

## **HOSPICE & COMMUNITY CARE LONG TERM CARE FACILITY AGREEMENT**

THIS AGREEMENT is entered into on [Click here to enter a date.](#), between **Hospice & Community Care**, a Pennsylvania not-for-profit corporation with administrative offices located at 685 Good Drive, P.O. Box 4125, Lancaster, Pennsylvania, 17604-4125 (aka "Hospice"), and [Click here to enter text.](#) (aka "LTC Facility"), a long-term care facility located at [enter facility address].

### Background:

- A) Hospice is engaged in the provision of interdisciplinary services for the palliation and management of life-limiting illness.
- B) The LTC Facility is skilled and experienced in the provision of long-term care services to its residents including room and board and assistance with activities of daily living. The LTC Facility is certified to participate in the Medicare/Medicaid program and has established policies and protocols for the care of terminally ill patients consistent and compatible with those of Hospice.
- C) NOW, THEREFORE, Hospice and the LTC Facility, in consideration of the mutual advantages to each, and to the residents and their families, the foregoing and the mutual covenants and agreements, hereby agree as follows:

### **1) Definitions:**

- A) "LTCF Services" means those personal care and 24-hour room and board services as specified in the Plan of Care for a Hospice Patient including, but not limited to: (i) providing food, including individualized requests and dietary supplements; (ii) assisting with activities of daily living such as mobility and ambulation, dressing, grooming, bathing, transferring, eating and toileting; (iii) arranging and assisting in socializing activities; (iv) assisting in the administration of medicine; (v) providing and maintaining the cleanliness of Hospice Patient's room; (vi) supervising and assisting in the use of any durable medical equipment and therapies included in the Plan of Care; (vii) providing laundry and personal care supplies; (viii) providing monitoring of general health conditions; (ix) contacting family/legal representative for purposes unrelated to the terminal condition; (x) arranging for the provision of medications not related to the management of the terminal illness; and (xi) providing the usual and customary room furnishings provided to residents including, but not limited to, beds, linens, lamps, over-the-bed tables, nightstands and dressers. LTCF Services are further described in Exhibit A, attached hereto. In the case of Medicaid Eligible Hospice Patients, LTCF Services shall include all services outlined in the Medicaid covered services rule, as may be amended from time to time.
- B) "Hospice Patient" means an individual who has consented, directly or through such individual's legal representative, to receive Hospice Services and is accepted by Hospice to receive Hospice Services whether they have elected their Hospice Medicare/Medicaid Benefits or made private pay arrangements with Hospice.
- C) "Hospice Physician" means a duly licensed doctor of medicine or osteopathy employed or contracted by Hospice who, along with the Hospice Patient's attending physician (if any), is responsible for the palliation and management of a Hospice Patient's terminal illness and related conditions.
- D) "Hospice Services" means those services provided to a Hospice Patient that are reasonable and necessary for the palliation and management of the Hospice Patient's terminal illness and related conditions and are specified in a Hospice Patient's Plan of Care. Hospice Services may include

- (i) Nursing services including aide services by or under the supervision of a registered nurse;
  - (ii) Medical social services provided by a qualified social worker;
  - (iii) Physician services, to the extent that these services are not provided by the Hospice Patient's attending physician;
  - (iv) Counseling services, including bereavement, and spiritual counseling;
  - (v) Physical, respiratory, occupational and speech therapy services;
  - (vi) Medical supplies;
  - (vii) Drugs and biologicals;
  - (viii) Use of medical appliances;
  - (ix) Volunteer support;
  - (x) Complementary therapies;
  - (xi) Dietary services.
- E) "Interdisciplinary Group" ("IDG") means a group of qualified individuals including, but not limited to: a doctor of medicine or osteopathy; a registered nurse; a social worker; a pastoral or other counselor.
- F) "Other LTCF Services" means all items and services provided by the LTC Facility which are not related to treatment of a Hospice Patient's terminal illness but specified in the Plan of Care.
- G) "Plan of Care" means a written care plan established, maintained, reviewed and modified, if necessary, at intervals identified by the IDG. The Plan of Care must reflect Hospice Patient and family goals and interventions based on the problems identified in the Hospice Patient assessments. The Plan of Care will reflect the participation of Hospice, the LTC Facility and the Hospice Patient and family to the extent possible. Specifically, the Plan of Care includes: (i) an identification of the Hospice Services, including interventions for pain management and symptom relief, needed to meet such Hospice Patient's needs and the related needs of Hospice Patient's family; (ii) a detailed statement of the scope and frequency of such Hospice Services; (iii) measurable outcomes anticipated from implementing and coordinating the Plan of Care; (iv) drugs and treatment necessary to meet the needs of the Hospice Patient; (v) medical supplies and appliances necessary to meet the needs of the Hospice Patient; and (vi) the IDG's documentation of the Hospice Patient's or Representative's level of understanding, involvement and agreement with the Plan of Care. Hospice and LTC Facility will collaborate and agree upon a coordinated Plan of Care which is consistent with the hospice philosophy and is responsive to the unique needs of Hospice Patient and his or her expressed desire for hospice care.
- H) "Purchased Hospice Services" means those Hospice Services specified in Exhibit A that are not core services under the Medicare Conditions of Participation for Hospice Care and that Hospice has elected to contract with the LTC Facility to provide.

- l) "Uncovered Items and Services" means those services provided by LTC Facility which are not Hospice Services, LTCF Services or other LTCF Services including, but not limited to, telephone, guest trays and television hookup. Uncovered Items and Services are further described in Exhibit A.

## 2) Responsibilities of the Long Term Care Facility

### A) Manner of Providing LTCF Services.

- (i.) LTCF Services - The LTC Facility shall work within the Hospice Patient's Plan of Care and shall ensure Hospice Patients are kept comfortable, clean, and well-groomed and protected from harm. It is the LTC Facility's responsibility to provide LTCF Services that meet the personal care and nursing needs that would have been provided by a Hospice Patient's primary caregiver at home. LTCF Services will be provided at the same level of care provided to each Hospice Patient before hospice care was elected based on the individual resident's needs. Notwithstanding the foregoing, in times of Hospice Patient crisis, Hospice may authorize and request the LTC Facility's staff to perform more sophisticated functions in order to ensure Hospice Patient comfort and LTC Facility staff may assist in the administration of prescribed therapies when permitted by state law.
- (ii.) Availability - LTCF Services will be available to 24 hours per day, 7 days per week and shall maintain sufficient personnel who have the requisite training, skills and experience to meet this obligation.
- (iii.) Purchased Hospice Services - At the request of Hospice, the LTC Facility shall provide Hospice Patients with the Purchased Hospice Services identified in Exhibit A.
- (iv.) Notification of Services -The LTC Facility shall fully inform Hospice Patients of all services that will be provided or may be offered by the LTC Facility.

