

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT GEORGIA  
ATLANTA DIVISION

In re: ) Chapter 11  
)  
CONFIRMATRIX LABORATORY, INC., ) Case No. 16-69934-PWB  
)  
Debtor. )  
\_\_\_\_\_ )

**MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105 AND 363 (I) AUTHORIZING THE DEBTOR TO EXECUTE PURCHASE AND SALE AGREEMENT BY AND BETWEEN CONFIRMATRIX LABORATORY, INC., NYX HEALTH RECOVERY SERVICES, LLC, AND FIRST PORTFOLIO VENTURES I, LLC; (II) WAIVING THE 14-DAY STAY UNDER BANKRUPTCY RULE 6004(h); AND (III) GRANTING OTHER RELATED RELIEF**

Pursuant to §§ 105 and 363 of Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, the “Bankruptcy Code”) and Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Confirmatrix Laboratory, Inc., a debtor and debtor-in-possession in the above-styled chapter 11 case (the “Debtor”), hereby seeks the entry of an order (i) authorizing the private sale of certain patient accounts receivable (the “Purchased Accounts”) to First Portfolio Ventures I, LLC (“First Portfolio”), (ii) authorizing the Debtor’s entry and execution of that certain Purchase and Sale agreement dated December 18, 2017 by and between the Debtor, First Portfolio, and NYX Health Recovery Services, LLC (the “Agreement”), and (iii) granting related relief.<sup>1</sup> In support thereof, the Debtor shows as follows:

<sup>1</sup> NYX was added as a signatory to the Agreement due to NYX’s obligations to provide access to Debtor’s records to First Portfolio. NYX is not a purchaser of the Purchased Accounts.

### **Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this case is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The Court has the authority to grant the requested relief pursuant to §§ 105 and 363 of the Bankruptcy Code.

### **Facts**

2. On November 4, 2016 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Petition”). In accordance with §§ 1107 and 1108 of the Bankruptcy Code, the Debtor has continued to operate its business as a debtor-in-possession and has continued its possession of its properties. As of the date of the filing of this motion, no trustee, examiner or official committee of unsecured creditors has been appointed in this case.

3. Before and after the Petition, the Debtor performed toxicology and blood testing services for medical offices and other laboratories. After the filing of the case, the Debtor identified the need to retain a collection agency to collect its sizable aged accounts receivable. The Debtor and NYX entered, with Court’s approval, into that certain Accounts Receivable Recovery Agreement (the “NYX AR Agreement”) pursuant to which the Debtor retained NYX to collect certain known aged accounts receivable. See ECF No. 74. NYX began reviewing and correcting, as needed, the subject aged accounts receivable and submitting them for reimbursement by the insurance companies. A number of these aged accounts receivable were determined by the insurance companies to be patient responsibility. Upon receiving the

insurance companies' determinations as to the patient liability, NYX identified the Purchased Accounts to the Debtor as an additional source of income for the Debtor's estate. To prepare the Purchased Accounts for marketing, NYX had to scrub and supplement the records with any missing information to the extent available. In doing so, NYX incurred substantial expense in assisting, preparing for, and in conducting the marketing of the Purchased Accounts, and has agreed to take on continuing obligations to provide First Portfolio with digital related access after the closing to allow First Portfolio to meaningfully pursue collection of the Purchased Accounts. NYX has agreed to accept a payment from Debtor of 20% of the net amounts actually received by Debtor free and clear of any claims by First Portfolio under the Agreement for NYX's services rendered and to be rendered in connection with the sale of the Purchased Accounts. The Purchased Accounts currently represent aged accounts receivable which the insurance companies have determined are the patients' responsibility and have a collective face value of approximately \$166,000,000.00. SunTrust Bank's first priority lien having been paid in full from the sale of the Debtor's sale of its real property, no known liens exist against the Purchased Accounts.

4. The Debtor, with the crucial assistance of NYX, marketed the Purchased Accounts for sale for approximately six (6) weeks, which is the customary marketing time for this type of asset. Marketing was undertaken by posting the Purchased Accounts on the ARxChange site, which is a well-known and established means for marketing accounts receivable for sale to third parties. The Debtor received two offers for the Purchased Accounts, with First Portfolio's offer being the highest and best offer. The Debtor and First Portfolio

heavily negotiated, at arm's length, the terms of the Agreement, a copy of which is attached hereto as Exhibit "A." The Debtor was successfully able to negotiate a purchase price of \$280,000.00 (the "Purchase Price") for the Purchased Accounts, subject to possible adjustments not to exceed \$50,000.00. The Agreement provides for a break-up fee equal to two percent (2%) of the Purchase Price plus a minimum initial overbid of \$75,000.00, although Debtor does not anticipate that an auction will ensue considering the previous substantial marketing that has already occurred.

5. Contemporaneously herewith, the Debtor has sought an expedited hearing on this motion as the Purchase Price is based on the ability of the Debtor to obtain Court approval for the Agreement as soon as possible but in no event later than December 29, 2017, as First Portfolio contends that the inherent value of the Purchased Accounts deteriorates with each passing day. A delay in obtaining the approval of the subject sale could cause a significant reduction to the Purchase Price or a possible entire loss of the sale to the detriment to Debtor's estate and creditors. For the sake of clarification, NYX continues to collect insurance-based accounts receivable under its agreement with the Debtor as approved by this Court.

**Relief Requested**

6. By this motion, the Debtor requests that the Court enter an order (a) authorizing the sale of the Purchased Accounts free and clear of liens, claims and encumbrances, (b) authorizing the Debtor to enter and execute the Agreement, (c) approving payment by Debtor to NYX of 20% of the net funds received by Debtor for NYX's services rendered in making the sale possible, and (d) granting related relief.

### Argument

7. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). While Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale of a debtor’s assets, in analyzing and applying this section, courts have determined that the proposed sale is appropriate where it is based on the debtor’s sound business judgment. *See In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992) (holding that a judge determining whether to approve a sale pursuant to Section 363 must determine whether the evidence presented before him evidences a good business reason to grant such sale); *In re Diplomat Const., Inc.*, 481 B.R. 215, 218 (Bankr. N.D. Ga. 2012) (“The business judgment test is the prevailing rubric to evaluate the proposed transaction under § 363(b)(1), although it has been articulated in a variety of ways”); *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002).

8. The Debtor has determined in its business judgment that entering in the Agreement is in the best interest of the Debtor, its creditors and stakeholders as it will generate additional immediate funds of approximately \$184,000.00<sup>2</sup> which will be available to meet

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<sup>2</sup> Under the Agreement, First Portfolio could assert claims for up to one year with a maximum limit of \$50,000 (with such maximum amount being reduced every quarter). Thus, upon Closing, Debtor will receive the full purchase price amount of \$280,000 but will not distribute \$50,000 of that until the quarterly claim periods as more specifically set forth in the Agreement have passed and further net amounts free and clear of claims by First Portfolio are determined. As such, the initial net available proceeds will be \$184,000 (\$280,000 less \$50,000 = \$230,000 less \$46,000 (20% x \$230,000 = \$46,000)). To the extent no valid claims are made within each quarter of

some financial obligations associated with the continuing administration of the Debtor's estate and the completion of the wind-down of the Debtor's business and other similar expenses. The Debtor believes that the Agreement provides the Debtor with the best and highest offer for the Purchased Accounts and opportunity to maximize the value of its assets. Furthermore, the Purchase Price is the highest offer received after marketing the assets for sale, is fair and reasonable, and reflects the fair market value of the Purchased Accounts. The Debtor will be able to obtain the Purchase Price without the need of expending any additional resources or having to wait for several months for the actual collections to be received, while transferring the risk associated with the collection of the Purchased Accounts to First Portfolio. The Debtor's decision to enter into the Agreement and sell the Purchased Accounts to First Portfolio is a sound exercise of Debtor's business judgment, as the Debtor has evaluated all available options with respect to these assets and has determined that this sale will result in the greatest recovery for the Debtor and its estate. As such, the proposed sale is consistent with applicable law and should be granted.

9. The Debtor further requests that this sale be approved free and clear of all liens, claims, and encumbrances. Pursuant to Section 363(f) of the Bankruptcy Code, a debtor-in-possession may sell property free and clear of any lien, claim or interest of another entity if one of the following is satisfied: (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such

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the year following closing as more specifically set forth in the Agreement, then Debtor will receive up to another \$40,000 (\$50,000 less 20% of \$50,000 = \$10,000)).

property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f). In this case, the Debtor is not aware of any entity that asserts a lien on the Purchased Accounts.

10. In the alternative, to the extent any secured creditor may exist, the Debtor can also satisfy Section 363(f)(5) of the Bankruptcy Code. Specifically, the “cram down” provision of Section 1129(b) of the Bankruptcy Code represents a “legal or equitable proceeding” pursuant to which a secured creditor can be compelled to “accept a money satisfaction” on account of its security interest in satisfaction of Section 363(f)(5) of the Bankruptcy Code. *See, e.g., In re Grand Slam U.S.A. Inc.*, 178 B.R. 460 (E.D. Mich. 1995) (holding that “cram down” provisions of Section 1129(b) satisfy “legal or equitable proceeding” requirement of Section 363(f)(5)); *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497 (Bankr. N.D. Ala. 2002) (same); *In re Terrace Chalet Apartments Ltd.*, 159 B.R. 821 (N.D. Ill. 1993). Pursuant to Section 1129(b) of the Bankruptcy Code, a secured creditor is entitled to either (a) retain its security interest in its collateral, (b) receive payment(s) on account of the value of its security interest (if any), or (c) have its security interest attach to the net proceeds of the sale of its collateral. *See* 11 U.S.C. §§ 1129(b)(2)(A)(i)-(ii). Here, the Debtor proposes that any liens, claims, and encumbrances attach to the proceeds of the sale, subject to any claims and defenses that the Debtor may have with respect thereto. Accordingly, the Purchased Accounts can be sold free and clear of all liens, claims, and encumbrances pursuant to either Section 363(f)(2) or (f)(5) of the Bankruptcy Code.

11. The Debtor further seeks that the Court afford First Portfolio the designation of “good faith purchaser” and the protections set out in Section 363(m) of the Bankruptcy Code. Section 363(m) of the Bankruptcy Code provides that “the reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith . . . .” 11 U.S.C. § 363(m). The Agreement and this sales transaction were negotiated in a good faith and at arm’s length. First Portfolio is an unrelated third party who is not an insider or an affiliate of the Debtor. As such, the Debtor requests that First Portfolio be entitled to the protections set out in Section 363(m) of the Bankruptcy Code.

12. By this motion, Debtor further seeks a waiver of the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Debtor believes that waiving the 14-day stay is necessary in this case in light of the relatively low-risk to the Debtor and its creditors arising out of its entry in the Agreement as opposed to the substantial benefit the relief sought herein will provide. For the reasons stated herein, the Debtor submits that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

WHEREFORE, the Debtor requests that this Court enter an Order (i) granting this Motion and authorizing the Debtor to execute the Agreement, (ii) waiving the 14-day stay



imposed by Bankruptcy Rule 6004(h), (iii) authorizing payment to NYX as set forth herein and (iv) granting such other and further relief as may be just and proper.

Respectfully submitted this 18th day of December, 2017.

/s/ J. William Boone  
J. William Boone  
Georgia Bar No. 067856  
Doroteya N. Wozniak  
Georgia Bar No. 627491  
3399 Peachtree Road, N.E., Suite 1700  
Atlanta, Georgia 30326  
(404) 997-6020  
(404) 997-6021 (fax)  
[bboone@jamesbatesllp.com](mailto:bboone@jamesbatesllp.com)  
[dwozniak@jamesbatesllp.com](mailto:dwozniak@jamesbatesllp.com)

**PURCHASE AND SALE AGREEMENT**

Between

Confirmatrix Laboratory, Inc.

