

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

IN RE:

CASE NO. 16-50740

PROGRESSIVE ACUTE CARE, LLC, et al.

CHAPTER 11

DEBTORS

JOINTLY ADMINISTERED

MOTION TO ASSUME EXECUTORY CONTRACT

NOW INTO COURT, comes Progressive Acute Care, LLC (“PAC”), Progressive Acute Care Avoyelles, LLC (“PAC Avoyelles”), Progressive Acute Care Oakdale, LLC (“PAC Oakdale”) and Progressive Acute Care Winn, LLC (“PAC Winn”) as debtors and debtors-in-possession (collectively, the “Debtors”), which respectively move this Court for entry of an order authorizing it to assume an executory contract with Crowe Horwath, LLP (the “Motion”). In support thereof, the Debtors respectfully represent as follows:

Background

1.

On May 31, 2016, each of the Debtors filed a petition for voluntary relief under chapter 11 of the Bankruptcy Code. No creditors’ committee has been appointed in any case; and, the Debtors continue to operate their businesses in the ordinary course as debtors-in-possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2.

The Debtors own and operate three (3) community-based hospitals (“Hospitals”), ranging from 50-60 bed capacity, which provide inpatient, outpatient and emergency care, primarily for residents of the immediate regions of the Hospitals. The Hospitals are located in Marksville (PAC Avoyelles), Oakdale (PAC Oakdale) and Winnfield (PAC Winn).

Basis for Relief

3.

The Debtors, by this Motion, seek authority to assume the audit services contract with Crowe Horwath, LLP (“Crowe”) pursuant to the provisions of 11 U.S.C. §365(a) and (b)(1)(A). A copy of the Contract is attached hereto as Exhibit “A”.

Relief Requested

4.

On September 29, 2015, the Debtors and Crowe entered into a contract wherein Crowe agreed to provide an audit and report on the consolidated financial statements of PAC for the years ending December 31, 2015, 2016 and 2017 (the “Contract”). The purpose of the audit is for Crowe to express an opinion on the consolidated financial statements in accordance with the auditing standards generally accepted in the United States of America.

5.

The audit services are required as part of the due diligence requirement by proposed purchasers of the Hospitals. Completion of the audit services is an immediate priority and necessary for the fulfillment of the requisite due diligence requirements.

6.

The services to be provided are strictly audit services and no general or professional advice will be given to the Debtors in connection with the services to be provided.

7.

Pursuant to 11 U.S.C. §365, the Debtor, subject to Court approval, may assume or reject any executory contract or unexpired lease of the debtor prior to plan confirmation. However, the Debtor cannot assume the executory contract or unexpired lease unless (i) all existing defaults in respect of the Lease are cured, or (ii) adequate assurance of a prompt cure or such defaults is provided. 11 U.S.C. §365(b)(1)(A). The Debtors have \$48,290.00 in pre-petition arrearages for services performed under the Contract that they propose to cure upon approval of the assumption of the Contract.

8.

It is estimated that the remaining cost due under the Contract to complete the audit for the consolidated financial statements for the year ending December 31, 2015 is \$20,000.00.

9.

A debtor-in-possession's decision to assume or reject an executory contract pursuant to 11 U.S.C. §365 is governed by the business judgment test. *Richmond Leasing Company v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985). Pursuant to the business judgment test, court approval to assume a lease "should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code." *Allied Technology, Inc. v. R.B. Bruemann & Sons*, 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982).

10.

As previously discussed, the Debtors require the use of Crowe to complete the audit services in order to comply with the due diligence requirement with a prospective purchaser pursuant to a confidential disclosure and limited use agreement. Crowe will not provide any advice

to the Debtors in connection with the performance of its audit services. Thus, for the foregoing reasons, the Debtors respectfully request this Court grant the relief requested herein as assumption of the Contract is in the Debtors' best judgment and can ultimately be of great benefit to the respective estates in the event an offer to purchase the Hospitals is made. The completion of the audit services, while required under the due diligence requirement of the current prospective purchaser, will likely be required by future prospective buyers and greatly outweighs the cost associated with the assumption of the Contract.

WHEREFORE, the Debtors respectfully request that this Court enter an Order granting the relief requested herein and approving the assumption of the contract with Crowe Horwath, LLP, and for such other and further relief as may be just and equitable.

Respectfully submitted by:

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

By: /s/ Noel Steffes Melancon

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

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

Noel Steffes Melancon (La. Bar No. 30072)

STEFFES, VINGIELLO & McKENZIE, LLC

13702 Coursey Boulevard Building 3

Baton Rouge, Louisiana 70817

Telephone: (225) 751-1751

Facsimile: (225) 751-1998

E-mail: nmelancon@steffeslaw.com

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



Crowe Horwath LLP
Independent Member Crowe Horwath International
225 West Wacker Drive, Suite 2600
Chicago, Illinois 60606-1224
Tel 312.899.7000
Fax 312.899.5300
www.crowehorwath.com

September 29, 2015

Mr. Wayne Thompson
Chief Financial Officer
Progressive Acute Care, LLC
2210 7th Street, Suite B
Mandeville, LA 74071

Dear Wayne:

This letter confirms the arrangements for Crowe Horwath LLP ("Crowe" or "us" or "we" or "our") to provide the professional services discussed in this letter to Progressive Acute Care LLC ("the Corporation" or "you", "your" or "Client") for the years ending December 31, 2015, 2016 and 2017. The attached Crowe Engagement Terms and Business Associate Addendum are an integral part of this letter, and their terms are incorporated herein.