### B) Professional Standards and Credentials

- (i.) Professional Standards -The LTC Facility shall ensure that all LTCF Services are provided competently and efficiently. LTCF Services shall meet or exceed the standards of care for providers of such services and shall be in compliance with all applicable laws, rules, regulations, professional standards and licensure requirements.
- (ii.) Credentials
  - a. Licensure -The LTC Facility represents and warrants that it has and will maintain in good standing during the term of this Agreement with all federal, state and local licenses and certificates required by law to provide LTCF Services. Upon Hospice's request, the LTC Facility shall provide Hospice with evidence of such licenses and certifications.
  - b. Qualifications of Personnel - All professionals employed or contracted by the LTC Facility to provide LTCF Services to Hospice Patients shall be legally authorized, licensed, certified or registered in accordance with applicable state, federal and local laws, as described by federal law, including, but without limitation, 42 CFR §418.114(b). The LTC Facility shall complete criminal background checks on all employees or other persons who have direct patient contact or access to patient records, as required by 42 CFR § 418.114(d). The LTC Facility represents to Hospice that those LTC Facility personnel who will have direct contact

with Hospice Patients or have access to Hospice Patient records have not been found to have engaged in improper or illegal conduct relating to the elderly, children or vulnerable individuals. Upon Hospice's request, the LTC Facility shall provide Hospice with proof of such personnel's qualifications.

- c. Disciplinary Action - The LTC Facility represents and warrants that neither it nor any of its personnel is under suspension or subject to any disciplinary proceedings by any agency having jurisdiction over professional activities of the LTC Facility or its personnel and is not under any formal or informal investigation or preliminary inquiry by such department or agency for possible disciplinary action.
- d. Exclusion from Medicare or Medicaid - LTC Facility represents and warrants that neither the LTC Facility nor its personnel has been, at any time, excluded from participation in any federally funded health care program including, without limitation, Medicare or Medicaid, nor has been convicted or found to have violated any federal or state fraud and abuse law or illegal remuneration law.

C) Quality Assessment and Performance Improvement Activities - The LTC Facility shall participate as able with Hospice in its hospice-wide quality assessment and performance improvement activities. Components of the quality assessment and performance improvement program may include

- (i.) Data collection;
- (ii.) Reporting adverse patient events, analyzing their causes, and implementing preventive actions and mechanisms; and
- (iii.) Taking actions to improve performance.

D) Coordination of Care

- (i.) General - The LTC Facility participates with Hospice in the coordination, supervision and evaluation of services. Hospice and the LTC Facility shall communicate with one another regularly and as needed for each particular Hospice Patient. The LTC Facility will designate and notify Hospice of the name of the clinical member of the facility's interdisciplinary team who is responsible for working directly with Hospice representatives to coordinate the care provided to Hospice residents by LTC Facility staff and Hospice staff. Each party is responsible for documenting such communications in its respective clinical records to ensure that the needs of Hospice Patients are met 24 hours per day.
- (ii.) Development of Plan of Care - In accordance with applicable federal and state laws and regulations, the LTC Facility coordinates with Hospice in developing a Plan of Care for each Hospice Patient.
- (iii.) Modifications to Plan of Care – The LTC Facility assists with periodic review and modification of the Plan of Care. The LTC Facility will not make any modifications to the Plan of Care without first consulting with Hospice. Hospice retains the sole authority for determining the appropriate level of hospice care provided to each Hospice Patient.
- (iv.) Notification of Change in Condition -The LTC Facility shall immediately inform Hospice of any change in the condition of a Hospice Patient. This includes

- a. A significant change in a Hospice Patient's physical, mental, social or emotional status,
  - b. Clinical complication(s) that suggest a need to alter the Plan of Care,
  - c. A need to transfer the Hospice Patient to another facility for any condition, or
  - d. Death of a Hospice Patient.
  
- E) Infection Control - The LTC Facility maintains and documents an effective infection control program. The LTC Facility provides infection control education to employees of Hospice and the LTC Facility who provide care to Hospice Patients, patients and family members or other caregivers of the patient.
  
- F) Assist with Surveys and Complaints - The LTC Facility shall be available during federal, state, local and other surveys to assist Hospice in responding to surveyor questions and survey citations, attending exit conferences, drafting plans of correction for identified survey deficiencies and providing clinical expertise when necessary to appeal survey deficiencies. In the event of any complaint filed by or with respect to a Hospice Patient or any investigation initiated by any governmental agency or any litigation commenced against Hospice, the LTC Facility shall work with Hospice in an effort to respond to and resolve the same in a timely and effective manner.
  
- G) Visiting and Access by Hospice
  - (i.) Visiting Privileges - The LTC Facility shall permit free access and unrestricted visiting privileges, including visits by children of any age, 24 hours per day, and 7 days per week.
  
  - (ii.) Visitor Accommodations - The LTC Facility shall provide adequate space, located conveniently to Hospice Patient, for private visiting among Hospice Patient, Hospice Patient's family members and other visitors. The LTC Facility shall provide adequate accommodations for Hospice Patient's family members to remain with Hospice Patient up to 24 hours per day, and permit family members privacy following the death of a Hospice Patient.
  
  - (iii.) Hospice Access to the LTC Facility - The LTC Facility shall permit employees, contractors and volunteers of Hospice free and complete access to the LTC Facility 24 hours per day, as necessary, to permit Hospice to counsel, treat, attend and provide services to each Hospice Patient.
  
- H) Patient Transfer - The LTC Facility shall not transfer any Hospice Patient to another care setting without the prior approval of Hospice. If the LTC Facility fails to obtain the necessary prior approval, Hospice bears no financial responsibility for the costs of transfer or the costs of care provided in another setting.
  
- I) Alleged Violations
  - (i.) LTC Facility shall notify the Hospice administrator immediately upon notification of alleged violations involving mistreatment, neglect, or verbal or mental, sexual and physical abuse, including injuries of unknown source and misappropriation of resident property by Hospice personnel.

- (ii.) LTC Facility shall conduct investigations of allegations and report to regulatory and other authorities in accordance with federal, state and local laws and per facility policy and procedure.
- J) Bereavement Services to Staff of the LTC Facility - LTC Facility shall notify Hospice of facility personnel who may benefit from bereavement services and Hospice shall provide requested bereavement services to staff of the LTC Facility after the death of a Hospice Patient or as otherwise reasonably requested.
- K) Orientation - LTC Facility shall provide orientation in the policies and procedures of the Facility including patient rights, appropriate forms, and recordkeeping requirements to Hospice staff furnishing care to LTC Facility residents.

### 3) **Responsibility of and Discharge from Hospice Program**

#### A) Admission to and Discharge from Hospice Program

- (i.) Assessment - Hospice shall perform an assessment of residents requesting Hospice Services and shall notify the LTC Facility, either orally or in writing, whether such resident is authorized for admission as a Hospice Patient. Hospice shall maintain adequate records of all such authorizations of admission.
- (ii.) Assessing Continued Eligibility - Hospice shall have sole authority for assessing a Hospice Patient's continued eligibility for Hospice Services and for discharging a Hospice Patient from Hospice Services and/or Hospice Medicare/Medicaid Benefit(s).