(Seller)

and

First Portfolio Ventures I, LLC

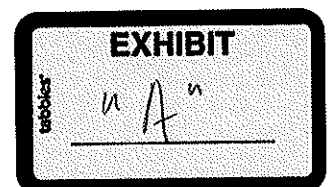
(Buyer)

and

NYX Health Recovery Services, LLC

(Third Party Collection Agent)

December 18, 2017



## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") dated December 18, 2017 (the "Effective Date") is entered into by Confirmatrix Laboratory, Inc., a Georgia Corporation ("Seller"), First Portfolio Ventures I, LLC, a Delaware limited liability company ("Buyer"), and NYX Health Recovery Services, LLC, a Georgia limited liability company ("NYX"). Seller, Buyer, and NYX are individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Seller is a debtor in possession in a chapter 11 case pending in the U.S. Bankruptcy Court for the Northern District of Georgia, styled as *In re Confirmatrix, Inc.*, Case No. 16-69934-PWB (the "Bankruptcy Case");

WHEREAS, no trustee or examiner has been appointed in the Bankruptcy Case, and Seller remains in control of its operations;

WHEREAS, Seller, as part of its operations, generated accounts by providing healthcare-related goods and services;

WHEREAS, Seller is winding down its operations and is no longer in the business of providing healthcare-related goods and services;

WHEREAS, pursuant to that certain Accounts Receivable Recovery Agreement (the "Collection Agreement") entered into between NYX and Seller on or about December 6, 2016, which was approved by the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court") on December 7, 2016 (ECF No. 74), Seller has retained NYX to collect Seller's aged accounts which included the Accounts;

WHEREAS, as part of such collection efforts, NYX, on behalf of Seller, was able to identify for sale the Accounts that Seller is selling under this Agreement;

WHEREAS, NYX and Seller, through third-party vendors, currently maintain Seller's access to HealthFusion, Laboratory Information Management System ("LIMS"), and Content Central, which collectively house Seller's digitized books and records for the Accounts;

WHEREAS, neither Seller, nor NYX on behalf of Seller, has received complete payment on the Accounts;

WHEREAS, Buyer acquires unpaid accounts to lawfully collect them;

WHEREAS, Buyer desires to purchase and Seller desires to sell the Accounts on the terms and conditions of this Agreement; and

WHEREAS, this Agreement is subject to the approval of the Bankruptcy Court.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

1. **DEFINITIONS.** Unless defined elsewhere in this Agreement or the context requires otherwise, capitalized terms used in this Agreement have the meanings set forth in Schedule 1.

2. **AGREEMENT TO SELL AND PURCHASE.**

2.1 **Sale Order.** Within five (5) business days after the Effective Date, Seller shall: (i) file a motion, supporting papers, and a proposed order, all in form and substance satisfactory to Buyer and Seller, with the Bankruptcy Court seeking the entry of an order approving this Agreement (the "**Sale Order**"); and (ii) seek a hearing thereon at the earliest possible date. The motion shall request that the sale be free and clear of all liens, claims, interests, and encumbrances, per 11 U.S.C. § 363(f); and shall request "stalking horse" protections acceptable to Buyer, including without limitation a break-up fee equal to two percent (2%) of the Purchase Price plus a minimum initial overbid of \$75,000.00. The Sale Order approving this Agreement entered by the Bankruptcy Court under 11 U.S.C. § 363 shall be in form and substance satisfactory to Buyer and Seller, approve a legal, valid, enforceable, and effective transfer of the Accounts to Buyer, and shall provide, among other things, that: (a) upon payment of the Purchase Price, this Agreement vests or will vest Buyer with good title to the Accounts which will be free and clear of all liens, claims, interests, and encumbrances; (b) payment of the Purchase Price constitutes reasonably equivalent value and fair consideration for the Accounts being purchased; and (c) Buyer shall be found by the Bankruptcy Court to be a good faith purchaser of the Accounts, as that term is used in 11 U.S.C. § 363.

2.2 **Closing.** On the fifth (5th) business day after entry of record of the Sale Order by the Bankruptcy Court (the "**Closing Date**"), Buyer will pay to Seller the Purchase Price by a wire transfer and Seller will sell, convey, assign, transfer, and deliver to Buyer, free and clear of all liens, claims, and encumbrances, all right, title, and interest in and to the Accounts. Seller: (i) consents to Buyer's filing of UCC 1 financing statement(s) on or after the Closing Date with respect to the Accounts suitable to reflect the transfer of accounts, payment intangibles, and general intangibles (each as defined in UCC Article 9) and meeting the requirements of applicable state laws in such manner and in such jurisdictions as are necessary to perfect the sale, transfer, and assignment of the Accounts; and (ii) will deliver to Buyer on the Closing Date (a) the original executed copy of the Assignment and Bill of Sale, in the form attached as **Schedule 2.2(a)**, (b) the original executed copy of the Closing Statement, in the form attached as **Schedule 2.2(b)**, and (c) a true, complete, and final Schedule of Accounts.

2.2.1 The obligation of Buyer and/or Seller to perform at closing is conditioned upon the terms of this Agreement and subject to the prior satisfaction of each condition in **Section 5**.

2.2.2 This sale excludes the originals of any record comprising an Account's Designated Record Set (as defined by HIPAA).

2.2.3 Except as otherwise stated in this Agreement, this sale is non-recourse to Seller.

3. **PRECAUTIONARY SECURITY INTEREST.**

3.1 Seller intends that its transfer and assignment under this Agreement shall constitute an absolute assignment and true sale of the Accounts from Seller to Buyer and shall provide Buyer with the full benefits of ownership of the Accounts. After the Closing Date, the beneficial interest in, and title to, the Accounts conveyed by this Agreement shall not constitute, under any applicable bankruptcy or non-bankruptcy laws, property or interests in property of the Seller.

3.2 Notwithstanding the foregoing, if, under applicable law, the transaction(s) arising out of or relating to this Agreement is or are: (i) deemed to constitute a loan or pledge rather than a sale or assignment of Accounts; or (ii) avoided, voided, unwound, rescinded, reversed, or otherwise vitiated or deemed unenforceable, then the terms in **Schedule 3.2** will apply to such transaction(s) and this Agreement.

4. **COLLECTION/CONTINGENT FEE INTERESTS.** Other than the Collection Agreement, the Accounts are not subject to any Collection Contracts<sup>1</sup> including, without limitation, any right or interest giving rise to: (i) an obligation on the part of Seller, or anyone claiming by, through, or under Seller, to pay any fees or other compensation for amounts collected on such Accounts; or (ii) any liens or encumbrances on the Accounts. Further, for the avoidance of doubt, the Parties agree and acknowledge that the Collection Agreement: (a) does not obligate Buyer to pay any sums to NYX; and (b) does not entitle NYX to any portion of any amounts collected on the Accounts on or after the Cut-Off Date. In this regard, the Parties specifically agree that NYX shall not seek any compensation from Buyer or from any proceeds collected on or after the Cut-Off Date on the Accounts. Any compensation due to NYX relating to the Accounts shall be the sole responsibility of the Seller.

5. **CONDITIONS TO CLOSING.**

5.1 Buyer's Obligation. Buyer's obligation to perform on the Closing Date is subject to satisfaction (or Buyer's waiver) of the following:

5.1.1 Seller's and NYX's representations and warranties contained in this Agreement must be accurate in all material respects as of the Closing Date;

5.1.2 Seller has obtained all required consents, if any, and performed or complied with all terms it is required to perform or comply with before the Closing Date;

5.1.3 No material adverse change to the Accounts exists or has occurred as of the date of execution of this Agreement, including, without limitation, the absence of any lien filings against Seller and/or its property (including its receivables) by any person or Governmental Authority;

5.1.4 Buyer's receipt, under trust, of all documents required by Section 2.2;

5.1.5 Buyer and NYX have executed an agreement providing for mutual unrestricted remote access to Account Documents within HealthFusion;

5.1.6. Buyer and NYX have executed an agreement providing for mutual unrestricted remote access to Account Documents within LIMS;

5.1.7 Buyer and NYX have executed an agreement providing for mutual unrestricted remote access to Account Documents within Content Central;

5.1.8 Buyer has received: (i) remote searchable access to Seller's HealthFusion, LIMS, and Content Central data backup files; and (ii) searchable digital copies of all such backup files.

5.1.9 Buyer has received assurances satisfactory to Buyer that it will have unrestricted access to Seller's physical copies of Account Documents until and including August 27, 2019, and Buyer has been provided a set of working keys to enable such access;

5.1.10 Buyer has assented to and executed any other agreements necessary to ensure Buyer's uninterrupted future access to the Account Documents;

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<sup>1</sup> "Collection Contract" means any account billing, collection, or servicing contract or contingency fee agreement (whether arising from contract or any Legal Requirements) between Seller and a Collecting Agent or other third party.

5.1.11 Buyer has consummated any other arrangements that Buyer deems reasonably necessary to ensure its uninterrupted future access to the Account Documents; and

5.1.12 The Bankruptcy Court has entered the Sale Order approving the Agreement.

5.2 Seller's Obligation. Seller's obligation to perform on the Closing Date is subject to satisfaction (or Seller's waiver) of the following:

5.2.1 Buyer's representations and warranties contained in this Agreement must be accurate in all material respects as of the Closing Date;

5.2.2 Buyer has obtained all required consents, if any, and performed or complied with all terms it is required to perform or comply with before the Closing Date;

5.2.3 Buyer's delivery of the Purchase Price to Seller in immediately available funds; and

5.2.4 The Bankruptcy Court has entered the Sale Order approving the Agreement.

6. **POST-CLOSING ADJUSTMENTS.** For a period of three (3) months following the Closing Date in the case of Seller, and one (1) year following the Closing Date as to NYX, Seller and NYX will promptly give notice to Buyer of any adjustments to any Current Balance that Seller and/or NYX discover(s) are due because of misapplied payments, unapplied payments, insufficient fund payments, adjustments due to Payor recoupments, or other accounting or clerical errors not specifically described elsewhere in this Agreement.

7. **REPRESENTATIONS AND WARRANTIES AS TO SELLER AND NYX.**

7.1 Seller's Representations and Warranties. As of the Closing Date, Seller makes the following representations and warranties:

7.1.1 Organization. Seller is a corporation duly organized, validly-existing, and in good standing under the laws of Georgia, with all requisite power and authority to conduct its business in each jurisdiction where it operates.

7.1.2 Power and Authority. Seller has the power and authority to make, execute, deliver, and perform this Agreement and to carry out Seller's obligations under its terms; and its execution, delivery, and performance of this Agreement has been duly authorized by all necessary action and consent.

7.1.3 Binding Obligation. This Agreement, when executed and delivered, constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, or similar laws now or hereafter in effect relating to or affecting creditors' rights generally, whether at law or in equity.

7.1.4 No Violation. This Agreement and Seller's performance of its terms do not conflict with, or result in a breach of, or constitute a default under, any: (i) order binding upon Seller or its properties; (ii) organizational document; or (iii) agreement or instrument to which Seller is bound.

7.1.5 Bona Fide Transactions. The execution, delivery, and performance of this Agreement: (i) is not made with the intent to hinder, delay, or defraud Seller's creditors; (ii) is recorded in

the records of Seller as a sale of the Accounts and such records will be continuously maintained by Seller; and (iii) represents a bona fide and arm's length transaction undertaken for adequate consideration in the ordinary course of business.

7.1.6 No Proceedings. Except as set forth on Schedule 7.1.6, no Proceedings or Pending Litigation exists, and to the Seller's knowledge, no matters overtly threatened, which, individually or in the aggregate, would likely: (i) have a material adverse change on this Agreement; (ii) impair Seller's ability to perform this Agreement; or (iii) have an adverse change on, result in a lien against, or otherwise impair the Accounts.

7.1.7 Information. To the best of Seller's knowledge after a reasonably diligent inquiry, no information furnished by Seller directly to Buyer (not including information furnished from NYX to Buyer) in connection with the diligence, negotiation, and/or execution of this Agreement contained, on the date such information was conveyed (or the statement was made), any material misstatement of fact or omitted to state a material fact necessary to make the information or statement contained therein, in light of the circumstances under which it was made, not misleading in its presentation of such information or statement, whether such information or statement relates to the Accounts, the Seller, its businesses, its properties, NYX, and/or any Collection Contracts; and all such information and statements are, to the best of Seller's knowledge after a reasonably diligent inquiry, true, complete, and accurate in all material respects.

7.1.8 Seller is, and at all times has been, in material compliance with all Legal Requirements applicable to the aspects of Seller and its business involving origination, maintenance, and/or billing on the Accounts.

7.1.9 Seller has maintained in full force and effect all Permits from Governmental Authorities necessary to carry on its business and operations as conducted at the time the Accounts were created.

7.2 NYX's Representations and Warranties. As of the Closing Date, NYX makes the following representations and warranties:

7.2.1 Organization. NYX is a limited liability company duly organized, validly-existing, and in good standing under the laws of Georgia, with all requisite power and authority to conduct its business in each jurisdiction where it operates.

7.2.2 Power and Authority. NYX has the power and authority to make, execute, deliver, and perform this Agreement and to carry out NYX's obligations under its terms; and its execution, delivery, and performance of this Agreement has been duly authorized by all necessary action and consent.

7.2.3 Binding Obligation. This Agreement, when executed and delivered, constitutes the legal, valid, and binding obligation of NYX, enforceable against NYX in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, or similar laws now or hereafter in effect relating to or affecting creditors' rights generally, whether at law or in equity.

7.2.4 No Violation. This Agreement and NYX's performance of its terms do not conflict with, or result in a breach of, or constitute a default under, any: (i) order binding upon NYX or its properties; (ii) organizational document; or (iii) agreement or instrument to which NYX is bound.