AUDIT SERVICES

Our Responsibilities

We will audit and report on the consolidated financial statements of the Corporation for the above years. The objective of the audit is the expression of an opinion on the consolidated financial statements. We will plan and perform the audit in accordance with auditing standards generally accepted in the United States of America (GAAS).

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment including the assessment of the risks that the consolidated financial statements could be misstated by an amount we believe would influence the financial statement users. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

An audit requires that we obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Because of inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS. An audit is not designed to detect error or fraud that is immaterial to the consolidated financial statements.

In making our risk assessments, we consider internal control relevant to the Corporation's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Corporation's internal control. However, we will communicate in writing to those charged with governance and management concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the consolidated financial statements that we have identified during the audit. We will communicate to management other deficiencies in internal control identified during the audit that have not been communicated to management by other parties and that, in our professional judgment, are of sufficient importance to merit management's attention. We will also communicate certain matters related to the conduct of the audit to those charged with governance, including (1) fraud involving senior management, and fraud (whether caused by senior management or other employees)

that causes a material misstatement of the consolidated financial statements, (2) illegal acts that come to our attention (unless they are clearly inconsequential) (3) disagreements with management and other significant difficulties encountered in performing the audit and (4) various matters related to the Corporation's accounting policies and financial statements. Our engagement is not designed to address legal or regulatory matters, which matters should be discussed by you with your legal counsel.

We expect to issue a written report upon completion of our audit of the Corporation's consolidated financial statements. Our report will be addressed to the Board of Directors of the Corporation. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other matter paragraph, or withdraw from the engagement.

Our audit and work product are intended for the benefit and use of the Corporation only. The audit will not be planned or conducted in contemplation of reliance by any other party or with respect to any specific transaction and is not intended to benefit or influence any other party. Therefore, items of possible interest to a third party may not be specifically addressed or matters may exist that could be assessed differently by a third party. The working papers for this engagement are the property of Crowe and constitute confidential information.

The Corporation's Responsibilities

The Corporation's management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America. Management is also responsible for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud.

Management has the responsibility to adopt sound accounting policies, maintain an adequate and efficient accounting system, safeguard assets, design and implement programs and controls to prevent and detect fraud and devise policies to ensure that the Corporation complies with applicable laws and regulations. Management's judgments are typically based on its knowledge and experience about past and current events and its expected courses of action. Management's responsibility for financial reporting includes establishing a process to prepare the accounting estimates included in the consolidated financial statements.

Management is responsible for providing to us, on a timely basis, all information of which management is aware that is relevant to the preparation and fair presentation of the consolidated financial statements, such as records, documentation, and other matters. Management is also responsible for providing such other additional information we may request for the purpose of the audit, and unrestricted access to persons within the Corporation from whom we determine it necessary to obtain audit evidence. Additionally, those charged with governance are responsible for informing us of their views about the risks of fraud within the Corporation, and their knowledge of any fraud or suspected fraud affecting the Corporation.

Management is responsible for adjusting the consolidated financial statements to correct material misstatements related to accounts or disclosures. As part of our audit process, we will request from management written confirmation concerning representations made to us in connection with the audit, including that the effects of any uncorrected misstatements aggregated by us during the audit are immaterial, both individually and in the aggregate, to the consolidated financial statements. Management acknowledges the importance of management's representations and responses to our inquiries, and that they will be utilized as part of the evidential matter we will rely on in forming our opinion. Because of the importance of management's representations to an effective audit, you agree to release Crowe and its personnel from any liability and costs relating to our services under this letter attributable to any misrepresentations by management.

You have also asked us to assist in the preparation of the Corporation's consolidated financial statements from the books and records of the Corporation as of and for the years ending December 31, 2015, 2016 and 2017. In connection with performing this service, you agree to: assume all management

responsibilities including making all management decisions; oversee the service by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience; evaluate the adequacy and results of the services performed; and accept responsibility for the results of the services.

FEES

Our fees, exclusive of out-of-pocket expenses, are outlined below. Our invoices are due and payable upon receipt. Invoices that are not paid within 30 days of receipt are subject to a monthly interest charge of one percent per month or the highest interest rate allowed by law, whichever is less, which we may elect to waive at our sole discretion, plus costs of collection including reasonable attorneys' fees. If any amounts invoiced remain unpaid 30 days after the invoice date, you agree that Crowe may, in its sole discretion, cease work until all such amounts are paid or terminate this engagement.