#### B) Manner of Providing Hospice Services - Hospice is responsible for providing Hospice Services to Hospice Patients residing at the LTC Facility at the same level and to the same extent as if Hospice Patients were receiving care in their own homes.

#### C) Professional Management Responsibility

- (i.) Compliance with Law - Hospice shall assume professional management responsibility for Hospice Services provided to Hospice Patients residing at the LTC Facility. For Hospice Patients who have elected their Hospice Medicare/Medicaid Benefit(s), Hospice shall assume professional management responsibility pursuant to the Medicare Conditions of Participation for Hospice Care and state and local laws and regulations. This includes admission and/or discharge of patients, patient and family assessments, reassessments, establishment of the Plan of Care, authorization of all services and management of the care through IDG meetings. Hospice shall make arrangements for, and remain responsible for, changing Hospice Patients' levels of hospice care including any necessary continuous care or inpatient care related to a Hospice Patient's terminal illness.
- (ii.) Coordination and Evaluation - Hospice shall retain responsibility for coordinating, evaluating and administering the hospice program, as well as ensuring the continuity of care of Hospice Patients, which shall include coordination with LTCF Services. Hospice's IDG shall communicate with the LTC Facility's medical director, Hospice Patient's attending physician and other physicians participating in the care of a Hospice Patient as needed to coordinate Hospice Services with the medical care provided by other physicians.

D) Professional Standards and Credentials

(i.) Professional Standards - The Hospice shall ensure that all services are provided competently and efficiently. Hospice Services shall meet or exceed the standards of care for providers of such services and shall be in compliance with all applicable laws, rules, regulations, professional standards and licensure requirements

(ii.) Credentials

- a. Licensure - The Hospice represents and warrants that it has and will maintain in good standing during the term of this Agreement with all federal, state and local licenses and certificates required by law to provide Hospice Services. Upon LTC Facility's request, the Hospice shall provide LTC Facility with evidence of such licenses and certifications.
- b. Qualifications of Personnel - All professionals employed or contracted by the Hospice to provide Hospice Services to Hospice Patients shall be legally authorized, licensed, certified or registered in accordance with applicable state, federal and local laws, as described by federal law, including, but without limitation, 42 CFR §418.114(b). The Hospice shall complete criminal background checks on all employees or other persons who have direct patient contact or access to patient records, as required by 42 CFR § 418.114(d). The Hospice represents to LTC Facility that Hospice Personnel who will have direct contact with Hospice Patients or have access to Hospice Patient records have not been found to have engaged in improper or illegal conduct relating to the elderly, children or vulnerable individuals. Upon LTC Facility's request, the Hospice shall provide LTC Facility with proof of such personnel's qualifications.
- c. Disciplinary Action - The Hospice represents and warrants that neither it nor any of its personnel is under suspension or subject to any disciplinary proceedings by any agency having jurisdiction over professional activities of the Hospice or its personnel and is not under any formal or informal investigation or preliminary inquiry by such department or agency for possible disciplinary action.
- d. Exclusion from Medicare or Medicaid - Hospice represents and warrants that neither the Hospice nor its personnel has been, at any time, excluded from participation in any federally funded health care program including, without limitation, Medicare or Medicaid, nor has been convicted or found to have violated any federal or state fraud and abuse law or illegal remuneration law.

E) Quality Assessment and Performance Improvement Activities - The Hospice shall participate as able with LTC Facility in its facility-wide quality assessment and performance improvement activities. Components of the quality assessment and performance improvement program may include

- (i.) Data collection;
- (ii.) Reporting adverse patient events, analyzing their causes, and implementing preventive actions and mechanisms; and
- (iii.) Taking actions to improve performance.

- F) Orientation - Hospice shall ensure adequate orientation and ongoing hospice care training to the LTC Facility's personnel as necessary to facilitate the provision of safe and effective care to Hospice Patients. Such orientation must include Hospice policies and procedures regarding methods of comfort, pain control and symptom management as well as principles about death and dying, individual responses to death, patient rights, appropriate forms, recordkeeping and communications requirements.
- G) Designation of Hospice Representative - For each Hospice Patient, Hospice shall designate a registered nurse to coordinate the implementation of the Plan of Care. Additionally, Hospice is available 24 hours per day, 7 days per week for consultation with the LTC Facility concerning a Hospice Patient's Plan of Care. Further, the Hospice Representative shall be responsible for communicating with the LTC Facility's representatives and other health care providers who participate in the care of a Hospice Patient's terminal illness and related conditions to ensure quality of care for Hospice Patients and their families.
- H) Provision of Information - At a minimum, Hospice shall provide the following information to the LTC Facility for each Hospice Patient:
- (i.) Plan of Care, Medications and Orders - The most recent Plan of Care, medication information and physician orders specific to each Hospice Patient;
  - (ii.) Election Form - The hospice election form and any advanced directives made available to the Hospice;
  - (iii.) Certifications - Physician certifications and recertification's of terminal illness;
  - (iv.) Contact Information - Names and contact information for Hospice Personnel involved in providing Hospice Services; and
  - (v.) On-Call System - Instructions on how to access Hospice's 24-hour on-call system.
- I) Alleged Violations
- (i.) Hospice shall notify the LTC Facility administrator immediately upon notification of alleged violations involving mistreatment, neglect, or verbal or mental, sexual and physical abuse, including injuries of unknown source and misappropriation of Hospice Patient property by facility personnel.
  - (ii.) Hospice shall conduct investigations of allegations and report to regulatory and other authorities in accordance with federal, state and local laws and per Hospice policy and procedure.
- J) Purchased Hospice Services - Hospice may purchase from the LTC Facility Purchased Hospice Services as delineated in Exhibit A.
- K) Assist with Surveys and Complaints - Hospice shall be available during federal, state, local and other surveys to assist the LTC Facility in responding to surveyor questions and survey citations, attending exit conferences, drafting plans of correction for identified survey deficiencies and providing clinical expertise when necessary to appeal survey deficiencies. In the event of any complaint filed by or with respect to a Hospice Patient or any investigation initiated by any

governmental agency or any litigation commenced against LTC Facility, Hospice shall work with the LTC Facility in an effort to respond to and resolve the same in a timely and effective manner.