7.2.5 Information. To the best of NYX's knowledge after a reasonably diligent inquiry, no information furnished to Buyer in connection with the diligence, negotiation, and/or execution of this Agreement contained, on the date such information was conveyed (or the statement was made), any material misstatement of fact or omitted to state a material fact necessary to make the information or statement contained therein, in light of the circumstances under which it was made, not misleading in its presentation of such information or statement, whether such information or statement relates to the Accounts, NYX, the Seller, its businesses, its properties and/or any Collection Contracts; and all such information and statements are, to the best of NYX's knowledge after a reasonably diligent inquiry, true, complete, and accurate in all material respects.

7.3 Survival of Representations, Warranties and Covenants. The representations, warranties, agreements, and covenants set forth in this Section 7 shall continue notwithstanding the closing on the sale of any Accounts.

## 8. REPRESENTATIONS AND WARRANTIES CONCERNING THE ACCOUNTS.

8.1 As of the Closing Date, Seller makes the following representations and warranties:

8.1.1 True Sale. This Agreement vests in Buyer all of Seller's right, title, and interest in and to the Accounts and constitutes a valid and true sale of the Accounts.

8.1.2 Privacy Compliance. To the best of Seller's knowledge after a reasonably diligent inquiry, the Accounts have not been the subject of, or otherwise involved in, a security breach or security incident.

8.1.3 Title, Liens, and Encumbrances.

8.1.3.1 Seller is the sole owner of all right, title, and interest in and to the Accounts.

8.1.3.2 The Accounts are free and clear of all liens, third-party interests, and encumbrances (including, without limitation, Seller's creditors).

8.1.3.3 Seller has not previously sold the Accounts to any person or entity, nor granted, created, or otherwise allowed to exist in favor of any person or entity (except Buyer) any lien, claim, pledge, security interest, or encumbrance in connection with any of the Accounts. Without limiting the generality of the foregoing, after the Closing Date, no individual or entity has a right, which is superior to Buyer's, to receive the cash flow or proceeds generated by the Accounts.

8.1.4 Policies and Procedures.

8.1.4.1 Before the execution of this Agreement, Seller provided Buyer with copies of Seller's policies and procedures detailing, with respect to all assets generated from Seller's businesses (including, without limitation, those relating to all Accounts), all material information regarding Seller's and NYX's internal and external collection efforts, and revenue cycle management and processing, which includes, without limitation, origination, bill drop, charity care, uninsured discounts, internal and external placements, and recall from Seller's Collecting Agents.

8.1.4.2 The policies and procedures attached as Schedule 8.1.4.2 (collectively, the "Policies and Procedures") fairly present, in all material respects, the entirety of Seller's efforts (both internally and externally) with respect to all assets (including, without limitation, those relating to the



Accounts) from the effective date of the Policies and Procedures (April 6, 2015) through and including the Closing Date.

8.1.4.3 The Accounts have not been worked, placed, collected, or recalled (whether internally or externally) by Seller, its employees, Collecting Agents, or other independent contractors: (i) before the Cut-Off Date, in a manner inconsistent with or contrary to the Policies and Procedures or the other information provided to Buyer; and (ii) after the Cut-Off Date, in any manner.

8.1.5 Fully Performed. The services, products, or other consideration giving rise to each Account has been provided and delivered by Seller and there is no requirement for any future performance on the part of Seller in connection with the Accounts. Seller will not take any action (or fail to take any reasonable action within its control) that would render such balances unenforceable.

8.1.6 Characteristics of Accounts. Each Account is: (i) payable in United States dollars; (ii) lawfully transferable to Buyer under the terms of this Agreement; and (iii) to the best of Seller's knowledge after a reasonably diligent inquiry, an Eligible Receivable.

8.1.7 Binding Obligations. Each Account is the legal, valid, binding, and enforceable obligation of the identified Guarantor(s) to pay the Current Balance set forth in the Schedule of Accounts, plus any additional amounts due from the application of interest and any other amounts permitted by law or Seller's underlying agreement with such Guarantor(s), except as enforcement may be limited by bankruptcy, insolvency, receivership, and other laws relating to or affecting creditors' rights generally (whether at law or equity).

8.1.8 Compliance with Law. To the best of Seller's knowledge after a reasonably diligent inquiry, each Account has been originated, billed, maintained, and collected by Seller, its predecessors, and Collecting Agents in material compliance with all: (i) Legal Requirements; (ii) contractual requirements; and (iii) Seller's Policies and Procedures. Without limiting the generality of the foregoing, all conditions precedent have been satisfied and there are no prohibitions against Seller or its assignee billing and collecting the Current Balance directly against any individual or Guarantor.

8.1.9 Current Balances. Except as set forth in Schedule 8.1.9, the Current Balances of the Accounts are still outstanding, and none of the Current Balances have been paid to, settled by, or compromised by Seller or NYX.

8.1.10 No Adverse Selection. The Accounts in the due diligence file were not selected by any adverse or intentional selection or scoring methodologies, whether by or on behalf of Seller.

8.1.11 Account Documentation. To the best of Seller's knowledge after a reasonably diligent inquiry, each transaction relating to an Account is properly and accurately recorded by Seller's third-party vendor on Seller's books and records and such business records (either electronically or in hardcopy format, and whether in Seller's possession or under Seller's control) contain sufficient Account Documents to permit Buyer to legally prove that the Current Balance is the amount due from the identified Guarantor on each Account. NYX and Seller through third-party vendors currently have sole access to HealthFusion, LIMS, and Content Central, which contain the digitized books and records relating to the Accounts.

8.1.12 Schedule of Accounts. The Schedule of Accounts is true, complete, and accurate in all material respects. None of the Accounts identified in the Schedule of Accounts was the subject of the "Order (i) Authorizing Sale of Certain Assets of Debtor to NYX Health, LLC; (ii) Waiving the 14-

Day Stay under Bankruptcy Rule 6004(h); and (iii) Granting Other Related Relief' entered by the Bankruptcy Court on or about July 26, 2017 (ECF No. 183).

8.2 As of the Closing Date, NYX makes the following representations and warranties:

8.2.1 Characteristics of Accounts. To the best of NYX's knowledge after a reasonably diligent inquiry, each Account is: (i) an Eligible Receivable; (ii) payable in United States dollars; and (iii) lawfully transferable to Buyer under the terms of this Agreement.

8.2.2 Compliance with Law. Each Account has been billed and collected by NYX in material compliance with all: (i) Legal Requirements; (ii) contractual requirements; and (iii) Seller's Policies and Procedures.

8.2.3 Privacy Compliance. To the best of NYX's knowledge after a reasonably diligent inquiry, the Accounts have not been the subject of, or otherwise involved in, a security breach or security incident.

8.2.4 Binding Obligations. To the best of NYX's knowledge after a reasonably diligent inquiry, each Account is the legal, valid, binding, and enforceable obligation of the identified Guarantor(s) to pay the Current Balance set forth in the Schedule of Accounts, plus any additional amounts due from the application of interest and any other amounts permitted by law or Seller's underlying agreement with such Guarantor(s), except as enforcement may be limited by bankruptcy, insolvency, receivership, and other laws relating to or affecting creditors' rights generally (whether at law or equity).

8.2.5 Current Balances. Except as set forth in Schedule 8.1.9, the Current Balances of the Accounts are still outstanding, and none of the Current Balances have been paid to, settled by, or compromised by Seller or NYX.

8.2.6 Policies and Procedures. Before the execution of this Agreement, Seller provided Buyer with copies of Seller's Policies and Procedures detailing, with respect to all assets generated from Seller's businesses (including, without limitation, those relating to all Accounts), all material information regarding Seller's and NYX's internal and external collection efforts, and revenue cycle management and processing, which includes, without limitation, origination, bill drop, charity care, uninsured discounts, internal and external placements, and recall from Seller's Collecting Agents.

8.2.7 The Accounts have not been worked, placed, collected, or recalled (whether internally or externally) by NYX: (i) before the Cut-Off Date, in a manner inconsistent with or contrary to the Policies and Procedures or the other information provided to Buyer; and (ii) after the Cut-Off Date, in any manner.

8.2.8 No Adverse Selection. The Accounts in the due diligence file were not selected by any adverse or intentional selection or scoring methodologies, whether by or on behalf of Seller.

8.2.9 Account Documentation. Each transaction relating to an Account is properly and accurately recorded by NYX on Seller's books and records and such business records (either electronically or in hardcopy format, and whether in NYX's possession or under NYX's control) contain sufficient Account Documents to permit Buyer to legally prove that the Current Balance is the amount due from the identified Guarantor on each Account. NYX and Seller through third-party vendors currently have sole access to HealthFusion, LIMS, and Content Central, which contain the digitized books and records relating to the Accounts.

8.2.10 Schedule of Accounts. The Schedule of Accounts is true, complete and accurate in all material respects. None of the Accounts identified in the Schedule of Accounts was the subject of the “Order (i) Authorizing Sale of Certain Assets of Debtor to NYX Health, LLC; (ii) Waiving the 14-Day Stay under Bankruptcy Rule 6004(h); and (iii) Granting Other Related Relief” entered by the Bankruptcy Court on or about July 26, 2017 (ECF No. 183).

8.3 Survival of Representations, Warranties and Covenants. The representations, warranties, agreements, and covenants set forth in this Section 8 shall continue notwithstanding the closing on the sale of any Accounts.

9. **BUYER’S REPRESENTATIONS AND WARRANTIES**. As of the Closing Date, Buyer makes the following representations and warranties:

9.1 Organization. Buyer is a limited liability company duly organized and validly-existing and in good standing under the laws of Delaware, with all requisite power and authority to own its properties and to conduct its business.

9.2 Power and Authority. Buyer has the power and authority to make, execute, deliver, and perform this Agreement and to carry out its obligations under this Agreement; and Buyer’s execution, delivery, and performance of this Agreement has been duly authorized by all necessary action or consents.

9.3 Binding Obligation. This Agreement, when executed and delivered, constitutes the legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws now or hereafter in effect relating to or affecting creditors’ rights generally, whether at law or in equity.

9.4 Business Associate. Buyer and its agents will conduct their activities in connection with PHI in accordance with the terms of a mutually agreed to Business Associate Agreement between Buyer and Seller (“BA Agreement”).

9.5 Assistance of Third Parties. Buyer acknowledges and understands that Seller shall have no responsibility or liability to Buyer arising out of or related to any third party’s failure to assist or cooperate with Buyer.

9.6 Status of Buyer. Buyer is a sophisticated institutional purchaser that is in the business of buying or originating Accounts of the type being purchased or that otherwise deals in such Accounts in the ordinary course of the Buyer’s business.

9.7 No Proceeding. There is no litigation or administrative proceeding before any court, tribunal, or governmental body presently pending or, to the knowledge of Buyer, threatened against Buyer which would have a material adverse effect on the transactions contemplated by, or Buyer’s ability to perform its obligations under, this Agreement. Buyer has not been sanctioned by, suspended by, or excluded from participation in any federal healthcare program by the Health and Human Services Office of the Inspector General or any other Governmental Authority, nor is Buyer listed as excluded in the List of Excluded Providers maintained by the General Services Administration.

9.8 Confidentiality. Buyer acknowledges and understands that certain verbal and written information Seller and/or NYX provides Buyer concerning Seller’s and/or NYX’s business(es) or operations constitutes proprietary information of Seller and/or NYX. Buyer, as well as its employees and agents, will treat such information as strictly confidential and will not disclose the information to anyone

except as may be necessary to: (i) collect on the Accounts; and/or (ii) enforce and/or defend Buyer's rights under this Agreement.

9.9 Protected Health Information. Buyer acknowledges and agrees that as a result of this Agreement, Buyer shall obtain and handle PHI from Seller. Buyer will only use and disclose such PHI as necessary to collect the Accounts from the Guarantors or as required by law. Buyer will not make any other uses or disclosures of the PHI and will not sell the PHI to any person or entity. Buyer will not aggregate the PHI with other information maintained by Buyer. Buyer will maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Section 9.9. Buyer will implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI, consistent with the requirements of the HIPAA Privacy and Security Rules. Buyer will immediately report to Seller any use or disclosure of PHI of which Buyer is aware that is not expressly permitted by this Section 9.9 and of any Security Incident (as defined at 45 CFR § 164.304) involving the PHI of which Buyer is aware. Buyer may subcontract the collection of the Accounts without Seller's prior written consent on the condition that Buyer will ensure that the subcontractor agrees or has agreed in writing to comply with the laws, rules, and regulations referred to in this Section 9.9 prior to obtaining any PHI.

9.10 Identity. Buyer is a "United States person" within the meaning of Paragraph 7701(a)(30) of the Internal Revenue Code of 1986, as amended.

9.11 Accounts Sold "As Is". BUYER ACKNOWLEDGES AND AGREES THAT EXCEPT AS SET FORTH IN THIS AGREEMENT, THE SALE OF ALL ACCOUNTS MADE BY SELLER PURSUANT TO THIS AGREEMENT SHALL BE SOLD "AS IS."

9.12 Review of Accounts. Buyer has been provided with an opportunity to review and examine certain data and information provided to Buyer by NYX and Seller concerning the Accounts before the consummation of the transaction contemplated in this Agreement.