Professional Service	2015	2016	2017
Audit of Progressive Acute Care LLC consolidated financial statements for the years ending December 31, 2015, 2016 and 2017	\$90,000	\$93,600	\$97,400
Audit procedures related to work performed by predecessor auditing firm. Audit procedures related to the loss from discontinued operation and loss from sale of discontinued operation.	\$10,000	N/A	N/A

Because each year is a separate engagement and this three-year period does not constitute a continuous engagement, we will require execution of a new engagement letter for each subsequent year listed above. However, we agree to the fees listed above for each year unless we both agree in writing to a modification. In recognition of the significant start-up investment incurred by Crowe during the initial year of the three-year period, should you terminate Crowe during the three-year period for reasons other than failure of Crowe to perform, you agree to pay our fees and expenses for services performed up to the date of termination.

The fees outlined above are based on certain assumptions. Those assumptions may be incorrect due to incomplete or inaccurate information provided, or circumstances may arise under which we must perform additional work, which in either case will require additional billings for our services. Examples of such circumstances include, but are not limited to:

- We assume that the discontinued operation will be sold prior to December 31, 2015 and that no assets or liabilities related to that operation will remain on your consolidated financial statements. Should this not occur, we would need to revise our fee estimate;
- New acquisitions;
- New professional standards or regulatory requirements or financial statement disclosures that require significant time to implement;
- Work caused due to the identification of, and management's correction of, inappropriate application of accounting pronouncements
- Erroneous or incomplete accounting records
- New or unusual transactions
- A change in your organizational structure or size due to merger and acquisition activity or other events
- A significant change in your controls
- Agreed-upon level of preparation and assistance from your personnel not provided
- Numerous revisions to your information
- Lack of availability of appropriate Corporation personnel during audit fieldwork.

Additionally, to accommodate requests to reschedule audit fieldwork without reasonable notice, additional billings for our services could be required, and our assigned staffing and ability to meet agreed-upon deadlines could be impacted.

Due to such potential changes in circumstance, we reserve the right to revise our fees. However, if such a change in circumstances arises or if some other significant change occurs that causes our fees to exceed our estimate, we will advise management. Further, these fees do not consider any time that might be necessary to assist management in the implementation or adoption of new or existing accounting, reporting, regulatory, or tax requirements that may apply.

Out of pocket travel expenses for the audit team will be billed in addition to the above fees based on actual costs incurred.

Our fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs, imposed in respect of the Services, any work product or any license, all of which Client agrees to pay if applicable or if they become applicable (other than taxes imposed on Crowe's income generally), without deduction from any fees or expenses invoiced to Client by Crowe.

To facilitate Crowe's presence at Client's premises, Client will provide Crowe with internet access while on Client's premises. Crowe will access the internet using a secure virtual private network. Crowe will be responsible for all internet activity performed by its personnel while on Client's premises. In the event Client does not provide Crowe with internet access while on Client's premises, Client will reimburse Crowe for the cost of internet access through other means while on Client's site.

* * * * *

MISCELLANEOUS

Crowe will provide the services to Client under this Agreement as an independent contractor and not as Client's partner, agent, employee, or joint venturer under this Agreement. Neither Crowe nor Client will have any right, power or authority to bind the other party.

This engagement letter agreement (the "Agreement") reflects the entire agreement between us relating to the services (or any deliverables or other work product) covered by this Agreement. The engagement letter and any attachments are to be construed as a single document, with the provisions of each section applicable throughout. This Agreement may not be amended or varied except by a written document signed by both parties. It replaces and supersedes any other proposals, correspondence, agreements and understandings, whether written or oral, relating to the services covered by this letter, and each party agrees that in entering this Agreement, it has not relied on any oral or written statements or other information not contained or incorporated in this Agreement. Any non-disclosure or other confidentiality agreement is replaced and superseded by this Agreement. The agreements of you and Crowe contained in this Agreement will survive the completion or termination of this Agreement. If any phrase, sentence, provision or other term of this Agreement is found unenforceable or invalid, this will not affect the other phrases, sentences, provisions or other terms, all of which will continue in effect as if the stricken term had not been included. This Agreement may be executed in two or more actual, scanned, emailed, or electronically copied counterparts, each and all of which together are one and the same instrument. Accurate transmitted copies (transmitted copies are reproduced documents that are sent via mail, delivery, scanning, email, photocopy, facsimile or other process) will be considered and accepted by each party as documents equivalent to original documents and will be deemed valid, binding and enforceable by and against all parties. This agreement must be construed, governed, and interpreted under the laws of the State of Illinois, without regard for choice of law principles.

We are pleased to have this opportunity to serve you, and we look forward to a continuing relationship. If the terms of this letter and the attached Crowe Engagement Terms are acceptable to you, please sign below and return a copy of this letter at your earliest convenience. Please contact us with any questions or concerns.