#### **4) Billing and Payment**

- A) For Hospice Patients that have elected their Hospice Medicare Benefits or Hospice Medicaid Benefits - The LTC Facility agrees to bill Hospice for any Purchased Hospice Services, provided to a Hospice Medicare/Medicaid Benefit Patient, as set forth in Exhibit A. The LTC Facility will accept such payment as payment in full for Purchased Hospice Services provided under this Agreement. The LTC Facility shall bill each Hospice Medicare/Medicaid Benefit Patient (or the Patient's third-party payer, if applicable) for the LTC Facility's room and board services provided, and will accept such payment as payment in full for LTC Facility room and board services.
- B) For Hospice Patients that are utilizing an insurer other than Medicare or Medicaid to cover the cost of Hospice Services – Covered Hospice Services are uniquely defined by individual private insurance carriers according to the policies and coverages offered by each carrier. For this reason, the LTC Facility and Hospice will coordinate billing and payment for any Purchased Hospice Services on an individual patient basis. The LTC Facility will accept such payment as payment in full for Purchased Hospice Services provided under this Agreement. The LTC Facility shall bill each Private Insurance Patient (or third-party payer, if applicable) for LTC Facility room and board and other non-hospice services provided.
- C) For Hospice Patients that are privately paying for Hospice Services (patient not electing Hospice Medicare/Medicaid Benefit(s)) - The LTC Facility shall bill each Private Pay Hospice Patient (or the third-party payer, if applicable) for LTC Facility room and board and other non-hospice services provided. Neither party shall seek reimbursement from the other in the event of default on financial obligations on the part of the Private Pay Hospice Patient.
- D) Billing - Within thirty (30) days after the provision of LTC Facility room and board services or Purchased Hospice Services, the LTC Facility shall submit to Hospice all bills with information acceptable to Hospice. Invoices must be received by Hospice within ninety (90) days of service for payment to be assured. Hospice shall pay the LTC Facility within sixty (60) days after receipt of invoice. Payment by Hospice shall be considered final.

- 5) **Insurance** - Each party shall obtain and maintain appropriate professional liability, commercial general liability, worker's compensation and employer's liability insurance coverage in accordance with the minimum amounts required from time to time by applicable federal and state laws and regulations, but at no time shall the terms or coverage amounts of LTC Facility's professional liability insurance be less than \$1 million per claim and \$3 million in the aggregate. Either party may request evidence of insurance from the other party or such other party shall provide such evidence to the requesting party in a timely manner. LTC Facility shall ensure that Hospice receives at least 30 days' notice prior to the termination of any insurance policy required by this Agreement.

#### **6) Records**

- A) Creation and Maintenance of Records - The LTC Facility shall prepare and maintain complete and detailed records concerning each Hospice Patient receiving LTCF Services under this Agreement in accordance with prudent record-keeping procedures and as required by applicable federal and state laws and regulations. The LTC Facility shall retain such records for the minimum time period required by applicable federal and state law.

- B) Financial Recordkeeping - The LTC Facility shall keep accurate books of accounts and records covering all transactions relating to this Agreement (the "Financial Records") at its principal place of business. Hospice and its duly authorized representatives, including any independent public accountant or other auditor, shall have the right during regular business hours and on reasonable written notice to the LTC Facility to examine the LTC Facility's Financial Records and to make copies thereof.
- C) Access by Hospice - The LTC Facility shall permit Hospice or its authorized representative, upon reasonable notice, to review and make photocopies of records maintained by the LTC Facility relating to the provision of LTCF Services including, but not limited to, clinical records and billing and payment records. This section shall survive the termination of this Agreement.
- D) Inspection by Government - In accordance with 42 U.S.C. § 1395x(v)(1)(i) and 42 C.F.R. § 420.300, et seq., LTC Facility shall make available, until the expiration of five years from the termination of this Agreement, upon written request, to the Secretary of Health and Human Services of the United States, and upon request, to the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and any of its books, documents and records that are necessary to certify the nature and costs of Medicare reimbursable services provided under this Agreement. If and to the extent LTC Facility carries out any of its duties under this Agreement through a subcontract with a related organization having a value or cost of \$10,000 or more over a 12-month period, then LTC Facility shall ensure that the subcontract contains a clause comparable to the clause in the preceding sentence. Nothing contained in this section shall be construed as a waiver by either party of any legal rights of confidentiality with respect to patient records and proprietary information.
- E) Destruction of Records - The LTC Facility shall take reasonable precautions to safeguard records against loss, destruction and unauthorized disclosure.
- 7) **Business Associate Agreement/Confidentiality** - Attached as Exhibit B and incorporated herein is a Business Associate Agreement which deals with Protected Health Information. Each party acknowledges that as part of its performance under this Agreement, it may be required to disclose to the other party certain information pertaining to Hospice Patients (collectively, "Patient Information") and may be required to disclose certain business or financial information (collectively, with the Patient Information, the "Confidential Information"). Each party agrees that it shall treat Confidential Information with the same degree of care it affords its own similarly confidential information and shall not, except as specifically authorized in writing by the other party or as otherwise required by law, reproduce any Confidential Information or disclose or provide any Confidential Information to any person. A party that discloses Confidential Information shall be entitled to injunctive relief to prevent a breach or threatened breach of this section, in addition to all other remedies that may be available. This section shall survive termination of this Agreement.

## 8) **Term and Termination**

- A) Term - This Agreement shall have an initial term of one year beginning on the Effective Date ("Initial Term") and shall automatically renew for successive one-year terms, unless sooner terminated as provided below.
- B) Termination
- (i.) Without Cause - This Agreement may be terminated by either party for any reason after the Initial Term by providing at least thirty (30) days' prior written notice to the other party.

- (ii.) Mutual Written Agreement - This Agreement may terminate at any time after the Initial Term upon written agreement of the parties.
  - (iii.) For Cause - Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party, if the other party breaches this Agreement and fails to cure such breach within such thirty (30) day period.
  - (iv.) Change in Law - In the event there are substantial changes or clarifications to any applicable laws, rules or regulations that materially affect, in the opinion of either party's legal counsel, any party's right to reimbursement from third party payers or any other legal right of any party to this Agreement, the affected party may, by written notice to the other party, propose such modifications to this Agreement as may be necessary to comply with such change or clarification. Upon receipt of such notice, the parties shall engage in good faith negotiations regarding any appropriate modifications to this Agreement. If such notice is given and the parties are unable within 60 days thereafter to agree to appropriate modifications to this Agreement, either party may terminate this Agreement by providing at least 30 days' notice to the other party.
  - (v.) Immediate Termination - Notwithstanding the above, either party may immediately terminate this Agreement if:
    - a. Failure to Have Qualifications - A party or its personnel are excluded from any federal health program or no longer have the necessary qualifications, certifications and/or licenses required by federal, state and/or local laws to provide LTCF Services or Hospice Services as the case may be.
    - b. Liquidation - A party commences or has commenced against it proceedings to liquidate, wind up, reorganize or seek protection, relief or a consolidation of its debts under any law relating to insolvency, reorganization or relief of debtors or seeking the appointment of a receiver or trustee.
    - c. Failure to Have Insurance - A party ceases to have any of the insurance required under this Agreement.
    - d. Threats to Health, Safety or Welfare - A party fails to perform its duties under this Agreement and the other party determines in its discretion that such failure threatens the health, safety or welfare of any patient.
    - e. Commission of Misconduct - A party commits an act of misconduct, fraud, dishonesty, misrepresentation or moral turpitude involving the other party or a mutual patient of the parties.
- C) Effect of Termination on Availability of LTCF Services - In the event this Agreement is terminated, LTC Facility shall work with Hospice in coordinating the continuation of LTCF Services to existing Hospice Patients. LTC Facility shall continue to provide LTCF Services to Hospice Patients after this Agreement is terminated, if Hospice determines that removing LTCF Services would be detrimental to Hospice Patients. In such cases, LTCF Services shall continue to be provided in accordance with the terms set forth in this Agreement. This section shall survive termination of this Agreement.