9.13 Survival of Representations, Warranties and Covenants. The representations, warranties, agreements and covenants set forth in this Section 9 shall continue notwithstanding the closing on the sale of any Accounts.

## 10. SELLER'S AND NYX'S COVENANTS.

10.1 Seller's Covenants. In addition to and not by way of limitation of any other term, condition, or obligation of this Agreement, Seller makes the following covenants:

10.1.1 Designated Record Set. Until the date that the Bankruptcy Court enters an order closing Seller's Bankruptcy Case, which includes but is not limited to structured dismissal, a plan confirmation/final decree, or any other disposition of the Bankruptcy Case (the "Bankruptcy Termination Date"), Seller will maintain each Account's Designated Record Set in its systems and records, and (with Buyer's assistance) Seller will continue to be responsible for all continuing obligations under HIPAA with respect to such records and PHI.

10.1.2 Delivery of Reviewed Accounts. Except for Accounts identified before the Closing Date as not constituting Eligible Receivables, Seller will not remove Accounts or otherwise alter the data contained in the due diligence files, as previously delivered to Buyer before the Closing Date. On the Closing Date, Seller will deliver the Accounts and any and all available Account Documents to Buyer.

10.1.3 Communications.

10.1.3.1 Until the Bankruptcy Termination Date, Seller will use reasonable efforts to require its employees and other agents who speak with any Patient, authorized representative, or Guarantor to inform them that: (i) the Account has been sold to Buyer; and (ii) Buyer, through its agent, can be reached at the following phone number: **800-542-8714** (or such other number as Buyer may subsequently provide to Seller in writing).

10.1.3.2 For a period of three (3) months following the Closing Date, Seller will use reasonable efforts to forward promptly to Buyer any written correspondence, notices, or other materials it receives in connection with any Account.

10.1.4 Payments on and after the Cut-Off Date.

10.1.4.1 From and after the Cut-Off Date and continuing until the Bankruptcy Termination Date, Seller must pay over and deliver to Buyer all moneys and/or other consideration (regardless of the form of its/their receipt, e.g., walk-in, lock-box, check, electronic remittance) received, directly or indirectly, in connection with any Account (regardless of the individual or entity making or conveying such payments or consideration) (collectively "Direct Payments").

10.1.4.1.1 Until turned over to Buyer, all Direct Payments must be held in trust for Buyer, and shall constitute property of Buyer. Further, Seller acknowledges and agrees that, even after the period set forth in Section 10.1.4.1 above, any Direct Payments received by Seller shall continue to constitute the property of Buyer.

10.1.4.1.2 Seller will not be paid for its receipt and delivery of Direct Payments.

10.1.4.2 On a monthly basis, Seller must promptly remit to the address set forth in Section 15 all Direct Payments received by Seller and/or Seller's Collecting Agents (other than NYX) since the date of its last remittance.

10.1.5 Adverse Rulings or Proceedings. Until the Bankruptcy Termination Date, Seller will promptly notify Buyer if: (i) any Order is or may be entered against Seller that could affect Buyer's rights to enforce or otherwise collect the Accounts; or (ii) Seller receives notice that any Account is or may become involved, directly or indirectly, in any Proceeding brought against Seller, or its agents.

10.1.6 Record of Sale. Until the Bankruptcy Termination Date, Seller will record and maintain on its records and systems that the Accounts have been sold to Buyer.

10.1.7 Access to LIMS and Content Central. On or before the Closing Date, Seller will: (i) assist Buyer or its designee, assignee, transferee, and/or all mentioned in obtaining an irrevocable, non-exclusive license to remotely access through HealthFusion, LIMS, and Content Central (Buyer to pay its agreed-upon share of the cost) all of Seller's files, records, documents, data, and information relating to the Accounts (including, without limitation, patient management, patient accounting and document imaging systems); and (ii) provide Buyer searchable digital copies of all current backup files of HealthFusion, LIMS, and Content Central data relating to the Accounts.

10.1.8 Physical Access. From the Closing Date through and including August 27, 2019, Seller shall provide Buyer with physical access to Seller's storage facility to permit Buyer, at Buyer's election and at Buyer's sole expense, to inspect, access, and digitally copy, or photocopy, or both, all

records, files, information, and documentation relating to the Accounts under the possession or control of Seller. To facilitate such access, Seller will provide Buyer the working key(s) to the storage facility. If any of the keys to the storage facility are changed prior to August 27, 2019, Seller will provide Buyer a working copy of each new key.

10.1.9 As limited by Section 11.7, Buyer may bill, submit, or otherwise process, for Buyer's sole benefit, any claims or forms required by any Payor. Seller will permit Buyer, in the name of Seller, to bill and submit claims and agrees, upon demand, to provide Buyer with: (i) Seller's Tax Identification Number; (ii) Seller's PIN; (iii) provider numbers and NPI; and (iv) all other information and assistance required or reasonably necessary for Buyer to submit, bill, or process a claim for payment.

10.1.10 Credit Reporting.

10.1.10.1 Seller will cause its Collecting Agents to delete any credit reporting (if any) relating to the Accounts, and if Seller has previously credit reported on any of the Accounts, Seller will delete all of such reporting.

10.1.10.2 To the best of Seller's knowledge after a reasonably diligent inquiry, Seller is aware of no fact or circumstance which would prevent or otherwise restrict Buyer from credit reporting on the Accounts.

10.2 NYX's Covenants. In addition to and not by way of limitation of any other term, condition, or obligation of this Agreement, NYX makes the following covenants:

10.2.1 Delivery of Reviewed Accounts. Except for Accounts identified before the Closing Date as not constituting Eligible Receivables, NYX will not remove Accounts or otherwise alter the data contained in the due diligence files, as previously delivered to Buyer before the Closing Date.

10.2.2 Communications.

10.2.2.1 For a period of two (2) years following the Closing Date, NYX will use reasonable efforts to require its employees and other agents who speak with any Patient, authorized representative, or Guarantor to inform them that: (i) the Account has been sold to Buyer; and (ii) Buyer, through its agent, can be reached at the following phone number: **800-542-8714** (or such other number as Buyer may subsequently provide to NYX in writing).

10.2.2.2 For a period of two (2) years following the Closing Date, NYX will use reasonable efforts to forward promptly to Buyer any written correspondence, notices, or other materials it receives in connection with any Account. Prior to the Closing Date, NYX will also provide Buyer with "read only" access to NYX's online portal for viewing such correspondence, notices, and other Account-related materials.

10.2.3 Payments on and after the Cut-Off Date.

10.2.3.1 From and after the Cut-Off Date and continuing thereafter in perpetuity, NYX must pay over and deliver to Buyer all Direct Payments.

10.2.3.1.1 Until turned over to Buyer, all Direct Payments must be held in trust for Buyer, and shall constitute property of Buyer.

10.2.3.1.2 NYX will not be paid for its receipt and delivery of Direct Payments.

10.2.3.2 On a monthly basis, NYX must promptly remit to the address set forth in Section 15 all Direct Payments received by NYX since the date of its last remittance.

10.2.4 Remote Access. Prior to the Closing Date, NYX and Buyer shall work in good faith to complete and execute an agreement providing Buyer with remote access to the Accounts via HealthFusion, LIMS, and Content Central.

10.2.5 Credit Reporting.

10.2.5.1 If NYX has previously credit reported on any of the Accounts, NYX will delete all of such reporting.

10.2.5.2 To the best of NYX's knowledge after a reasonably diligent inquiry, NYX is aware of no fact or circumstance which would prevent or otherwise restrict Buyer from credit reporting on the Accounts.

10.2.6 Notice of Privacy Practices. Before the Closing Date, NYX will identify and provide to Buyer any restrictions requested by an individual (or their authorized representative) and granted by Seller under HIPAA.

10.2.7 Record of Sale. For a period of five (5) years following the Closing Date, NYX will record and maintain on its records and systems that the Accounts have been sold to Buyer.

10.3 Survival of Representations, Warranties and Covenants. The representations, warranties, agreements, and covenants set forth in this Section 10 shall continue notwithstanding the closing on the sale of any Accounts.

11. **BUYER'S COVENANTS**. In addition to, and not by way of limitation of, any term, condition or obligation set forth in this Agreement, Buyer makes the following covenants:

11.1 Legal Compliance. Buyer will comply with all Legal Requirements relating to: (i) its collection activities with respect to the Accounts; and (ii) the privacy and security of Patient information. Buyer acknowledges and agrees that remote or physical access to any information relating to the Accounts is subject to the requirements of HIPAA and any other Legal Requirements.

11.2 Relationship. Buyer will not represent that it is employed by Seller.

11.3 [Deleted].

11.4 Use of PHI. Buyer will use and disclose PHI consistent with the BA Agreement and for collection and billing purposes, to enforce its rights, and as otherwise permitted by Legal Requirements. Buyer will not share any PHI with other parties outside of those who need to know such information for collection and billing of the Accounts, except as permitted by the BA Agreement, Legal Requirements, or with Seller's prior written consent.

11.5 Patient Inquiries.

11.5.1 Buyer will use reasonable efforts to respond to any inquiries, requests, or communications relating to any Accounts directly with the Patient or his or her representative, or other Guarantor.

11.5.2 Buyer will not refer any Guarantor back to Seller for any reason. If Buyer needs any information or assistance to resolve an inquiry or Account, Patient, or Guarantor issue, Buyer will contact Seller and/or NYX. Notwithstanding anything to the contrary contained in this Agreement, Seller will remain solely responsible for all matters relating to or arising out of an individual's exercise of his rights pursuant to HIPAA (e.g., an individual's request to: (i) restrict the uses and disclosures of PHI; (ii) inspect and obtain a copy of PHI in the individual's Designated Record Set; (iii) amend PHI or a record in the individual's Designated Record Set; and/or (iv) receive an accounting of disclosures of PHI).

11.6 Informational Tax Reporting. Buyer agrees to perform all obligations with respect to federal and/or state tax reporting relating to or arising out of the Accounts sold and assigned pursuant to this Agreement including, but not limited to, the obligations with respect to Forms 1098 and 1099 and backup withholding with respect to the same, if required, for the year of the Closing Date and thereafter. Upon reasonable request, each Party will provide the requesting Party(ies) with copies, delivered in a commercially reasonable format, of its Forms 1098 and 1099.

11.7 Insurance Payor Payments. Buyer agrees that it will not attempt to collect payment on an Account from an insurance Payor unless Buyer believes, after reasonably diligent inquiry, that it has a legal or contractual obligation to do so prior to attempting to collect payment directly from the Patient.

11.8 Survival of Representations, Warranties and Covenants. The representations, warranties, agreements and covenants set forth in this Section 11 shall continue notwithstanding the closing on the sale of any Accounts.

12. MUTUAL REPRESENTATIONS AND UNDERSTANDINGS.

12.1 No Securities. This Agreement does not involve, nor is its transaction(s) intended in any way to constitute, the sale, or purchase, of a "security" or "securities."

12.2 Waiver of Jury Trial. EACH PARTY (AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL) KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING BASED UPON, RELATING TO, OR ARISING OUT OF THIS AGREEMENT OR ANY OTHER THING, MATTER, OR TRANSACTION CONNECTED THEREWITH. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THIS SECTION 12.2 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

12.3 Business Associate Agreement. Before the Closing Date, Buyer and Seller will execute the BA Agreement.

12.4 Tax. No Party is aware of any state or federal sales, transfer, or similar taxes applicable to the purchase or sale of the Accounts pursuant to this Agreement.



13. **BUYER'S RIGHT TO AUDIT.**

13.1 Until the Bankruptcy Termination Date in the case of Seller, and for a period of two (2) years following the Closing Date as to NYX, Buyer and its designees will have the absolute right, during Seller's or, as applicable, NYX's normal business hours and upon prior notice, to review, copy, and audit all documents and records maintained by Seller and/or NYX relating to: (i) the Accounts; (ii) Direct Payments; (iii) Seller's compliance with (a) the Policies and Procedures, and (b) this Agreement; and (iv) confirmation of amounts shown as Current Balances (including, without limitation, any information necessary to verify, reconcile, or account for all funds paid or received in connection with the Accounts).

13.1.1 Buyer and its designees will use commercially reasonable efforts to minimize any disruption of Seller's and/or NYX's operations.

13.2 Seller and NYX will cooperate in all aspects with Buyer's review and audit (including, without limitation, requests for documents and/or record production). Seller and NYX will provide, without charge, reasonable access to their facilities, records, files, equipment, and such other amenities as are reasonably necessary to permit the Buyer to conduct an accurate and complete audit and/or review.

13.3 Buyer's audit, or its failure to audit, or the right to audit, does not relieve Seller or NYX of its responsibility or obligation to comply with this Agreement, nor does Buyer's failure to detect noncompliance, or the detection of, but the failure to notify Seller or NYX or require Seller's or NYX's remediation of, any noncompliance, constitute acceptance of such nonconformity or a waiver of Buyer's rights.