Mr. Wayne Thompson
Progressive Acute Care, LLC
September 29, 2015
Page 5

ACCEPTANCE:

I have reviewed the arrangements outlined above and in the attached "Crowe Engagement Terms," and I accept on behalf of Progressive Acute Care, LLC the terms and conditions as stated.

IN WITNESS WHEREOF, Progressive Acute Care, LLC and Crowe have duly executed this engagement letter as of the date below.

Progressive Acute Care, LLC

Crowe Horwath LLP

Signature



Signature

Printed Name

James P. Grigg

Printed Name

Title

Partner

Title

Date

9/29/2015

Date

Crowe Engagement Terms

Crowe wants Client to understand the terms under which Crowe provides its services to Client and the basis under which Crowe determines its fees. These terms are part of the Agreement and apply to all services described in the Agreement as well as all other services provided to Client (collectively, the "Services"), unless and until a separate written agreement is executed by the parties for separate services. Crowe specifically notes that no advice Crowe provides should be construed to be investment advice.

CLIENT'S ASSISTANCE – For Crowe to provide its Services effectively and efficiently, Client agrees to provide Crowe timely with the information it requests and to make Client's employees available for Crowe's questions. The availability of Client's personnel and the timetable for their assistance are key elements in the successful completion of Crowe's Services and in the determination of Crowe's fees. Completion of Crowe's work depends on appropriate and timely cooperation from Client's personnel; complete, accurate, and timely responses to Crowe's inquiries; and timely communication by Client of all significant tax, accounting and financial reporting matters of which Client is aware. If for any reason this does not occur, a revised fee to reflect the additional time or resources required by Crowe will be mutually agreed upon, and Client agrees to hold Crowe harmless against all matters that arise in whole or in part from any resulting delay.

PROFESSIONAL STANDARDS – As a regulated professional services firm, Crowe must follow certain professional standards where applicable, including the Code of Professional Conduct promulgated by the American Institute of Certified Public Accountants ("AICPA"). Therefore, if circumstances arise that, in Crowe's professional judgment, prevent it from completing this engagement, Crowe retains the right to take any course of action permitted by professional standards, including declining to express an opinion or issue other work product, or terminating the engagement.

REPORTS – Any information, advice, recommendations or other content of any memoranda, reports, presentations, or other communications Crowe provides under this Agreement ("Reports"), other than Client's original information, are for Client's internal use only, consistent with the purpose of the Services. Client will not rely on any draft Report. Unless required by an audit or attestation professional standard, Crowe will not be required to update any final Report for circumstances of which we become aware or events occurring after delivery.

THIRD PARTY PROVIDER – Crowe may use a third-party service provider in providing Services to Client which may require Crowe's sharing Client's confidential information with the provider. If Crowe uses a third-party service provider, Crowe will enter into a confidentiality agreement with the provider to require them to maintain the confidentiality of Client's confidential information, and Crowe will be responsible to Client for maintaining its confidentiality. The terms of Crowe's engagement letter and these engagement terms will apply to any third party provider.

CONFIDENTIALITY – Except as otherwise permitted by this Agreement or as agreed in writing, neither Crowe nor Client may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. Client use of any Crowe work product will be limited to its stated purpose and to Client business use only. However, Client and Crowe each agree that either party may disclose such information to the extent that it: (i) is or becomes public other than through a breach of this Agreement, (ii) is subsequently received by the recipient from a third party who, to the recipient's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information, (iii) was known to the recipient at the time of disclosure or is thereafter created independently, (iv) is disclosed as necessary to enforce the recipient's rights under this Agreement, or (v) must be disclosed under applicable law, regulations, legal process or professional standards.

DATA PROTECTION – If Crowe holds or uses Client information that can be linked to specific individuals who are Client's customers ("Personal Data"), Crowe will treat it as confidential as described above and comply with applicable US state and federal law and professional regulations in disclosing or using such information to carry out the Services. Crowe has implemented and will maintain physical, electronic and procedural safeguards reasonably designed to (i) protect the security, confidentiality and integrity of the Personal Data, (ii) prevent unauthorized access to or use of the Personal Data, and (iii) provide proper disposal of the Personal Data (collectively, the "Safeguards"). Client warrants that it has the authority to

provide the Personal Data to Crowe in connection with the Services and that Client has processed the Personal Data provided to Crowe in accordance with applicable law. To provide the Services, Client may also need to provide Crowe with access to Personal Data consisting of protected health information, financial account numbers, Social Security or other government-issued identification numbers, or other data that, if disclosed without authorization, would trigger notification requirements under applicable law ("Restricted Personal Data"). In the event Client provides Crowe access to Restricted Personal Data, Client will consult with Crowe on appropriate measures (consistent with professional standards applicable to Crowe) to protect the Restricted Personal Data, such as: deleting or masking unnecessary information before making it available to Crowe, encrypting it when transferring it to Crowe, or providing it to Crowe only during on-site review on Client's site. Client will provide Crowe with Restricted Personal Data only in accordance with mutually agreed protective measures. Otherwise, Client and Crowe agree each may use unencrypted electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement.