- 9) **Notification of Material Events**-Hospice and LTC Facility each agree to notify the other of any of the following Material Events:
- A) **Ownership Change** - Any change in 10% or more of its ownership.
  - B) **Business Address Change** - Any change in business address.
  - C) **Licensure Actions** - Any sanctions, intermediate or otherwise, administrative or judicial fines, penalties, or action by federal or state officials against the party or its personnel.
  - D) **Exclusion** - Any threatened, proposed or actual exclusion of it or any of its subcontractors or personnel from any government program including, but not limited to, Medicare or Medicaid.
  - E) **Insurance** - The cancellation or modification of any of the insurance coverage that the party is required to have under this Agreement.
  - F) **Liquidation** - The commencement of any proceeding to liquidate, wind up, reorganize or seek protection, relief or a consolidation of LTC Facility's or Hospice's debts under any law relating to insolvency, reorganization or relief of debtors or seeking the appointment of a receiver or trustee.
- 10) **Nondiscrimination** - The parties agree that in the performance of this Agreement they will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, sex, age, religion, national origin, or any other protected class in any manner prohibited by federal or state laws.
- 11) **Independent Contractor** - In performance of the services discussed herein, Hospice and the LTC Facility shall each be, and at all times are, acting and performing as an independent contractor, and not as a partner, a co-venturer, an employee, an agent or a representative of the other. No employee or agent of one party to this Agreement shall be considered an employee or agent of the other party.
- 12) **Use of Name or Marks** - Neither Hospice nor the LTC Facility shall have the right to use the name, symbols, trademarks or service marks of the other party in advertising or promotional materials or otherwise without receiving the prior written approval of such other party; provided, however, that one party may use the name, symbols, or marks of the other party in written materials previously approved by the other party for the purpose of informing prospective Hospice Patients and attending physicians of the availability of the services described in this Agreement.
- 13) **Miscellaneous Provisions**
- A) **Amendment** - No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the parties hereto.
  - B) **Severability** - This Agreement is severable, and in the event that any one or more of the provisions hereof shall be deemed invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
  - C) **Headings** - The descriptive headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

- D) Governing Law - This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any claims or disputes related to this Agreement shall be brought in the Court of Common Pleas of Lancaster County, Pennsylvania.
- E) Nonassignability - Neither party shall assign or transfer, in whole or in part, this Agreement or any of its rights, duties or obligations under this Agreement without the prior written consent of the other party, and any assignment or transfer without such consent shall be null and void.
- F) Waiver - The waiver by either party of a breach or violation of any provision in this Agreement shall not operate or be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.
- G) Binding Effect - This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. There are no third party beneficiaries of or to this Agreement.
- H) No Third Party Beneficiaries - Except as expressly provided elsewhere herein, nothing in this Agreement is intended to be construed or be deemed to create any rights or remedies in any third party.
- I) Force Majeure - In the event that either party's business or operations are substantially interrupted by acts of war, fire, labor strike, insurrection, riots, earthquakes or other acts of nature of any cause that is not that party's fault or is beyond that party's reasonable control, then that party shall be relieved of its obligations only as to those affected operations and only as to those affected portions of this Agreement for the duration of such interruption.
- J) No Requirement to Refer - This Agreement is not intended to influence the judgment of any physician or provider in choosing medical specialists or medical facilities appropriate for the proper care and treatment of residents. Neither the LTC Facility nor Hospice shall receive any compensation or remuneration for referrals.
- K) Nonexclusive Agreement - This Agreement is intended to be nonexclusive, and either party may use any provider for the same or similar services.
- L) Counterparts - This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same instrument.
- M) Notices - All notices required or desired to be given under this Agreement by either party to the other will be given by hand, by overnight courier, by facsimile, or by regular mail when posted to the addresses listed below. Notices shall be effective upon receipt, or three days after the notice was deposited into the mail, whichever date is later. Each party may designate by notice in writing a new address to which any notice or communication may thereafter be so given, served or sent.

TO: HOSPICE:  
Hospice & Community Care  
685 Good Drive  
P.O. Box 4125  
Lancaster, PA 17604-4125  
Attention: Rebecca Martin, Director of Finance  
Fax 717-391-9582

TO: LTC FACILITY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Fax: \_\_\_\_\_

- N) Entire Agreement - This instrument contains the entire agreement of the parties hereto and supersedes all prior oral or written agreements or understandings between them with respect to the matters provided for herein. This Agreement may not be modified or amended except by mutual consent of the parties, and any such modification or amendment must be in writing duly executed by the parties hereto, and shall be attached to, and become a part of, this Agreement.
  
- O) Regulatory Compliance - Nothing in this Agreement or in connection herewith (1) contemplates, requires or shall require or contemplate the referral of any patient or the purchase, order or lease of any item or service from one party or any affiliate of such party by the other party or any affiliate of the other party; or (2) shall be construed as an offer of payment by one party or any affiliate of such party to the other party or any affiliate of the other party of any cash or other remuneration, whether directly or indirectly, overtly or covertly, specifically for patient referrals or for recommending or arranging the purchase, lease or order of any item or service. The parties acknowledge that referrals that result from this Agreement will be based solely on the assessment of each resident's health care needs, the facility care plan and the expressed preference of each resident. The parties intend and agree that all amounts paid under this Agreement are intended to reflect and do reflect fair market value for the services rendered. No amount paid or to be paid hereunder is intended to be, nor shall it be construed to be, an inducement or payment for the referral of patients or for recommending or arranging the purchase, lease or order of any item or service.

The parties have executed this Agreement as of the day, month and year first written above.

**HOSPICE & COMMUNITY CARE:**

**[ENTER FACILITY NAME]:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### Purchased Ancillary Services

Hospice may purchase from LTC Facility or outside suppliers certain services and supplies related to the treatment of the Hospice Patient's terminal illness which LTC Facility or outside supplier may agree to furnish in accordance with the Hospice Plan of Care. All such services will be limited to those required for the management of the Hospice Patient's terminal illness and those services not normally provided as part of LTC Facility Room and Board. Such services may include, but are not limited to, physical, occupational and speech therapy, medications, oxygen, medical supplies and equipment.

Ancillary services purchased from LTC Facility and billable to Hospice must be approved by the Hospice nurse in advance and authorized by the Hospice nurse in conjunction with the Hospice Plan of Care. Except for prescription medications, LTC Facility will bill Hospice for authorized ancillary services and agrees to accept 70% of the current Medicare Fee schedule as payment. Prescription medications are billed to Hospice by the providing pharmacy and reimbursed according to the pharmacy's contract with Hospice.