13.4 The rights granted in this Section 13 are subject to the minimum necessary requirements imposed by HIPAA and any other Legal Requirements.

13.5 Buyer's costs and expenses of relating to any audit pursuant to this Section 13 will be paid by Buyer.

14. **INDEMNIFICATION.**

14.1 Seller's Indemnification. Subject to the limitations set out in Section 14.6, until the Bankruptcy Termination Date, Seller must defend, indemnify, and hold Buyer's Indemnified Parties harmless from and against any and all Liabilities and Losses (whether or not suit is instituted) incurred or suffered by Buyer's Indemnified Parties, arising out of or relating to:

- (i) any Retained Liability;
- (ii) any representation or warranty made by Seller in connection with this Agreement having been untrue or incorrect in any material respect when made or deemed made;
- (iii) the material breach by Seller or its agents of any covenant or agreement made herein; and/or
- (iv) any act or omission, or violation of any Legal Requirements, by Seller or Seller's employees, representatives, agents (including Collecting Agents), affiliates, assigns, representatives, or predecessors in interest with regard to any Account.

14.2 Buyer's Indemnification. Until the earlier of the Bankruptcy Termination Date or one year after the Closing Date, Buyer must defend, indemnify, and hold Seller's Indemnified Parties harmless from and against any and all Liabilities and Losses (whether or not suit is instituted), incurred or suffered by Seller's Indemnified Parties involving third-party claims, arising out of, or relating to:

- (i) any representation or warranty made by Buyer in connection with this Agreement having been untrue or incorrect in any material respect when made or deemed made;
- (ii) the material breach by Buyer or its agents of any covenant or agreement made herein; and/or
- (iii) any act or omission, or violation of any Legal Requirements, by Buyer or Buyer's affiliates, successors, assigns, agents, employees, contractors or representatives occurring on or after the Closing Date in connection with any Account.

14.3. Indemnification Procedures. Certain rights and obligations of the Buyer and Seller regarding the application of Section 14 are set forth in Schedule 14.3.

14.4 Other Remedies. Except as provided for in Section 14.5, this Section 14 does not limit the rights or remedies of any Party under this Agreement or under applicable law or in equity.

14.5 Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, Buyer has no Liability for any Losses incurred or suffered by Seller, Seller's Indemnified Parties, or any third-party that arise from or relate to: (i) erroneous information provided by Seller or otherwise contained in any Account or Account Document; and/or (ii) acts or omissions made at the direction of Seller.

14.6 Cap on Claims against Seller and Seller's Indemnification Obligations. Notwithstanding anything to the contrary in this Agreement, any and all damages arising from any claims against Seller and/or Seller's Indemnified Parties under this Agreement, including but not limited to any of Seller's indemnification obligations, shall in no event exceed the total amount of \$50,000.00, which maximum amount shall be reduced as follows:

- (i) For a period of three (3) months following the Closing Date (the "First Period"), all damages, if any, shall be limited to \$50,000.00;
- (ii) For a period of three (3) months following the First Period (the "Second Period"), all damages, if any, shall be limited to \$37,500.00;
- (iii) For a period of three (3) months following the Second Period (the "Third Period"), all damages, if any, shall be limited to \$28,125.00; and
- (iv) For a period of three (3) months following the Third Period (the "Fourth Period"), all damages, if any, shall be limited to \$21,093.75.

14.6.1 Buyer waives any and all claims against Seller and Seller's Indemnified Parties, including, but not limited to any indemnification rights, on the earlier of: (a) the expiration of the Fourth Period; or (b) the Bankruptcy Termination Date.

14.6.2 The determination as to which of the four periods set forth in Section 14.6(i)-(iv) applies shall be based upon the date that Seller is provided notice of the specific claim at issue, as follows: (i) if Seller is provided notice of a specific claim of the type described in Section 14.6 in the First Period, then the damages for such claim shall be limited to \$50,000.00 (regardless of when the claim is resolved); (ii) if Seller is provided notice of a specific claim of the type described in Section 14.6 in the Second Period, then the damages for such claim shall be limited to \$37,500.00 (regardless of when the claim is resolved); (iii) if Seller is provided notice of a specific claim of the type described in Section 14.6 in the Third Period, then the damages for such claim shall be limited to \$28,125.00 (regardless of when the claim is resolved); and (iv) if Seller is provided notice of a specific claim of the type described in Section 14.6 in the Fourth Period, then the damages for such claim shall be limited to \$21,093.75 (regardless of when the claim is resolved).

14.6.3 Section 14.6.1 shall not apply to any claims as to which Seller is provided notice prior to the expiration of the Fourth Period.

14.7 Survival. This Section 14 will survive termination or expiration of this Agreement.

15. **NOTICES**. All notices, consents, or demands provided for, arising out of or relating to this Agreement must be in writing and sent to the addresses listed below. Any Party may change its address as listed below by giving written notice to the other Parties. Any matter sent by: (i) U.S. mail is deemed delivered three (3) days after deposit with the U.S. Postal Service if sent by registered or certified mail, return receipt requested; or (ii) a reputable express carrier is deemed received on the day received for by the Party or its agent.

To Seller: **Confirmatrix Laboratory, Inc.**  
Attn: J. William Boone, Esq.  
James-Bates-Brannan-Groover-LLP  
3399 Peachtree Road, N.E.  
Atlanta, GA 30326

**Confirmatrix Laboratory, Inc.**  
Attn: Ann B. Durham  
P. O. Box 1084  
Dacula, GA 30019-9998

To Buyer: **First Portfolio Ventures I, LLC**  
Attn: Matthew Maloney  
3091 Governors Lake Parkway  
Suite 500  
Peachtree Corners, GA 30071

To NYX: **NYX Health Recovery Services, LLC**  
Attn: Michael Cain, Esq.  
8440 Holcomb Bridge Road  
Suite 560  
Alpharetta, GA 30022

16. **SUCCESSORS AND ASSIGNS; ASSIGNMENT OF AGREEMENT OR ACCOUNTS.**

16.1 This Agreement only binds and inures to the benefit of, and is enforceable by the Parties and their permitted successors and assigns.

16.2 Except as provided for in Section 16.2.1, this Agreement (including any of its rights or the performance of any of its obligations or duties) may not be delegated or assigned by any Party or by anyone else claiming by or through a Party, other than a subsequently appointed chapter 7 or 11 trustee, or a liquidating agent (whether via voluntarily or involuntarily means; operation of law; or otherwise), without the prior written consent of Buyer and Seller, which consent may be withheld for any reason, in Buyer's or, as applicable, Seller's sole and absolute discretion or judgment.

16.2.1 Notwithstanding anything to the contrary in this Agreement, Buyer may assign or otherwise delegate this Agreement, without the consent of Seller, to: (i) any subsidiary; (ii) any affiliate, lender, or a joint-venture partner; or (iii), upon three (3) days' prior written notice to Seller, any successor or consolidated or restructured entities formed by Buyer, its parent, or its affiliates.

16.3 Notwithstanding anything to the contrary in this Agreement, Buyer may, upon three (3) days' prior written notice to Seller, sell, convey, or otherwise transfer and assign Accounts to any assignee or transferee without the consent of Seller.

16.4 Notwithstanding anything to the contrary in this Agreement, Buyer may engage third-party providers or agents to assist Buyer with its recovery and collection of the Accounts without the consent of Seller; *provided that* the Buyer will remain liable to Seller under all circumstances under this Agreement, whether such liability is incurred or suffered as a result of the acts, omissions, or breach, of any third-party servicer engaged by Buyer.

16.5 Any assignment, delegation, or transfer contrary to this Agreement is null and void.

17. **WAIVER.**

17.1 No waiver, renunciation or relinquishment of any claim, right, or remedy under this Agreement is effective unless it is in writing and signed by the waiving, repudiating, or relinquishing Party and then only in the specific instance and for the specific purpose for which it is given.

17.2 Neither any failure nor delay by any Party in exercising any right, remedy, or recourse will operate as a waiver of such right, remedy, or recourse hereunder or preclude any other or further exercise thereof. A waiver or release on any one occasion will not be construed as a bar to, or as a waiver or release of, any subsequent claim, right, remedy, or recourse on subsequent occasions.

17.3 Except as otherwise provided for in this Agreement, all rights and remedies, whether pursuant to this Agreement, or any other document or instrument delivered in connection therewith, are cumulative and concurrent and may be exercised singly, successively, or concurrently at the sole discretion of such Party and may be exercised as often as occasion for such exercise may exist and are in addition to all other rights and remedies provided at law or in equity.

18. **INTEGRATED AGREEMENT; AMENDMENTS.**

18.1 Subject to Section 18.2, this Agreement constitutes the entire, complete, exclusive (completely integrated), and final agreement of the Parties with respect to the subject matter hereof.

18.2 Except for the diligence information provided by Seller before the date of this Agreement: (i) all prior and contemporaneous negotiations and agreements, whether oral or written, expressed or implied, with respect to the subject matter hereof are expressly merged into and superseded by this Agreement; and (ii) no Party has relied upon any statement, representation, warranty, or agreement not contained in this Agreement in making the decision to enter into this Agreement.

18.3 This Agreement may not be amended, explained, supplemented, or otherwise modified, except by written agreement signed by authorized representatives of Buyer, Seller, and NYX.

19. **SEVERABILITY.**

19.1 If any part of this Agreement is held indefinite, invalid, or otherwise unenforceable, the rest of the Agreement will continue in full force.

19.2 If any provision or part of this Agreement held to be invalid, indefinite, or unenforceable deprives any Party of the economic benefit intended to be conferred by this Agreement, the Parties will negotiate to develop a structure the economic effect of which is as nearly as possible the same as the economic effect of this Agreement without regard to such holding.

20. **RELATIONSHIP.** This Agreement does not establish any agency, joint venture, partnership, or employer-employee relationship between the Parties and except to the extent otherwise provided in this Agreement, no Party has the right or authority to act for or on behalf of the other.

21. **BROKERS.** Under the Collection Agreement, Seller owes NYX a commission which: (i) shall be Seller's sole responsibility; (ii) shall be paid from the Purchase Price paid to Seller at closing; and (iii) shall not be paid from any sums collected on the Accounts. Buyer shall have no responsibility or liability whatsoever for any commissions, fees, and/or other sums due to NYX: (a) pursuant to the Collection Agreement; and/or (b) from Seller. In addition, ARxChange has provided certain broker services in connection with the transactions contemplated by this Agreement, and may be due a commission or fee from Buyer and/or NYX (as determined by those respective Parties' agreements, if any, with ARxChange). Other than as set forth above, the Parties have not incurred any obligation or liability for brokerage or finder's fees or agent's commissions or other similar payment in connection with this Agreement or the transactions contemplated herein. In the event of a breach of this Section 21, the breaching Party will indemnify and hold the other Party(ies) harmless from any fees or commissions they incur with any third party brokers in connection with this Agreement.

22. **GOVERNING LAW.** The laws of Georgia (without giving effect to that state's conflict of law principles) govern all matters arising out of or relating to this Agreement including, without limitation, its validity, interpretation, construction, performance, and enforcement; *provided, however*, for as long as the Bankruptcy Case is pending, this Agreement is subject to the jurisdiction of the Bankruptcy Court.

23. **CONSTRUCTION.**

23.1 **No Strict Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as a jointly drafted document and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

23.2 **General Construction.** Unless a contrary intent is indicated in this Agreement: (i) defined terms in the singular include the plural and vice versa, and the use of any gender includes all genders and

the neuter; (ii) periods of days will be counted in calendar days unless business days are expressly prescribed; and (iii) headings are for reference purposes only and must not be used in construing or interpreting this Agreement.

23.3 **Interpretation and Construction Subject to HIPAA.** This Agreement will be construed and interpreted, at all times, to assure that HIPAA, and any state-law equivalents that are more restrictive than HIPAA, are fully observed and effectuated. Nothing contained in this Agreement permits any use or disclosure of PHI that is contrary to HIPAA, or any state-law equivalents that are more restrictive than HIPAA.

23.3.1 If any conflict or ambiguity exists between this Agreement and the BA Agreement as to the use, handling, and/or disclosure of PHI, the terms and conditions of the BA Agreement will control and prevail, except that nothing in the BA Agreement will operate or otherwise act as a forfeiture of either the Security Interest or Buyer's ownership of the Accounts including, without limitation, Buyer's right to receive proceeds generated by the Accounts.

24. **FURTHER ASSURANCES.** For a period of six (6) months following the Closing Date in the case of Seller, and for a period of one (1) year following the Closing Date as to NYX, Seller and NYX (at their expense) will timely execute and deliver to Buyer such additional information, instruments, or documents, and take (or cause to be taken) all acts as may be reasonably requested to consummate or effectuate the transactions contemplated by this Agreement and/or carry out the intent of this Agreement including, without limitation, filling out and completing within thirty (30) days from Buyer's reasonable request any documents requested by vendors of Buyer.