INTELLECTUAL PROPERTY – Crowe may use ideas, concepts, methodologies, data, software, designs, utilities, tools, models, techniques, data, systems, or other know-how that it develops, owns or licenses ("Materials") in performing the Services. Notwithstanding the delivery of any Reports, Crowe retains all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers compiled in connection with the Services (but not Client information reflected in them). Upon payment for particular Services and subject to the other terms of this Agreement, Client will use Reports, as well as any Materials owned by Crowe included therein, solely to the extent necessary and permitted under this Agreement.

AGGREGATED DATA – Client agrees that Crowe may from time to time use and process Client's confidential information for data aggregation and/or industry benchmarking purposes. In using Client's confidential information for data aggregation and/or industry benchmarking purposes, Crowe will maintain Client's information as confidential unless Crowe removes data that specifically identifies Client and Client's customers.

LEGAL AND REGULATORY CHANGE – Crowe may periodically communicate changes in laws, rules or regulations to Client. However, Client has not engaged Crowe, and Crowe does not undertake an obligation, to advise Client of changes in laws, rules, regulations, industry or market conditions, Client's own business practices or other circumstances, except to the extent required by professional standards. In addition, the scope of Services and the fees for Services are based on current laws and regulations. If changes in laws or regulations change Client's requirements or the scope of Crowe's work, the parties agree that Crowe's fees will be modified to a mutually agreed upon amount to reflect the changed level of Crowe's effort.

PUBLICATION – Client agrees to obtain Crowe's specific permission before using any Report or Crowe work product or Crowe's firm's name in a published document, and Client agrees to submit to Crowe copies of such documents to obtain Crowe's permission before they are filed or published.

CLIENT REFERENCE – From time to time Crowe is requested by prospective clients to provide references for Crowe's client offerings. Client agrees that Crowe may use Client's name and generally describe the nature of the engagement(s) provided to Client in marketing to prospective clients, and Crowe may also provide prospective clients with contact information for Client personnel familiar with Crowe's Services for Client.

NO PUNITIVE OR CONSEQUENTIAL DAMAGES – Any liability of Crowe will not include any special, consequential, incidental, punitive, or exemplary damages or loss nor any lost profits, goodwill, savings, or business opportunity, even if Crowe had reason to know of the possibility of such damages.

LIMIT OF LIABILITY – Except where it is judicially determined that Crowe performed its Services with gross negligence or willful misconduct, Crowe's liability will not exceed fees paid by Client to Crowe for the portion of the work giving rise to liability. A claim for a return of fees paid is the exclusive remedy for any damages. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, and including, without limitation, claims based on principles of contract, negligence or other tort, fiduciary duty, warranty, indemnity, statute or common law. This limitation of liability will also apply after termination of this agreement.

INDEMNIFICATION FOR THIRD-PARTY CLAIMS – In the event of a legal proceeding or other claim brought against Crowe by a third party, except where it is judicially determined that Crowe performed Services with gross negligence or willful misconduct, Client agrees to indemnify and hold harmless Crowe and its personnel against all costs, fees, expenses, damages and liabilities, including attorney fees and any other fees or defense costs, associated with such third-party claim, relating to or arising from any Services performed or work product provided by Crowe that Client uses or discloses to others or this engagement generally. This indemnification is intended to apply to the fullest extent allowed by law, regardless of the grounds or nature of any claim, liability, or damages asserted, including, without limitation, to claims, liability or damages based on principles of contract, negligence or other tort, fiduciary duty, warranty, indemnity, statute or common law. This indemnification will also apply after termination of this agreement.

NO TRANSFER OR ASSIGNMENT OF CLAIMS – No claim against Crowe, or any recovery from or against Crowe, may be sold, assigned or otherwise transferred, in whole or in part.

TIME LIMIT ON CLAIMS – In no event will any action against Crowe, arising from or relating to this engagement letter or the Services provided by Crowe relating to this engagement, be brought after the earlier of 1) two (2) years after the date on which occurred the act or omission alleged to have been the cause of the injury alleged; or 2) the expiration of the applicable statute of limitations or repose.

RESPONSE TO LEGAL PROCESS – If Crowe is requested by subpoena, request for information, or through some other legal process to produce documents or testimony pertaining to Client or Crowe's Services, and Crowe is not named as a party in the applicable proceeding, then Client will reimburse Crowe for its professional time, plus out-of-pocket expenses, as well as reasonable attorney fees, Crowe incurs in responding to such request.

MEDIATION – If a dispute arises, in whole or in part, out of or related to this engagement, or after the date of this agreement, between Client or any of Client's affiliates or principals and Crowe, and if the dispute cannot be settled through negotiation, Client and Crowe agree first to try, in good faith, to settle the dispute by mediation administered by the American Arbitration Association, under its mediation rules for professional accounting and related services disputes, before resorting to litigation or any other dispute-resolution procedure. The results of mediation will be binding only upon agreement of each party to be bound. Costs of any mediation will be shared equally by both parties. Any mediation will be held in Chicago, Illinois.