For patients who have elected the Medicare Hospice Benefit, Medicare B and D are not accessible for services related to the hospice diagnosis(es), and claims, if submitted to Part B or D, will be rejected by Medicare.

Following is a sample of ancillary services that may be used for hospice patients who have elected the Medicare Hospice Benefit and may be authorized as part of Hospice Plan of Care. Coverages may vary based on individual hospice payer benefits and ancillary services not listed may be determined on a case-by-case basis between Hospice and the LTC Facility.

	When related and authorized by Hospice, Hospice Will Pay	Resident or Guarantor Will Pay
Physical/Occupational/Speech Therapy	X	
X-Ray; Lab	X	
Ambulance	X	
Room & Board		X
Oxygen	X	
Personal Care Supplies		X
Medical Supplies (e.g., dressings, catheters, items normally covered by Medicare Part B)	X	
Durable Medical Equipment not included in the definition of Nursing Home Room and Board	X	
Private Duty Nurses	X*	X**
Consulting Physician's Fees (not the attending)	X	
Hand Feeding		X
TV Hook-up, Telephone		X
Personal Laundry		X
Clothing		X
Beautician/Barber		X

\* When the Hospice nurse assesses qualifications for continuous home care.

\*\* Patient/family request.

## EXHIBIT B

### BUSINESS ASSOCIATE AGREEMENT

THIS EXHIBIT supplements and is made part of the Agreement by and between [Click here to enter text.](#) (“Contractor”) and **Hospice & Community Care** (“Covered Entity”).

WHEREAS, Contractor will or may have access to, receive, maintain or transmit, or may create on behalf of the Covered Entity certain Protected Health Information and/or Electronic Protected Health Information in carrying out its obligations hereunder, and that as a result thereof, it would be a “Business Associate” as defined in the privacy regulations and referenced in the security regulations issued by the Department of Health and Human Services pursuant to the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act, Part 164 of Title 45 of the Code of Federal Regulations (the law and regulations being hereinafter referred to as the “Law”).

WHEREAS, the parties desire to delineate their obligations pursuant to the Law, all as more fully described herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

#### 1. Additional Definitions and Other Provisions.

- (a) Catch-all definition: Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms are given when defined in the HIPAA Regulations.
- (b) Breach or Breached: “Breach” or “Breached” shall generally have the same meaning as the term “breach” at 45 CFR §160.103.
- (c) Breach Notification Rule: “Breach Notification Rule” means subpart D, Notification in the Case of Breach of Unsecured Protected Health Information, of 45 CFR Part 164.
- (d) Business Associate: “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR §160.103, and in reference to the part to this agreement, shall mean the Contractor.
- (e) Covered Entity: “Covered Entity” shall generally have same meaning as the term “covered entity” at 45 CFR §160.103, and in reference to the party to this agreement, shall mean Hospice & Community Care.
- (f) Data Aggregation: “Data Aggregation” shall generally have the same meaning as the term “data aggregation” at 45 CFR 164.501.
- (g) Designated Record Set: “Designated Record Set” shall generally have the same meaning as the term “designated record set” at 45 CFR §164.501.
- (h) Electronic Protected Health Information: “Electronic Protected Health Information” shall generally have the same meaning as the term “electronic protected health information” at 45 CFR 160.103.

- (i) Enforcement Rule: "Enforcement Rule" means 45 CFR Part 160, Subparts C, D, and E.
- (j) HIPAA Rules: "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (k) Individually Identifiable Health Information: Information that is health information, including demographic information collected from an individual, and that: (1) is created by or received from a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and either (i) identifies the individual or (ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual
- (l) Minimum Necessary: "Minimum Necessary" shall generally have the same meaning as the term "minimum necessary" at 45 CFR §501.
- (m) Privacy Rule: "Privacy Rule" means 45 CFR Part 160, General Administrative Requirements, and Subpart A, General Provisions, and Subpart E, Privacy of Individually Identifiable Health Information, of 45 CFR 164.
- (n) Protected Health Information: Individually identifiable health information
- (p) Security Incident: "Security Incident" shall generally have the same meaning as the term "security incident" at 45 CFR 160.03.
- (p) Security Rule: "Security Rule" means 45 CFR Part 160, General Administrative Requirements, and Subpart A, General Provisions, and Subpart C, Security Standards for the Protection of Electronic Protected Health Information, of 45 CFR Part 164.

**2. Covenants and Agreements of Contractor** - Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information solely as necessary to perform the Services, if such use or disclosure of Protected Health Information would not violate the Law if done by the Covered Entity. Contractor acknowledges that it will limit its requests for uses and disclosures of Protected Health Information to the minimum necessary to accomplish the performance of the Services. In furtherance and not in limitation of the foregoing, Contractor specifically covenants and agrees as follows:

- (a) Contractor will limit its requests for and use and disclosure of Protected Health Information to those that are permitted or required by this Agreement or by law, and in all events, to the minimum amount of information that is necessary for Contractor to carry out the purposes of the permitted use or disclosure.
- (b) Contractor will use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of Protected Health Information other than as described in subparagraph (a). Contractor will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity.

- (c) Contractor will report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Exhibit of which it becomes aware, including Breaches of Unsecured Protected Health Information as required by 45 CFR §164.410, and any Security Incident of which it becomes aware.
  - (i) Contractor shall promptly and within five (5) business days, give Covered Entity notice of any such Breach and, as soon as commercially reasonably practical, but within twenty (20) business days, after discovery of such Breach, provide Covered Entity with the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Contractor to have been, accessed, acquired, or disclosed during such Breach.
  - (ii) Contractor notification to the Covered Entity shall consist of a brief written description detailing, to the extent possible, what happened, the date of the Breach and the date of the discovery of the Breach, if known, and a description of the types of Unsecured Protected Health Information that were involved in the Breach.
- (d) In accordance with 45 CFR §164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Contractor agree to the same restrictions, conditions, and requirements that apply to the Contractor with respect to such information.
- (e) To the extent that Contractor maintains Protected Health Information in a Designated Record Set, Contractor will make such Protected Health Information available to Covered Entity within ten (10) business days or, at Covered Entity's request, to the individuals who are the subject of that information, as and when designated by Covered Entity, in order to allow Covered Entity to comply with the Covered Entity's obligations under 45 CFR §164.524. If a request for access to Protected Health Information is received by Contractor, Contractor will immediately notify Covered Entity of the receipt of such request.
- (f) To the extent that Contractor maintains Protected Health Information in a Designated Record Set, Contractor will make such Protected Health Information available for amendment at the direction of Covered Entity or will incorporate any amendments or corrections to such Protected Health Information in a time and manner designated by Covered Entity, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.526 (provided that such period of time is not less than 10 business days).
- (g) Contractor will maintain records of disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528. Contractor will, at Covered Entity's request, make available the information required for Covered Entity to provide an accounting of disclosures in accordance with the Law in a time and manner designated by Covered Entity (provided that such period of time is not less than 10 business days).
- (h) To the extent the Contractor is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Contractor will comply with requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

- (i) Contractor will make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, Covered Entity available to Covered Entity, or at the request of Covered Entity, to the Secretary of the Department of Health and Human Services (the ("Secretary")), in a time and manner designated by Covered Entity, for purposes of allowing the Secretary to determine Covered Entity's compliance with the Law.
- (j) Except as otherwise provided in this subsection (i), upon termination of this Agreement for any reason, including without limitation, termination pursuant to Section 4 hereof, Contractor shall return to Covered Entity or destroy all Protected Health Information received from or created for Covered Entity that the Contractor still maintains in any form and retain no copies of such information. If Covered Entity determines that return or destruction of such information is not feasible, then (i) the provisions of this Section shall continue to apply to such information for as long as it is in Contractor's possession; and (ii) Contractor shall not use or disclose such information except for those purposes that make return or destruction of the information infeasible.