25. **FORCE MAJEURE.** Notwithstanding anything to the contrary in this Agreement, no Party will be liable or in default for any delay or failure of performance resulting directly from anything reasonably beyond the control of the nonperforming Party, such as acts of God, acts of terrorism, war, fire, work stoppages, labor disputes, or strikes.

26. **NON-MERGER/SURVIVAL.** Notwithstanding any prior acceptance, inspection, investigation, or knowledge by any Party: (i) all representations, warranties, covenants, and agreements contained in this Agreement, in all cases, will be deemed to have been relied upon by, as applicable, Buyer, Seller, and NYX, and will survive the Closing Date, and (ii) the terms of this Agreement and any other transfer documents will not merge into the Assignment and Bill of Sale or other transfer documents, but instead will remain independently enforceable.

27. **NO THIRD-PARTY BENEFICIARIES.** This Agreement only confers rights and remedies upon, and is for the sole and exclusive benefit of, the Parties and their permitted successors and assigns. No other person or entity has any legal or equitable right or remedy or any direct or indirect claim under or with respect to this Agreement or any provision of this Agreement; *provided that* the provisions of Section 14 and Schedule 14.3 will inure to the benefit of the respective indemnified parties identified thereunder.

28. **EXPENSES.** Each Party will bear its own costs and expenses incurred by its execution and performance of this Agreement.

29. **COUNTERPARTS.** This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed to be an original and all of which, when taken together will constitute one and the same instrument.

30. **POWER OF ATTORNEY AND USE OF SELLER'S NAME.**

30.1 Power of Attorney. Without limiting the generality of any other provision of this Agreement, Seller irrevocably constitutes and appoints Buyer in connection with the Accounts as Seller's true and lawful attorney-in-fact to act with full power and authority in the name and on behalf of Seller to do all things and to perform all acts, subject to the limitation contained in Section 11.7, in connection with the Accounts including: (i) endorse Seller's name on all checks and other forms of exchange or payment; (ii) open all correspondence; (iii) process and file (including, without limitation, the right to bill, re-bill and appeal) in the name of Seller all claims or forms, or both, necessary to establish eligibility for, or receive, payment from Payors or any other contractually obligated individuals or entities; (iv) transmit notices and other communications to carriers, Payors, or any other Guarantors that the amounts owed by them to Seller are payable directly to Buyer and to request from such entities any information concerning the Accounts or the amounts owed; (v) execute releases and other documentation; and (vi) take all steps necessary or desirable to effect collections including, without limitation, perfecting statutory liens (the "Power of Attorney").

30.2 Use of Seller's Name. The name of Seller may not be used for any reason, except: (i) identify Seller as the former owner or originator/provider of the Accounts, (ii) otherwise comply with any Legal Requirements; and/or (iii) to the extent otherwise provided in this Agreement.

31. **NO PATIENT REFERRALS.** Buyer and Seller agree that the benefits to any Party to this Agreement do not require, are not payment for, and are not in any way contingent upon the referral, admission, or any other arrangement for the provision of any item or service offered by Buyer. The Parties agree that no payments made hereunder are made in return for, or are to induce any person to: (i) refer an individual to anyone for the furnishing or arranging for the furnishing of items or services for which payment may be made in whole or in part under any federally funded healthcare program, including the Medicare and Medicaid programs; (ii) develop referral networks or seek to enhance Seller's practice by participating in activities intended to encourage referrals to Seller; or (iii) purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering, any good, facility, service or item, for which payment may be made in whole or in part under any federal healthcare program, including the Medicare and Medicaid programs.

32. **BANKRUPTCY COURT APPROVAL.** The Parties acknowledge and agree that this Agreement is subject to entry of the Sale Order by the Bankruptcy Court in the Bankruptcy Case. None of the Parties' obligations and rights hereunder shall become enforceable unless and until the Sale Order has been entered by the Bankruptcy Court.

33. **SELLER'S RETAINED LIABILITIES.** The Retained Liabilities are the sole obligation and responsibility of Seller and must be paid, performed, and discharged solely by Seller.

34. **CONFIDENTIAL AGREEMENT.**

34.1 Other than disclosing this Agreement, its terms, and any non-public materials or information disclosed in connection with this Agreement or in the Bankruptcy Case for purposes of obtaining the Sale Order, the Parties will keep this Agreement, its terms, and any non-public materials or information disclosed in connection with this Agreement confidential. Unless otherwise permitted by the BA Agreement or Section 34.2, the Parties may not use confidential information for any purposes other than their performance of this Agreement.

34.2 The Parties are permitted to disclose this Agreement: (i) to their accountants, lenders, attorneys, and such other third parties as are necessary to satisfy any Legal Requirements; (ii) to enforce

and/or defend a Party's rights under this Agreement; and/or (iii) in the case of a public disclosure, if the disclosing Party believes (in good faith) that it is required to disclose this Agreement.

34.3 Nothing in Section 34 prohibits the Buyer from filing the UCC 1 financing statement(s) required or permitted by Section 2.

34.4 This Section 34 will survive termination or expiration of this Agreement.

*[Signature Page Follows]*



IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives as of the Effective Date.

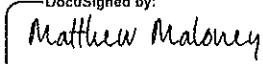
**SELLER**

Confirmatrix Laboratory, Inc.

By: \_\_\_\_\_  
Name: Ann B. Durham  
Title: Chief Executive Officer

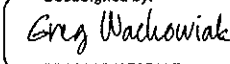
**BUYER**

First Portfolio Ventures I, LLC

DocuSigned by:  
  
By: \_\_\_\_\_  
A0A9E09653C9417...  
Name: Matthew Maloney  
Title: Chief Investment Officer

**THIRD PARTY COLLECTION AGENT**

NYX Health Recovery Services, LLC


DocuSigned by:  
  
By: \_\_\_\_\_  
BDB9AAB49E6F4AE...  
Name: Greg Wachowiak  
Title: President

*[Signature Page - Purchase and Sale Agreement dated December 18, 2017]*

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives as of the Effective Date.

**SELLER**

Confirmatrix Laboratory, Inc.

By:   
Name: Ajay B. Durham  
Title: Chief Executive Officer

**BUYER**

First Portfolio Ventures I, LLC

By: \_\_\_\_\_  
Name: Matthew Maloney  
Title: Chief Investment Officer

**THIRD PARTY COLLECTION AGENT**

NYX Health Recovery Services, LLC

By: \_\_\_\_\_  
Name: Greg Wachowiak  
Title: President

*[Signature Page - Purchase and Sale Agreement dated December 18, 2017]*

### **Schedule 1**

**Account** means: (i) each of the accounts receivable listed in the Schedule of Accounts, including the known or unknown past and/or present obligations of any Guarantor to pay any amount, interest, and/or fee due or to become due and owing with respect thereto; (ii) all rights of the Seller to collect and receive any proceeds or streams of income from the foregoing (including, as limited by Section 11.7, rights to payments or proceeds from “healthcare insurance receivables” or any other Payors, to the extent such rights exist, including without limitation payments on unknown balances on such Account from recoupments of prior payments preceding the Cut-Off date, etc.), whether now or hereafter due and owing including, without limitation, any collateral, security interests, assignments, liens, and/or guaranties granted to or made for the benefit of Seller to secure or otherwise assure payment of the foregoing; (iii) the obligation of any Guarantor to pay the Current Balance, interest, fees, costs, charges, amounts, and other assessments, whether accruing before or after the Cut-Off Date, with respect thereto; (iv) all Account Documents; (v) all documents pursuant to which Seller acquired an interest in any Account; and (vi) all proceeds of any of the foregoing, including, without limitation, all collections or other amounts received by or on behalf of Seller and/or any affiliate or agent. For the avoidance of doubt, the Accounts subject to this Agreement do not include: (a) any accounts receivable that were sold to NYX Health, LLC pursuant to the “Order (i) Authorizing Sale of Certain Assets of Debtor to NYX Health, LLC; (ii) Waiving the 14-Day Stay under Bankruptcy Rule 6004(h); and (iii) Granting Other Related Relief” entered by the Bankruptcy Court on or about July 26, 2017 (ECF No. 183); or (b) any other accounts receivable not listed in the Schedule of Accounts.

**Account Documents** means the true and correct copies of all original or imaged books, records, data, files, and other information maintained by or on behalf of the Seller in connection with the Accounts and each Patient or Guarantor (which materials are maintained and recorded in the ordinary course of Seller’s business, contemporaneously with the events as they occur), which include: (i) a written face sheet or other admissions or intake records; (ii) itemized billing statements or statements of account; (iii) documentation of any payment plans or arrangement between Patient or a Guarantor and Seller; (iv) any UBs, CPT codes or condensed code sets, 1500s, EOBs, ICD-9 classifications, and taxonomy codes; and (v) any payment history or other business or medical records or information upon which a creditor could (a) rely in asserting that the Current Balance is legally due and owing from any Guarantor, and/or (b) successfully prosecute or validate any Account. “Account Documents” do not include the originals of any record comprising an Account’s Designated Record Set; provided that Buyer may obtain copies of any books, records, files, data, and/or information comprising any and/or all Designated Record Set(s).

**Agreement** means this Purchase and Sale Agreement in its entirety, including all recitals, exhibits, information, and schedules attached hereto (the same being incorporated by reference), as the same may be amended, restated, or otherwise modified.

**BA Agreement** has the meaning set forth in Section 9.4.

**Buyer’s Indemnified Parties** means, individually or collectively, Buyer, its affiliates, and subsidiaries, and its and their past, present, and future members, owners, officers, managers, directors, employees, servicers, agents, and representatives (or any of them).

**Closing Date** means the date determined in accordance with Section 2.2.

**Collecting Agent** means any patient account billing company, collection agency, attorney, vendor, person, or entity engaged contractually or otherwise by or on behalf of Seller, directly or indirectly, to collect, service, or otherwise attempt to liquidate the Current Balance and/or recover or enforce any other interest in and to any Account.

**Collection Contracts** has the meaning set forth in Section 4, footnote 1.

**Current Balance** means the total unpaid balance or receivable due, as of the Cut-Off Date, on an Account from each identified Guarantor, after application or deduction of all: (i) prior payments; (ii) contractual discounts or other adjustments; (iii) charity or indigent care, if applicable; (iv) insurance; and (v) other Payor sources of payment or reimbursement. For purposes of this Agreement, the Current Balance of any Account also includes the right to assess and recover any interest, late charges, and other assessments; provided that if such amounts are already added and contained within the balances being reported and sold under this Agreement, Seller must identify such amounts separately in the Schedule of Accounts.

**Cut-Off Date** means 12:00 A.M. on **July 1, 2017**.

**Eligible Receivable** means an Account:

- (i) that is identified in the Schedule of Accounts;
- (ii) that arises in the ordinary course of business and in accordance with all applicable Legal Requirements and Seller's Policies and Procedures;
- (iii) that is not subject to any agreements, Orders, or other Legal Requirements prohibiting transfer under the terms of this Agreement;
- (iv) that is reflected on the books and records of Seller as the responsibility and obligation of the respective Patient (or his or her Guarantor) to pay for goods or services, or both;
- (v) as to which NYX transmitted a billing statement to the Patient (or his or her Guarantor) prior to the Closing Date;
- (vi) as to which neither NYX nor Seller has received a valid dispute from the Patient (or his or her Guarantor), which, if true, would render the Account and/or the Current Balance unenforceable;
- (vii) as to which, prior to the Cut-Off Date, neither Seller nor NYX has received full payment;
- (viii) that is final billed; and
- (ix) that is not an Ineligible Account.

**Governmental Authority** means any governmental body, entity or agency, public or regulatory authority, instrumentality, department, commission, court, arbitrator, ministry, tribunal, or board of any government or political subdivision thereof, whether federal, state, regional, local, or municipal, including, without limitation, the Office of Inspector General of the U.S. Department of Health and Human Services.

**Guarantor** means any person, or entity, or both, who is legally obligated to pay any portion of an Account, or if there are multiple individuals or entities legally obligated to pay any portion of an Account, all such natural persons and entities individually and collectively including, without limitation, any co-debtor, Patient, Payor, and all other contractually or legally obligated (or responsible) persons or entities.

**HIPAA** means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act and all accompanying regulations, and any subsequently adopted rules or amendments.

**Ineligible Account** means an Account that, as of the Cut-Off Date, is ineligible for sale because:

- (i) the Account Documents do not contain an address for the applicable Patient;
- (ii) the balance, or any portion, is unenforceable or it is an invalid debt (e.g., the Patient's liability (or that of any other Guarantor) for payment of the Account has been released, barred, discharged, or otherwise rendered unenforceable (including because it has been settled, satisfied, and/or paid-in-full prior to the Cut-Off Date)), or the self-pay amount reflected by the Current Balance has been rendered unenforceable or otherwise impaired as a result of Seller's (a) failure to obtain certification of services, or (b) failure to abide by any other contractual or Legal Requirements;
- (iii) the Account, or any portion thereof, was fraudulently originated by Seller and/or Seller's agents;
- (iv) the Account is subject to Pending Litigation;
- (v) the Account is not an Eligible Receivable, unless another Guarantor, Payor, or other third party remains obligated to pay;
- (vi) the Account has been written off at the instruction of a Government Authority or Payor; and/or
- (vii) Seller received payment(s) on the Account but did not post the payment(s) or write-off the balance (if required) after the payment was provided in part.

