Governing Law; Jurisdiction and Venue. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. ANY LITIGATION BASED ON, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER RETAIL INSTALLMENT CONTRACT DOCUMENTS SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF CALIFORNIA LOCATED IN THE COUNTY OF KERN OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE CROSSCHECK CAPITAL FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. CROSSCHECK CAPITAL, AND PROVIDER HEREBY EXPRESSLY AND IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA LOCATED IN THE COUNTY OF KERN AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. CROSSCHECK CAPITAL AND PROVIDER FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF CALIFORNIA. CROSSCHECK CAPITAL AND PROVIDER EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

3.6 Severability of Provisions. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be held invalid for any reason, then such covenants, agreements, provisions or terms shall be severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other covenants, agreements, terms or provisions of this Agreement.

3.7 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY BE DELIVERED IN THE FUTURE AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

3.8 Further Assurances. Each party agrees to cooperate fully with the other in the performance of this Agreement. Each party shall execute, acknowledge and deliver any other instruments, documents and materials that party may reasonably request and which are necessary or appropriate in order to affect the consummation of the transactions contemplated by this Agreement; provided that no such other instrument, document or material shall either extend or enlarge the obligations of the non-requesting party beyond the express undertakings of this Agreement.

3.9 Entire Agreement. This Agreement and the attached exhibits, incorporated herein by reference, constitute the entire agreement between the parties and supersedes all prior or contemporaneous agreements, representations or warranties of the parties. No alteration, amendment, modification or waiver of any of the terms or provisions of this Agreement, and no future representation or warranty by either party with respect to this transaction, shall be valid or enforceable, unless the same shall be in writing and signed by the party against whom enforcement is sought.

3.10 Indulgences; No Waivers. No failure or delay to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of that right, remedy, power or privilege. Nor single or partial exercise of any right, remedy, power or privilege shall preclude any other or further exercise of the same or of any other right, remedy, power or privilege. No waiver of any right, remedy, power or privilege with respect to any one occurrence shall extend to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

3.11 Books and Records. It is the express intention of the parties that the transactions contemplated by this Agreement be, and be construed as, a true sale of the purchased Contract Portfolios by Provider and not a pledge of such Contract Portfolios by Provider to Crosscheck Capital to secure a debt or other obligation of Provider. Consequently, the sale of each Contract Portfolio shall be reflected as a purchase of assets on Crosscheck Capital's business records and financial statements, and as a sale of assets on Provider's business records, tax returns and financial statements.

3.12 Headings. The headings and subheadings contained in this Agreement are for convenience of reference only, and they shall not be used in the interpretation of the Agreement.

3.13 Facsimile; Counterparts. This Agreement may be executed by facsimile or other electronic transmission and in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

3.14 INDEMNITY AND LIMITATION OF LIABILITY.

(a) INDEMNIFICATION. NOT IN LIMITATION OF ANY OTHER RIGHT OR REMEDY CONTAINED HEREIN, IN CONSIDERATION OF THE EXECUTION AND DELIVERY OF THIS AGREEMENT, CROSSCHECK CAPITAL AND PROVIDER (AS APPLICABLE, THE "INDEMNIFYING PARTY") AGREE TO IMMEDIATELY INDEMNIFY, DEFEND, EXONERATE AND HOLD THE OTHER PARTY AND EACH OF THE OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, APPROVED FUNDS AND AGENTS OF CROSSCHECK CAPITAL, EACH LENDER AND ANY ASSIGNEE OF SUCH PARTY (EACH AN "INDEMNIFIED PARTY") FREE AND HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, CAUSES OF ACTION, SUITS, LOSSES, LIABILITIES, DAMAGES AND EXPENSES, FINES, PENALTIES, INCLUDING REASONABLE AND DOCUMENTED, OUT-OF-POCKET ATTORNEY COSTS ARISING OUT OF OR IN CONNECTION WITH (i) ANY CLAIM BY A THIRD PARTY ARISING OUT OF THE NEGLIGENCE OF OR A BREACH BY THE INDEMNIFYING PARTY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, (ii) ANY VIOLATION OF APPLICABLE LAW BY OR ON BEHALF OF THE INDEMNIFYING PARTY, (iii) ANY UNAUTHORIZED USE BY OR ON BEHALF OF THE INDEMNIFYING PARTY OF ANY PROPRIETARY SOFTWARE OF THE INDEMNIFIED PARTY, (iv) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY OR ON BEHALF OF THE INDEMNIFYING PARTY, IN EACH CASE AS DETERMINED BY A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION. ADDITIONALLY, PROVIDER HEREBY AGREES TO INDEMNIFY, DEFEND, EXONERATE AND HOLD CROSSCHECK CAPITAL AND EACH OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, APPROVED

FUNDS AND AGENTS, LENDERS AND ANY ASSIGNEES FROM AND AGAINST ANY AND ALL ACTIONS, CAUSES OF ACTION, SUITS, LOSSES, LIABILITIES, DAMAGES AND EXPENSES BROUGHT AGAINST CROSSCHECK CAPITAL, INCLUDING REASONABLE AND DOCUMENTED, OUT-OF-POCKET ATTORNEY COSTS ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM BY ANY PATIENT ARISING OUT OF PROVIDER'S PROVISION OF DENTAL SERVICES TO ITS PATIENTS INCLUDING, WITHOUT LIMITATION, CLAIMS THAT SUCH SERVICES ARE DEFICIENT OR THE PROVISION THEREOF CONSTITUTES PROFESSIONAL MALPRACTICE.

(b) LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE NOTED, NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF REVENUE OR PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF THEY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

3.15 Survival of Terms. Sections 2.4, 2.5, 2.6, of the Contract Purchase Agreement and Sections 2.1, 2.2, 2.3, 3.4, 3.5, 3.7, 3.8 and 3.14 of this Terms of Service shall survive the termination of this Agreement.

3.16 Benefits of Agreement. Nothing in this Agreement, express or implied, shall give to any person, other than the parties to this Agreement and their successors and permitted assigns, any benefit or any legal or equitable right, power, remedy or claim under this Agreement.