### **3. Permitted Uses and Disclosures by the Contractor.**

- (a) General Use and Disclosures - Contractor provides Services to Covered Entity pursuant to a Long Term Care Facility Agreement ("Services Agreement") and other arrangements. In accordance with the Services Agreement, the arrangements, and through their course of dealings and verbal understandings, Covered Entity and Contractor have become knowledgeable about how and when Contractor uses or discloses Protected Health Information on behalf of Covered Entity when providing Services. Covered Entity expressly authorizes Contractor to make any and all uses and disclosures deemed reasonable and necessary to provide Services; except that Contractor shall use or disclose Protected Health Information only in a manner permitted by the HIPAA Regulations if done by Covered Entity, unless expressly provided in this Section 3.
- (b) Specific Uses and Disclosures.
  - (i) Except as otherwise limited in this Exhibit, the Contractor may use Protected Health Information received by it hereunder in its capacity as a Business Associate of the Covered Entity if, and only to the extent, necessary for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor. Notwithstanding the foregoing, upon receipt of a written request from Covered Entity, Contractor will provide Covered Entity with a description of any use made of Covered Entity's Protected Health Information that Contractor made in reliance on this sub-section (b).
  - (ii) Except as otherwise limited in this Exhibit B, the Contractor may disclose Protected Health Information received by it hereunder in its capacity as a Business Associate of the Covered Entity if, and only to the extent, necessary for the proper management and administration of the Contractor if: (i) the disclosure is required by law; or, (ii) the Contractor receives reasonable written assurances from the person to whom the information is to be disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, a copy of such written assurances is provided to the Covered Entity prior to the disclosure, and the

person is required to notify the Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

- (iii) Upon written request from Covered Entity for each such occasion, Contractor may use or disclose Protected Health Information to (1) provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B); or, (2) create de-identified health information in accordance with 45 CFR §164.514.

#### **4. Term/Termination.**

- (a) Notwithstanding any provision of this Agreement to the contrary, Covered Entity shall have the right to immediately terminate this Agreement without penalty of any nature in the event that Contractor violates any covenant of this Agreement. Covered Entity may, in its sole discretion, provide Contractor with a period of time in which to cure the breach and mitigate any damage resulting from the breach, and in the event of such a cure, this Agreement will continue in full force and effect. Covered Entity may terminate this Agreement at any time, with or without cause. Any termination of this Agreement shall be subject in all respects to the provisions of Sections 2(j) and 6 of this Agreement.
- (b) Upon termination of this Agreement for any reason, Contractor, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Contractor on behalf of Covered Entity, shall:
  - (i) Retain only that Protected Health Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
  - (ii) Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Contractor still maintains in any form;
  - (iii) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR 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 Contractor retains the Protected Health Information;
  - (iv) Not use or disclose the Protected Health Information retained by the Contractor other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 3 above under "Permitted Uses and Disclosures by the Contractor" which applied prior to termination; and
  - (v) Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities.

**5. Change of Law.** Notwithstanding any provision of this Agreement to the contrary, in the event of an amendment of the Law that conflicts with any provision of this Agreement, this Agreement shall be amended to comply with the requirements of Law, as amended. Otherwise, this Agreement may only be amended in a writing signed by both of the parties hereto.

**6. Survival.** Sections 1 through 6 of this Agreement and this Section 6 shall survive termination of this Agreement for any reason.

7. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Law.

8. **Miscellaneous.**

- (a) This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns, except that neither party may, without the specific prior written consent of the other party, assign any of its interest or rights in or to, or arising under, this Agreement, or delegate the performance of any of its obligations and duties hereunder.
- (b) Except as otherwise provided in Section 5 hereof, neither this Agreement nor any of its provisions may be released, abandoned, waived, modified or added to except by a subsequent written agreement duly executed on behalf of each of the parties hereto.
- (c) The failure of any party or parties to enforce at any time any right or privilege under this Agreement shall in no way constitute or be construed as a waiver of that or any other right or privilege under this Agreement, nor shall it affect in any way the validity and full enforceability of this Agreement and each and every provision thereby. No waiver of any right or privilege under this Agreement, or of any breach of any provision of this Agreement, or of any remedy for any such breach, shall be binding except to the extent specifically set forth in writing and duly executed by or on behalf of the party or parties to be bound thereby. No waiver of any right or privilege under this Agreement shall operate as a waiver of any other breach of that or any other provision of this Agreement; and no waiver of any remedy for any such breach shall operate as a waiver of any other remedy for such breach.
- (d) This Agreement shall be construed and the legal relations hereunder of the parties bound hereby will be determined, according to the laws of the Commonwealth of Pennsylvania without reference to conflict of law principles.
- (e) This Agreement may be executed in several counterparts, each of which will be deemed to be an original, and it will not be necessary in making proof of this Agreement to produce or account for more than one (1) of such counterparts.
- (f) This Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements between the parties hereto, either oral or written. Should any provision of this Agreement be deemed unenforceable by a Court of competent jurisdiction, such finding shall not invalidate the balance of this Agreement, which shall remain in full force and effect.
- (g) This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania without reference to conflict of law principles. The parties hereto consent to the jurisdiction and venue of the Court of Common Pleas of Lancaster County or the United States District Court of the Eastern District of Pennsylvania, as the case may be, in connection with any actions involving this Agreement.

## **Hospice & Community Care Respite Care Addendum**

THIS RESPITE CARE ADDENDUM is made and entered into on [Enter Date] (the "Effective Date") and amends and is made part of the **Long Term Care Facility Agreement** by and between **Hospice & Community Care** ("Hospice") and [Enter LTCF Name] ("LTC Facility") dated [Enter Contract Date] (the "Agreement").

Hospice and LTC Facility agree to modify the Agreement to address the provision of Respite Care to Hospice Patients. In the event of conflicting terms or conditions, this Addendum shall supersede the Agreement.

1. Definitions. Capitalized terms not otherwise defined in this Addendum shall have the meanings given to them in the Agreement.