**Legal Requirement** means any applicable federal, state, local, municipal laws, ordinances, common law principles, codes, regulations, or statutes.

**Liability** means any liability or obligation of any kind, character or description (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, or otherwise).

**Loss** means, to the extent actually incurred, all damages, cost, penalties, liabilities, losses, fees, and expenses (including reasonable attorneys' fees, the costs to investigate and expenses and any court, arbitration, and/or mediation costs and expenses, and/or any amounts paid to settle or resolve the foregoing) arising out of or relating to any: (i) Proceedings (whether or not filed or formally instituted); and/or (ii) Orders including, without limitation damages, penalties, fines, costs, judgments, liabilities, obligations, taxes, liens, losses, expenses, fees, and any other awarded sums.

**Notice of Privacy Practices** means Seller's notice of privacy practices.

**Obligations** has the meaning set forth in Schedule 3.2.

**Order** means any order, judgment, decree, ruling, assessment, or award of any Governmental Authority or arbitrator.

**Patient** means the natural person who has received medical services or goods, or both, giving rise to an Account.

**Payor** means any governmental entity, third-party payor (e.g., insurance company), healthcare providers (e.g., health maintenance origination, preferred provider organization or other managed care programs), or similar entity that provide payment for medical and related services (including, without limitation, victim reparations, county payors, or third-party liability).

**Pending Litigation** means a petition, complaint, or other pleading has been filed, commenced, and/or brought by a Guarantor, Patient, and/or his representative against Seller and/or a Collecting Agent, including, without limitation, any assertion that the claim or receivable giving rise to an Account is invalid.

**Permits** means any licenses, franchises, permits, certificates, consents, approvals, or other similar authorizations of, from, or by a Governmental Authority possessed by or granted to or necessary for the ownership of the Accounts or conduct of the businesses of the Seller.

**Person** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**PHI** means any protected or confidential health information, as defined under the HIPAA Privacy and Security Rules set forth at 45 CFR Parts 160 and 164.

**Policies and Procedures** has the meaning set forth in Section 8.1.4.2.

**Proceeding** means any action, arbitration, audit, hearing, injunction, investigation, complaint, demand, proceeding, charge, inquiry, or suit (whether civil, criminal, administrative, judicial, quasi-judicial, or investigative, whether formal or informal, whether public or private) commenced, brought, conducted, or heard by or before any court, arbitrator or quasi-judicial forum, or administrative or regulatory agency/body having competent jurisdiction.

**Purchase Price** means Two Hundred and Eighty Thousand U.S. Dollars and xx/100 (\$280,000.00).

**Retained Liabilities** mean any Liability or Loss relating to an Account and based upon, arising out of, or in any way relating to: (i) any obligation or liability not explicitly assumed by Buyer under this Agreement; (ii) any Pending Litigation (whether threatened or actually instituted); (iii) any failure of Seller and/or its agents to comply with any Legal Requirement and/or Order; (iv) any asset transferred that is not an Eligible Receivable; and (v) any acts or omissions of Seller and its agents with regard to any Account and/or any indemnifiable events.

**Sale Order** has the meaning set forth in Section 2.1.

**Schedule of Accounts** means, collectively, the following Microsoft Excel files that were provided by NYX to Buyer:

PatientAR\_Format2\_2014\_v2.1.xlsx ("Last Modified" date is December 8, 2017);  
PatientAR\_Format2\_2015\_A\_v2.1.xlsx ("Last Modified" date is December 8, 2017);  
PatientAR\_Format2\_2015B\_v2.1.xlsx ("Last Modified" date is December 8, 2017);  
PatientAR\_Format2\_2016\_V\_2.1.xlsx ("Last Modified" date is December 8, 2017); and

PatientAR\_Format2\_2017\_v2.1.xlsb (“Last Modified” date is December 8, 2017).

All five of the above-described Microsoft Excel files are incorporated by reference into this Agreement as if set forth fully herein.

**Security Interest** has the meaning set forth in Schedule 3.2.

**Seller’s Indemnified Parties** means, individually or collectively, Seller and its affiliates, and its and their past, present and future owners, officers, directors, employees, agents, and representatives (or any of them). For the avoidance of doubt, “Seller’s Indemnified Parties” does not include NYX or its employees, agents, or representatives.

**UCC** means the Uniform Commercial Code, as amended from time to time, in effect in Georgia.

**Schedule 1.1**

The Schedule of Accounts contains all of Seller's records for the Accounts which may include one or more of the following for *each* Account:

- (1) Name of the Patient;
- (2) Patient contact and location information (e.g., the most current home and work addresses and phone numbers available to Seller and/or its Collecting Agents);
- (3) Social Security number of the Patient or all other responsible parties;
- (4) Collector notes from Seller's system;
- (5) The date of delinquency;
- (6) The exact rate of interest permitted or otherwise authorized by the applicable admissions documents to be assessed or charged;
- (7) The date(s) of service;
- (8) The Current Balance;
- (9) Payment history or records including last pay dates;
- (10) Any repayment terms (promise to pay) or other settlement arrangements that Seller agreed to accept for Accounts including, without limitation, the amounts paid, amounts owed, and due dates;
- (11) The status codes and legend defining such codes, which show or otherwise identify or explain the claim;
- (12) Whether the Account is: (i) currently placed with a Collecting Agent (including their identity); or (ii) otherwise subject to Collection Contracts;
- (13) The name and address of the facility where the services or goods were provided;
- (14) Date of birth of Patient and insured;
- (15) Name of Guarantor;
- (16) Address and phone of each Guarantor;
- (17) Financial class of account;
- (18) Type of service;
- (19) Discharge status;
- (20) Primary, secondary, tertiary insurance name, address and phone;
- (21) Payor (Insurance) code;
- (22) UB92, UB04 or HCFA 1500, as needed;
- (23) Diagnosis Codes;
- (24) Procedure Codes and Dates; and
- (25) DRG (if applicable).



**Schedule 2.2(a)**  
**LOT # FFCML01**

**ASSIGNMENT AND BILL OF SALE**

For value received and pursuant to the terms of the Purchase and Sale Agreement dated **December 18, 2017** (the "**Agreement**") between **Confirmatrix Laboratory, Inc. ("Seller")**, **First Portfolio Ventures I, LLC ("Buyer")**, and **NYX Health Recovery Services, LLC**, Seller hereby absolutely conveys, transfers, sells, and assigns to Buyer, effective as of the Cut-Off Date, all of Seller's right, title, and interest in and to: (i) the Accounts described in the Schedule of Accounts (as the same may be amended in accordance with the Agreement); and (ii) all proceeds arising from or relating to Current Balance, interest, and any other amounts now or hereafter due or owing in connection with such Accounts.

Capitalized terms have the meaning set forth in the Agreement.

Except as otherwise stated in the Agreement, this Assignment and Bill of Sale is executed without recourse.

DATED: **December \_\_, 2017**

**Confirmatrix Laboratory, Inc.**

By: \_\_\_\_\_  
Name: Ann B. Durham  
Title: Chief Executive Officer

**Schedule 2.2(b)**

**CLOSING STATEMENT**

This transaction consists of Accounts being purchased by **First Portfolio Ventures I, LLC** ("*Buyer*") from **Confirmatrix Laboratory, Inc.** ("*Seller*") pursuant to a Purchase and Sale Agreement (the "*Agreement*") dated **December 18, 2017**.

For the purpose of this Closing Statement, the Closing Date and the Cut-Off Date shall be as defined in the Agreement to which this Closing Statement is attached.

FILE DESCRIPTION: (LOT # FFCML01)  
# OF ACCOUNTS: 1,313,070  
TOTAL OF UNPAID CURRENT BALANCES: \$166,976,391.21  
PURCHASE PRICE: \$280,000.00

- A. On the Closing Date, Buyer shall pay to Seller, by wire transfer or otherwise in immediately available funds, a combined amount which equals Two Hundred and Eighty Thousand Dollars and xx/100 (**\$280,000.00**).
- B. Seller agrees to transfer the Accounts, as set forth in the Agreement, to Buyer on the Closing Date and turn over all payments on the Accounts made on or after the Cut-Off Date.

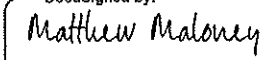
Funds must be wired as follows:

<b>Account Name:</b>	<b>James-Bates-Brannan-Groover-LLP</b>
<b>Bank Name:</b>	<b>State Bank &amp; Trust Company</b>
<b>ABA (Routing) Number:</b>	<b>061104123</b>
<b>Bank Account Number:</b>	<b>136263</b>
<b>Reference:</b>	<b>File No. 51228.0002</b>

**CONFIRMATRIX LABORATORY, INC.**

By: \_\_\_\_\_  
Name: Ann B. Durham  
Title: Chief Executive Officer

**FIRST PORTFOLIO VENTURES I, LLC**

DocuSigned by:  
  
 By: \_\_\_\_\_  
A0A9E09653C9417...  
 Name: Matthew Maloney  
 Title: Chief Investment Officer

**Schedule 3.2**

1. This Agreement constitutes a security agreement under the UCC, and Seller hereby grants to the Buyer a first priority security interest ("**Security Interest**") in all of Seller's right, title, and interest in and to the Accounts for the purpose of securing: (i) the Buyer's recovery of the Purchase Price paid for all Accounts (net of insufficient fund and returned checks and the commissions or servicing fees paid or other expenses incurred by Buyer in connection with such Accounts); (ii) the recovery of all interest and fees paid by Buyer in connection with any loans obtained by it to fund the Purchase Price that was paid in connection with all acquired Accounts; (iii) Buyer's recovery of any amounts due Buyer hereunder; and (iv) all other obligations of the Seller contained in this Agreement, now existing or hereafter arising, including all indemnity obligations (collectively, "**Obligations**").
2. The Accounts are transferred and assigned to Buyer for debt collection on behalf of Seller, subject only to Buyer's Security Interest and satisfaction of the Obligations.
3. Seller's assignment under this Agreement is an assignment of all right, title, and interest in and to the Accounts (including, without limitation, the stream of income from all of the Accounts and each and every right of Seller to the payment of money, whether such right to payment now exists or hereafter arises) until such time as all Obligations have been satisfied.
4. Seller will maintain the Accounts free and clear of all liens except the Security Interest. Seller consents to Buyer's filing of any UCC financing statements necessary to perfect the Security Interest. Seller further agrees that from time to time, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that Buyer may reasonably request, in order to perfect and protect the Security Interest granted or purported to be granted hereby or to enable Buyer to exercise and enforce its rights and remedies hereunder with respect to any Account.

**Schedule 7.1.6**

*Millennium Health, LLC v. James Grove, et al.*, Civil Action No. 2016-152012-CB, Circuit Court for Oakland County (employment claim against Seller; stayed by Seller's bankruptcy)

*Millennium Health, LLC v. Confirmatrix Laboratory, Inc.*, Civil Action No. 2016-521847, 237<sup>th</sup> District Court of Lubbock County, Texas (employment claim against Seller; stayed by Seller's bankruptcy)

*SunTrust Bank and SunTrust Equipment Finance & Leasing Corp. v. Confirmatrix Laboratory, Inc. and GNOS Medical, Inc.*, Civil Action No. 16A-11049-4, Superior Court for Gwinnett County (receivership action; rendered moot by Seller's bankruptcy case)

FBI Investigation (Seller does not have any knowledge as to the nature and target of the investigation)

**Schedule 8.1.4.2**

## **BILLING PATIENT RESPONSIBILITY POLICY AND PROCEDURE**

It is the policy of Confirmatrix Laboratory, Inc. ("Confirmatrix") to bill all patient balances relating to patient cost-sharing responsibility, whether co-insurance, deductible, co-payment or other financial liability. This policy identifies the various scenarios that lead to such patient cost-sharing responsibility, and the procedures for collecting money due from patients for the services provided by Confirmatrix. Unless financial hardship is demonstrated pursuant to the Confirmatrix Financial Assistance Policy, Confirmatrix will not waive, forgive, or reduce patient obligations to pay deductibles, co-insurance, or co-payment amounts to their insurance or coverage benefit plan.