JURY TRIAL WAIVER – FOR ALL DISPUTES RELATING TO OR ARISING BETWEEN THE PARTIES, THE PARTIES AGREE TO WAIVE A TRIAL BY JURY TO FACILITATE JUDICIAL RESOLUTION AND TO SAVE TIME AND EXPENSE. EACH PARTY AGREES IT HAS HAD THE OPPORTUNITY TO HAVE ITS LEGAL COUNSEL REVIEW THIS WAIVER. THIS WAIVER IS IRREVOCABLE, MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND APPLIES TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS WRITTEN CONSENT TO A BENCH TRIAL WITHOUT A JURY. HOWEVER, AND NOTWITHSTANDING THE FOREGOING, IF ANY COURT RULES OR FINDS THIS JURY TRIAL WAIVER TO BE UNENFORCEABLE AND INEFFECTIVE IN WAIVING A JURY, THEN ANY DISPUTE RELATING TO OR ARISING FROM THIS ENGAGEMENT OR THE PARTIES' RELATIONSHIP GENERALLY WILL BE RESOLVED BY ARBITRATION AS SET FORTH IN THE PARAGRAPH BELOW REGARDING "ARBITRATION."

ARBITRATION – If any court rules or finds that the JURY TRIAL WAIVER section above is not enforceable, then any dispute between the parties relating to or arising from this engagement or the parties' relationship generally will be settled by binding arbitration in Chicago, Illinois (or a location agreed in writing by the parties). Any dispute between the parties will be arbitrated by the arbitrator(s) in accordance with this section, including without limitation any dispute relating to whether a dispute is subject to arbitration or any issue concerning the applicability, interpretation or enforceability of this section or any of its procedures. The arbitration will be governed by the Federal Arbitration Act and resolved by the arbitrator(s). The parties will use the International Institute for Conflict Prevention & Resolution (the "CPR Institute") Global Rules for Accelerated Commercial Arbitration (the "Accelerated Rules") then in effect, or such other rules or procedures as the parties may agree. In the event of a conflict between those rules and this Agreement, this Agreement will control. If a party has a basis for injunctive relief, this paragraph will not preclude a party seeking and obtaining injunctive relief in a court of

proper jurisdiction. The parties will agree within a reasonable period of time after notice is made of instituting the arbitration process whether to use one or three arbitrators, and if the parties cannot agree within fifteen (15) business days, the parties will use a single arbitrator. In any event the arbitrator(s) must be retired federal judges or attorneys with at least 15 years commercial law experience and no arbitrator may be appointed unless he or she has agreed to these procedures. If the parties cannot agree upon arbitrator(s) within an additional fifteen (15) business days, the arbitrator(s) will be selected by the CPR Institute. The arbitrator(s) may authorize only limited discovery upon a showing of substantial need by the party seeking discovery. The arbitrator(s) may rule on a summary basis, including without limitation on a motion to dismiss basis or on a summary judgment basis. The arbitrator(s) may enter such prehearing orders as may be appropriate to ensure a fair hearing. The hearing will be held within one year of the demand or less and must be concluded within ten business days absent written agreement by the parties to the contrary, but these time limits are not jurisdictional. The arbitrator(s) will apply substantive law and may award injunctive relief or any other remedy available from a judge. The arbitrator(s) may award attorney fees and costs to the prevailing party, and in the event of a split or partial award, the arbitrator(s) may award costs or attorney fees in an equitable manner. Any award by the arbitrator(s) will be accompanied by a reasoned opinion describing the basis of the award. The arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. All aspects of the arbitration will be treated by the parties and the arbitrator(s) as confidential.

NON-SOLICITATION – Client and Crowe acknowledge the importance of retaining key personnel. Accordingly, both parties agree that during the period of this agreement, and for one (1) year after its expiration or termination, neither party will solicit any personnel or subcontractors (if any) of the other party for employment without the written consent of the other party. If an individual becomes an employee of the other party, the other party agrees to pay a fee equal to the individual's compensation for the prior full twelve-month period to the original employer.

AFFILIATES – Crowe Horwath LLP is an independent member of Crowe Horwath International, a Swiss verein. Each member firm of Crowe Horwath International is a separate and independent legal entity. Crowe Horwath LLP and its affiliates are not responsible or liable for any acts or omissions of Crowe Horwath International or any other member of Crowe Horwath International and specifically disclaim any and all responsibility or liability for acts or omissions of Crowe Horwath International or any other member of Crowe Horwath International. Crowe Horwath International does not render any professional services and does not have an ownership or partnership interest in Crowe Horwath LLP. Crowe Horwath International and its other member firms are not responsible or liable for any acts or omissions of Crowe Horwath LLP and specifically disclaim any and all responsibility or liability for acts or omissions of Crowe Horwath LLP.