(a) "Respite Care" means short-term inpatient care provided to a Hospice Patient when necessary to relieve a Hospice Patient's family members or other persons caring for the patient. Such services include, without limitation, nursing, dietary, housekeeping, therapies, emergency, laboratory, radiology, respiratory, pharmacy, oxygen services and related ancillary services.

(b) "Respite Care Day" means a day on which a Hospice Patient receives Respite Care from LTC Facility, including the day of admission but excluding the day of discharge, unless the patient dies in LTC Facility, with a maximum of five (5) consecutive days with Hospice Medicare or Medicaid Benefits.

2. Responsibilities of LTC Facility.

(a) Provision of Respite Care. At the request of Hospice, LTC Facility shall provide Hospice Patients with beds in LTC Facility and provide Respite Care to Hospice Patients. While LTC Facility does not guarantee the availability of any specific number of beds, it will make beds available to Hospice Patients on the same priority as its other patients. LTC Facility shall immediately notify Hospice if LTC Facility is unable to provide Respite Care to a Hospice Patient. Routine admission testing and physician visits are not required for this short stay.

(b) Medicare or Medicaid Certification. LTC Facility represents and warrants that it is currently, and will at all times during the term of this Addendum remain, certified to participate in the Medicare and/or Medicaid programs.

(c) Twenty-Four Hour Nursing Services. LTC Facility shall provide 24-hour nursing services that meet the nursing needs of all patients and are furnished in accordance with each patient's Plan of Care. Each patient must receive all nursing services as prescribed. For each shift, LTC Facility will identify to Hospice in advance a charge nurse or other member of LTC Facility's nursing staff who will respond to Hospice's requests for information concerning Hospice Patients.

(d) Home-Like Atmosphere. LTC Facility shall provide a home-like atmosphere and ensure that patient areas are designed to preserve the dignity, comfort, and privacy of patients.

(e) Hospice Policies and Procedures. In providing Respite Care, LTC Facility shall abide by Hospice's Plans of Care.

(f) Discharge Summary. LTC Facility shall provide Hospice with a copy of the discharge summary at the time of discharge.

(g) Inpatient Clinical Record. LTC Facility shall maintain an inpatient clinical record for each Hospice Patient that includes a record of all Respite Care furnished and events regarding care that occurred at LTC Facility. A copy of the inpatient clinical record shall be available to Hospice at the time of discharge.

(h) Hospice Patient Visitors.

(i) Visiting Privileges. LTC Facility shall permit free access and unrestricted visiting privileges, including visits by children of any age, 24 hours per day, 7 days per week.

(ii) Visitor Accommodations. LTC Facility shall provide adequate space, located conveniently to Hospice Patient, for private visiting among Hospice Patient, Hospice Patient's family members and any other visitors. LTC Facility shall provide adequate accommodations for Hospice Patient's family members to remain with Hospice Patient up to 24 hours per day, and permit family members privacy following the death of a Hospice Patient.

(i) Implementation of Agreement. LTC Facility shall designate an individual within the LTC Facility who shall be responsible for the implementation of the provisions of this Addendum and the Agreement ("Responsible LTC Facility Representative"). The current Responsible LTC Facility

Representative is identified at the end of this Addendum. LTC Facility shall notify Hospice if a new individual is designated as the Responsible LTC Facility Representative.

3. Hospice Responsibilities.

(a) Provision of Plan of Care to LTC Facility. Upon a Hospice Patient's transfer to LTC Facility for Respite Care, Hospice shall furnish a copy of the current Plan Care. Hospice shall specify the Respite Care to be furnished by LTC Facility to such Hospice Patient.

(b) Verification of Regulatory Requirements. Hospice shall verify compliance the following requirements established by the Medicare Conditions of Participation for Hospice Care.

(i) Copy of Plan of Care. Hospice shall document in the patient's record that the Plan of Care has been provided to LTC Facility and specify the Inpatient Services that LTC Facility will furnish. Hospice shall periodically review Hospice Patients' records to verify that these requirements are met.

(ii) Patient Care Policies. Hospice shall verify that LTC Facility has established patient care policies that are consistent with Hospice's policies and agrees to abide by the palliative care protocols and Plans of Care established by Hospice for its patients. Hospice shall review LTC Facility's policies to determine their consistency with Hospice policies.

(iii) Inpatient Clinical Records. Hospice shall periodically review Hospice Patients' inpatient clinical records to determine that they include a record of all Inpatient Services furnished and events regarding care that occurred at LTC Facility. LTC Facility shall make inpatient clinical records available to Hospice at the time of discharge.

(iv) Copy of Discharge Summary. Hospice shall file a copy of the discharge summary at the time of discharge.

(v) Responsible LTC Facility Representative. The Responsible LTC Facility Representative is identified at the end of this Addendum. LTC Facility shall immediately notify Hospice if a new Responsible LTC Facility Representative is appointed, and shall inform Hospice of the name and contact

information of the new Responsible LTC Facility Representative.

(vi) Hospice Training. Hospice shall ensure adequate orientation and ongoing hospice care training to the LTC Facility's personnel as necessary to facilitate the provision of safe and effective care to Hospice Patients. Such orientation must include Hospice policies and procedures regarding methods of comfort, pain control and symptom management as well as principles about death and dying, individual responses to death, patient rights, appropriate forms and communications.

(vii) Professional Management Responsibility. Hospice retains administrative and financial management, and oversight of services related to all Respite Care. All Respite Care must be authorized by Hospice, furnished in a safe and effective manner and delivered in accordance with the Plan of Care.

4. Billing and Payment.

(a) Medicare and/or Medicaid Eligible Hospice Patients. For each Respite Care Day provided to a Medicare and/or Medicaid Eligible Hospice Patient, Hospice shall pay LTC Facility a fixed payment equal to 100% of the rate Hospice receives from Medicare or Medicaid, except the day on which such patient is discharged from LTC Facility, unless such patient dies while residing at LTC Facility, with a maximum of five (5) consecutive days under Hospice Medicare or Medicaid Benefits.

(b) Private Pay Hospice Patients. LTC Facility shall bill each Private Pay Hospice Patient, or the third party payor, if applicable, for each Respite Care Day at a rate agreed upon by LTC Facility and Private Pay Hospice Patient or his or her third party payor. LTC Facility shall accept such payment as payment in full for the Respite Care Day. Hospice will not be responsible for reimbursing LTC Facility for any portion of the cost of Respite Care provided to a Private Pay Hospice Patient.

(c) Billing. The terms for billing for Respite Care shall be governed by the Agreement.

5. Responsible LTC Facility Representative. LTC Facility has identified the following individual as the Responsible LTC Facility Representative: \_\_\_\_\_.

6. Conflicts. To the extent that there is any conflict between the provisions of this Addendum and the Agreement, the provisions of this Addendum shall control.

The parties have executed this Addendum as of the day, month and year first written above.

**HOSPICE:  
HOSPICE & COMMUNITY CARE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LTC FACILITY:**

**[ENTER LTCF NAME]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_