### **PAYMENT SOURCES**

Regardless of a patient's type of insurance, coverage or insurance status (i.e. no insurance), Confirmatrix will bill all patients for services provided by Confirmatrix. Confirmatrix recognizes that benefit plans differ and that the cost-sharing responsibility of the beneficiary may differ with each benefit plan. The following sets forth the various scenarios wherein cost-sharing may be at issue:

### **BACKGROUND**

Patients who have health insurance typically agree to pay certain portions of their bills (i.e. cost-sharing responsibility). In the laboratory context, an insured person may be required to pay a deductible (e.g., the first \$2,000 of all medical bills during a plan year), and/or co-insurance (a percentage of the total allowable bill). Co-payments typically do not apply to laboratory services. Confirmatrix is typically not aware at the time of service of the particular provisions of a patient's health care coverage, the allowable amounts by each plan, the status of deductible payments, or the amount of co-insurance that may be due until it has filed a claim and received an Explanation of Benefits ("EOB") from the benefit plan. Upon receipt of the EOB or its equivalent, Confirmatrix shall make a good faith attempt to collect all amounts due from the patient under the particular benefit plan.

### **CONFIRMATRIX BILLING RIGHTS AND PRACTICES**

#### **Government-Sponsored Insurers**

Confirmatrix is an approved provider for all government insurance programs, which include Medicare, Medicaid, and Tri-Care. Confirmatrix is required to bill patients for the portion of the bill that the insurer indicates as the patient's cost-sharing responsibility and engage in uniform collection efforts for all of its patients.

#### **Commercial In-Network**

If Confirmatrix is in-network with a plan, it must abide by the terms of the network agreement regarding the billing of patients. All questions about patient cost-sharing responsibility should be resolved by reference to the provider participation agreement. Network provider participation agreements typically require that Confirmatrix (i) accept predetermined rates for services (and not pursue patients for any amount exceeding those rates); and (ii) bill and make a good faith attempt

EFFECTIVE DATE: APRIL 6, 2015\_\_\_\_\_1

to collect the amounts determined by the payer to be the patient's cost-sharing responsibility. If Confirmatrix is in-network, the payer must provide Confirmatrix with an EOB and pay Confirmatrix directly. Upon receipt of an EOB, Confirmatrix shall use commercially reasonable efforts to collect payment from the patient for the amount identified as the patient's cost-sharing responsibility, which shall include invoicing said patient and following-up on those invoices with commercially reasonable efforts. At no time shall Confirmatrix release, waive, forgive or otherwise reduce the payment of a patient deductible or co-insurance amount, except for those cases for which financial hardship is established pursuant to the Confirmatrix Financial Assistance Policy.

#### Commercial Out-of-Network

If Confirmatrix does not have an agreement with a commercial plan, it is considered to be out-of-network with that payer and will charge the payer on a "fee-for-service" basis based upon the Confirmatrix current fee schedule. Most plans have an agreement with the plan beneficiary to pay for out-of-network services based on the patient cost-sharing responsibility. The patient, pursuant to that plan, is typically obligated to pay a plan year deductible and co-insurance.

Confirmatrix will bill the payer in an attempt to collect payment. Upon receipt of an EOB, Confirmatrix shall use commercially reasonable efforts to collect payment from the patient for the amount identified as the patient's cost-sharing responsibility, which efforts shall include invoicing the patient and following-up on those invoices with commercially reasonable efforts. At no time shall Confirmatrix release, waive, forgive or otherwise reduce the payment of a patient deductible or co-insurance amount, except for those cases for which financial hardship is established pursuant to the Confirmatrix Financial Assistance Policy.

Again, in all cases, when Confirmatrix becomes aware that a patient must pay a portion of the invoice, Confirmatrix shall use commercially reasonable efforts to collect that payment from the patient. Confirmatrix will not invoice patients for any amount that exceeds the insurer's "allowable amount." All invoices to patients shall include the following language in large, conspicuous lettering:

YOUR BENEFIT PLAN HAS DETERMINED THAT YOU OWE AND MUST  
PAY THE COST-SHARING AMOUNTS SHOWN.

PLEASE CALL 1-888-497-8603 IF YOU HAVE QUESTIONS.

Confirmatrix shall issue at least three invoices to patients, the second and third to follow in thirty-day increments. If any partial payment is received, either pursuant to a payment plan or otherwise, Confirmatrix shall issue additional invoices that reflect the payment received and the balance due. Confirmatrix may send any accounts for which payments have not been collected to a debt collection service subject to the laws of the applicable jurisdiction.

#### Compliance Training

At no time should any Confirmatrix employee, representative or agent state that Confirmatrix will waive, release, eliminate, fail to bill, or otherwise forego billing and/or collecting a patient's

deductible or co-insurance amounts as determined by the patient's plan. Confirmatrix will not, at any time, waive a patient's deductible or co-insurance, except in those individual and non-routine cases of financial hardship determined pursuant to the Confirmatrix Financial Assistance Policy.

Confirmatrix shall, at least once per year, provide compliance training to all laboratory and sales personnel to educate said personnel on the foregoing billing policies. Confirmatrix shall ensure that its billing agents provide compliance training to all billing and collections personnel. Such training shall specifically include educating said personnel on Confirmatrix' strict prohibition against stating or otherwise suggesting, whether directly or indirectly, that the patient's cost-sharing responsibility will be released, waived, forgiven or otherwise reduced. Confirmatrix will regularly audit its billing and collection practices to ensure compliance with this policy.

Financial Hardship

This payment option shall not be routine, and is strictly limited to patients experiencing substantial financial hardship, as evidenced by the completion of a financial hardship application after the service is provided identifying sources of income and expenses, along with supporting documents such as W-2 or 1099 tax documentation, employer paystubs, proof of unemployment, and similar documentation. Only the Chief Operating Officer of Confirmatrix can approve the reduction or elimination of a patient balance pursuant to the Financial Assistance Policy, which approval shall be set forth in a letter to the patient.



**Schedule 8.1.9**

### **Schedule 14.3**

Subject to the limitations contained in Section 14.6, the following indemnification procedures shall apply:

14.3.1 The indemnified Person has the right to require the indemnifying Party to assume (from the first instance) the defense of any Proceeding or indemnified event and to promptly pay all Liabilities and Losses as they are imposed, incurred, or suffered.

14.3.2 If the indemnifying Party assumes the defense, the indemnifying Party must select defense counsel who is reasonably satisfactory to the indemnified Person. In any case, the indemnifying Party will bear all expenses and costs in connection with the defense and/or settlement of any Proceeding and/or indemnifiable event.

14.3.3 The indemnified Person has the right to participate in the defense of any matter against which it/he/she is indemnified, but such participation will be at its/his/her own expense if the indemnifying Party has assumed the defense.

14.3.4 The indemnifying Party will not, except with the written consent of the indemnified Person, consent to entry of any judgment or enter into any settlement that either: (i) does not include, as an unconditional term, the grant by the claimant to the indemnified Person of a release of all Liabilities and Losses in respect of all claims; or (ii) adversely affects the rights of the indemnified Person.

14.3.5 The indemnified Person must notify the indemnifying Party promptly of any Proceeding for which the indemnified Person is seeking indemnification.

14.3.6 The Parties will cooperate with each other and their respective counsel in defending any Proceeding pursuant to Section 14 of this Agreement, including, without limitation, making their personnel reasonably available, providing testimony, and subject to Legal Requirements, providing access to their books and records as is reasonably necessary in connection with preparing the defense of any Proceeding to which Section 14 of this Agreement applies, all at the sole cost and expense of the indemnifying Party.

14.3.7 If a Party is obligated to indemnify another Person pursuant to Section 14 of this Agreement, the indemnifying Party must, upon fulfillment of its obligations with respect to indemnification, including payment in full of all amounts due pursuant to its indemnification obligations, be subrogated to the rights of the indemnified Person with respect to the claim(s) to which such indemnification relate(s).

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	Chapter 11
CONFIRMATRIX LABORATORY, INC.,	Case No.:16-69934-PWB
Debtor.	

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I served true and correct copies of the foregoing pleading by filing same with the CM/ECF electronic-filing system and depositing same in the United States mail, with adequate first class postage affixed thereon, properly addressed to the parties on the service list as follows:

See Attached Service List

This 18th day of December, 2017.

/s/ J. William Boone  
J. William Boone  
Georgia Bar No. 067856  
Doroteya N. Wozniak  
Georgia Bar No. 627491  
3399 Peachtree Road, N.E.  
Suite 1700  
Atlanta, Georgia 30326  
(404) 997-6020  
(404) 997-6021 (fax)  
bboone@jamesbatesllp.com  
dwozniak@jamesbatesllp.com  
*Counsel for Confirmatrix Laboratory, Inc.*

Service List

360 Medical Supplies, Inc.  
815 Progress Court, Suite A  
Lawrenceville, GA 30043

American Express  
P.O. Box 360001  
Fort Lauderdale, FL 33336-0001

AT&T  
P.O. Box 105262  
Atlanta, GA 30348-5262

Beckman Coulter, Inc.  
c/o Bernstein-Burkley, P.C.  
Kirk B. Burkley, Esq.  
707 Grant St., Ste 2200 Gulf Tower  
Pittsburgh, PA 15219

Beckman Coulter, Inc.  
c/o Bernstein-Burkley, P.C.  
Lara E. Shipkovitz, Esq.  
707 Grant St., Ste 2200 Gulf Tower  
Pittsburgh, PA 15219

David Silverstein  
905 Juniper St NE  
Unit 801  
Atlanta, GA 30309

Frank W. DeBorde, Esq.  
Morris, Manning & Martin, LP  
1600 Atlanta Financial Center  
3343 Peachtree Road, N.E.  
Atlanta, GA 30326

Adam Hough  
c/o Compliance S.O.S.  
Deborah Tanenbaum McCormick  
2001 Big Sky Lane  
Franklin, TN 37067

Anthem Blue Cross & Blue Shield  
Joseph C. Klein Esq.  
4361 Irwin Simpson Rd  
Mason, OH 45040-9498

Beckman Coulter, Inc.  
c/o Bernstein-Burkley, P.C.  
Daniel R. Schimizzi, Esq.  
707 Grant St., Ste 2200 Gulf Tower  
Pittsburgh, PA 15219

Beckman Coulter, Inc.  
c/o Bernstein-Burkley, P.C.  
Lara S. Martin, Esq.  
707 Grant St., Ste 2200 Gulf Tower  
Pittsburgh, PA 15219

Bio Rad  
P.O. Box 849740  
Los Angeles, CA 90084-9740

FedEx  
P.O. Box 660481  
Dallas, TX 75266-0481

Garner Group, LLC  
1206 State Blvd  
Franklin, TN 37064

Gwinnett Co. Tax Commissioner  
P.O. Box 372  
Lawrenceville, GA 30046

Kenneth T. Law, Esq.  
Bialson, Bergen & Schwab  
633 Menlo Ave, Suite 100  
Menlo Park, CA 94025

Missouri Department of Revenue  
Bankruptcy Unit  
Attn: Steven A. Ginther  
PO Box 475  
Jefferson City, MO 65105-0475

Nue Medical Consulting, Inc.  
GNOS Medical  
Suite 1800  
1130 Hurricane Shoals Rd, NE  
Lawrenceville, GA 30043

Quest Diagnostics  
P.O. Box 740736  
Atlanta, GA 30374-0736

Sun Life Financial  
P.O. Box 7247-0381  
Philadelphia, PA 19170-0381

State of Michigan, Dept of Treasury  
Attn: Bill Schuette, Attorney General  
Cadillac Place, Ste. 10-200  
3030 W. Grand Blvd  
Detroit, MI 48202

James H. Morawetz  
Office of U.S. Trustee  
362 Richard Russell Bldg  
75 ted Turner Drive, SW  
Atlanta, GA 30303

Law Office of Henry Sewell, LLC  
Henry Sewell, Esq.  
3343 Peachtree Road, NE  
Suite 200  
Atlanta, GA 30326-1420

Newegg, Inc.  
Attn: Accts Receivable  
17560 Rowland St  
Rowland Heights, CA 91748

Phenomenex  
P.O. Box 749397  
Los Angeles, CA 90074

Siemens Healthcare Diagnostics  
P.O. Box 121102  
Dallas, TX 75312-1102

State of Michigan, Dept of Treasury  
Attn: Moe Freedman, Asst Atty General  
Cadillac Place, Ste. 10-200  
3030 W. Grand Blvd  
Detroit, MI 48202

The Hartford  
P.O. Box 660916  
Dallas, TX 75266-0916

TN Dept of Revenue  
c/o TN Attorney General's Office  
Bankruptcy Division  
PO Box 20207  
Nashville, TN 37202-0207

UPS  
P.O. Box 7247-0244  
Philadelphia, PA 19170-0001

WellCare  
c/o James H. Rollins, Esq.  
Holland & Knight LLP  
1180 West Peachtree Street  
Suite 1800  
Atlanta, GA 30309

UCT, LLC  
2731 Bartram Road Bristol  
Bristol, PA 19007

WellCare  
c/o A. Andre Hendrick, Esq.  
Holland & Knight LLP  
1180 West Peachtree Street  
Suite 1800  
Atlanta, GA 30309

Wondfo USA Co. Ltd  
545 Willowbrook Center Pkwy  
Unit B  
Willowbrook, IL 60527