Crowe Horwath LLP
Health Insurance Portability and Accountability Act (HIPAA)
Business Associate Addendum

To the extent that Progressive Acute Care, LLC ("Covered Entity") discloses Protected Health Information to Business Associate, or Business Associate handles Protected Health Information on Covered Entity's behalf, in connection with services or products provided to Covered Entity, or as otherwise required or allowed by the Health Insurance Portability and Accountability Act of 1996, as amended, ("HIPAA"), Covered Entity and Business Associate agree to the following terms and conditions, which are intended to comply with HIPAA, the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and their implementing regulations. This Addendum shall be applicable only in the event and to the extent Business Associate meets, with respect to Covered Entity, the definition of a Business Associate set forth at 45 C.F.R. §160.103, or applicable successor provisions.

1. General Terms.

(a) This HIPAA Business Association Addendum (this "**Addendum**") is Exhibit 1 to Engagement Letter dated September 29, 2015 ("**Agreement**") between Covered Entity and Business Associate.

(b) "**Business Associate**" shall generally have the same meaning as the term "business associate" at 45 C.F.R. §160.103, and in reference to the party to this Addendum, shall mean Crowe Horwath LLP, which is acting as an independent contractor to Covered Entity.

(c) "**Covered Entity**" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. §160.103, and in reference to the party to this Addendum, shall mean, Progressive Acute Care, LLC.

(d) "**HIPAA Rules**" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

(e) Other definitions: The following terms used in this Addendum shall have the same meaning as those in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (to the extent such Protected Health Information is received, used, disclosed, accessed or maintained by Business Associate), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Other terms shall have the definitions set forth in this Addendum.

2. Obligations and Activities of Business Associate.

(a) Business Associate shall not use or disclose Protected Health Information other than as permitted or required by this Addendum or the Agreement or, as permitted or Required by Law.

(b) Business Associate agrees to use appropriate safeguards, including compliance with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as permitted by this Addendum.

(c) Business Associate agrees to report to Covered Entity's Privacy Official any use or disclosure of Protected Health Information not provided for by this Addendum of which it becomes aware, including Breaches of Unsecured Protected Health Information, as required by 45 C.F.R. §164.410, and any Security Incident of which it becomes aware. For reports of incidents constituting a Breach, the report shall include, to the extent available, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or Disclosed during such Breach. Security Incidents that do not result in any unauthorized access, use, disclosure, modification, destruction of information or interference with system operations will be reported in the aggregate upon written request of Covered Entity in a manner and frequency mutually acceptable to the parties. Business Associate hereby reports to Covered Entity that incidents including, but not limited to, ping sweeps or other common network reconnaissance techniques,

attempts to log on to a system with an invalid password or username, and denial of service attacks that do not result in a server being taken off line, may occur from time to time.

(d) In accordance with 45 C.F.R. §164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions, conditions and requirements that apply through this Addendum to Business Associate with respect to such information.

(e) To the extent Business Associate has Protected Health Information in a Designated Record Set, and only to the extent required by HIPAA, Business Associate agrees to make available Protected Health Information in a Designated Record Set, to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.524. The Parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests.

(f) Business Associate agrees to make Protected Health Information available for purposes of any amendment(s) to Protected Health Information in its possession contained in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. §164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.526. The Parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests.

(g) Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528. The Parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests.

(h) to the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164 of the HIPAA Rules, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

(i) Business Associate agrees to make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate.

(a) Business Associate may only use or disclose Protected Health Information as necessary to perform the services set forth in the Agreement and as permitted in this Addendum.

(b) Business Associate may Use or Disclose Protected Health Information as Required By Law.

(c) Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with the requirements in the HIPAA Rules regarding Minimum Necessary uses and disclosures. Covered Entity represents and warrants that its Minimum Necessary policies and procedures and the Notice of Privacy Practices are consistent with, and not more stringent than, the HIPAA Rules or, to the extent that Covered Entity's Notice of Privacy Practices or policies and procedures regarding the Minimum Necessary requirements of the HIPAA Rules impose additional particular restrictions on Business Associate, Covered Entity agrees to provide such policies to Business Associate in writing prior to requesting that Business Associate perform a particular function or activity on behalf of Covered Entity that would be affected by such policies and procedures.

(d) Business Associate may create de-identified information that may be used and disclosed by Business Associate as Business Associate deems appropriate, provided that the information is de-identified in accordance with the HIPAA Rules.

(e) Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity. Business Associate may also use Protected Health Information to create, use and disclose a Limited Data Set consistent with the HIPAA Rules.

(f) Business Associate may use and disclose Protected Health Information to report violations of law to appropriate Federal and State authorities, in a manner consistent with the HIPAA Rules.

(g) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.

(h) Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(i) Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required By Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Obligations of Covered Entity.

(a) Covered Entity agrees to notify Business Associate, in writing and in a timely manner, of any limitations(s) in its Notice of Privacy Practices under 45 C.F.R. §164.520 to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information and to notify Business Associate of any material changes thereof;

(b) Covered Entity agrees to notify Business Associate, in writing and in a timely manner, of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information;

(c) Covered Entity agrees to notify Business Associate, in writing and in a timely manner, of any restriction to the use or disclosure of Protected Health Information to which Covered Entity has agreed or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) Covered Entity agrees to comply with all applicable state and federal privacy and security laws and regulations, including the HIPAA Rules. Covered Entity agrees to obtain any patient authorizations or consents that may be required under state or federal law in order to transmit Protected Health Information to Business Associate and to enable Business Associate to Use and Disclose Protected Health Information as contemplated by this Addendum and the Agreement.

(e) Covered Entity shall not request that Business Associate Use or Disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except that Business Associate may use or disclose Protected Health Information for its proper management and administration, data aggregation, and other activities specifically permitted by this Addendum.

(f) Covered Entity shall disclose only the Minimum Necessary Protected Health Information to accomplish the intended purpose of such Disclosure or request. Prior to any Disclosure, Covered Entity shall determine whether a Limited Data Set would be sufficient for the purpose.

5. Term and Termination.

(a) The term of this Addendum shall continue for the term of the Agreement and following termination of the Agreement until all Protected Health Information is destroyed or returned to Customer or its designee.

(b) Upon Covered Entity's knowledge of a material breach of this Addendum by Business Associate, Covered Entity shall provide written notice to Business Associate and may terminate this Addendum if Business Associate does not cure the breach or end the violation within thirty (30) days.

(c) Except as required by law or regulation, upon termination of the Agreement for any reason Business Associate shall return or, at Covered Entity's direction, destroy all Protected Health Information at Covered Entity's cost and expense. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate as well as Business Associate itself. Business Associate shall retain no copies of the Protected Health Information. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall: (i) retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (ii) Return or destroy the remaining Protected Health Information that Business Associate still maintains in any form; (iii) Continue to use appropriate safeguards to comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information; (iv) Not use or disclose the Protected Health Information retained by Business Associate other than for the purpose for which such Protected Health Information was retained and subject to the same conditions set out in this Addendum which applied prior to termination; and (v) Return to Covered Entity or destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities. The parties agree that it is infeasible for Business Associate to return or destroy Protected Health Information it must maintain in supporting documentation to comply with professional standards of practice. This Section does not require Business Associate to segregate any Protected Health Information from other information maintained by Covered Entity on Business Associate's servers and Business Associate may comply with this requirement by returning or destroying all of the information maintained on its servers by Covered Entity. Business Associate's obligations under this subsection shall survive the termination of this Addendum.

6. **Liability.**

(a) IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, LOSS OF DATA, OR CIVIL OR CRIMINAL PENALTIES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY TO ANY CLAIM, INCLUDING WITHOUT LIMITATION CLAIMS BASED IN STATUTE, COMMON LAW, CONTRACT, WARRANTY, FIDUCIARY DUTY, NEGLIGENCE OR OTHER TORT, OR STRICT LIABILITY. THIS LIMITATION OF LIABILITY SHALL ALSO APPLY AFTER TERMINATION OF THIS AGREEMENT.

(b) BUSINESS ASSOCIATE'S AGGREGATE LIABILITY TO COVERED ENTITY UNDER THIS ADDENDUM SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID TO BUSINESS ASSOCIATE FOR THE PORTION OF THE WORK GIVING RISE TO SUCH LIABILITY, AND A RETURN OF SUCH AMOUNTS PAID SHALL BE COVERED ENTITY'S EXCLUSIVE REMEDY FOR ANY DAMAGES. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY TO ANY CLAIM, INCLUDING WITHOUT LIMITATION CLAIMS BASED IN STATUTE, COMMON LAW, CONTRACT, WARRANTY, FIDUCIARY DUTY, NEGLIGENCE OR OTHER TORT, OR STRICT LIABILITY. THIS LIMITATION OF LIABILITY SHALL ALSO APPLY AFTER TERMINATION OF THIS AGREEMENT.

7. **Miscellaneous.**

(a) **Amendment.** Covered Entity and Business Associate agree to negotiate in good faith to take such action as is reasonably necessary to amend this Addendum from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA as they may be amended from time to time; provided, however, that if such an amendment would materially increase the cost of Business Associate providing service under the Agreement, Business Associate shall have the option to terminate the Agreement on thirty (30) days advance notice.

(b) **Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Addendum shall survive the termination of the Agreement. Business Associate's obligations shall end when all of the Protected Health Information provided by Covered Entity to Business Associate,

or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

(c) **Interpretation.** Any ambiguity in the Agreement shall be resolved to permit compliance with the HIPAA Rules.

(d) **Governing Law.** To the extent not preempted by federal law, this Addendum shall be governed and construed in accordance with the state laws governing the Agreement, without regard to conflicts of law provisions that would require the application of the law of another state.

Crowe Horwath LLP

By: James P. Gann
(Signature)

Its: Partner
(Type or Print Position)

Date: September 29, 2015

Covered Entity

By: _____
(Signature)

Its: _____
(Type or Print Position)

Date: _____