

BRIGHTREE HOME HEALTH & HOSPICE LLC SERVICES AGREEMENT

TERMS AND CONDITIONS

The Brightree Home Health & Hospice LLC Services Agreement (the “**Agreement**”) consists of these terms and conditions (the “**Terms and Conditions**”) and one or more Order Forms. These Terms and Conditions shall apply to each Order Form executed by Brightree and Client.

1. DEFINITIONS.

- 1.1 “**Active Patients**” means accepted and admitted patients of Client.
- 1.2 “**Active Patient Census**” or “**Census**” means the rolling 3-month average number of Active Patients as determined by Brightree’s Average Daily Census (“**ADC**”) records established by the Application Services.
- 1.3 “**Agency Management Software**” means Brightree’s proprietary clinical point of care, mobile clinical, advanced front office and private duty software licensed to Client for use in conjunction with the Application Services.
- 1.4 “**Authorized Users**” means persons authorized by Client to read and use the Services and who possess an authorized user ID and password.
- 1.5 “**Application Services**” means hosting and operating a Brightree Application to provide Client with access to and use of such Brightree Application over the Internet.
- 1.6 “**Brightree Application**” means all software and databases used by Brightree to provide the Agency Management Software or the Private Duty Software to Client.
- 1.7 “**Content**” means all Client Confidential Information, software applications, text, pictures, sound, graphics, video and other data transmitted by Authorized Users using the Services.
- 1.8 “**Hours**” means the verified Private Duty billable hours recorded in the Private Duty Software.
- 1.9 “**Licensed Software**” means the Agency Management Software or the Private Duty Software licensed by Client under an Order Form.
- 1.10 “**Order Form**” means the written description of the Services to be provided by Brightree to Client that is executed by Client and Brightree and expressly refers to this Agreement.
- 1.11 “**Private Duty**” means the provision of a broad range of services by caregivers to allow persons to remain independent in their personal residences.
- 1.12 “**Private Duty Software**” means Brightree’s proprietary private duty software licensed to Client for use in conjunction with the Application Services.
- 1.13 “**Private Duty Visits**” means, in connection with the use of the Agency Management Software, the rolling 3-month average number visits for the non-Medicare certified service line visits as determined by Brightree’s records established by the Application Services.
- 1.14 “**Professional Services**” shall mean any training, consulting, data migration, additional site and location setup, conversion, integration, implementation and/or other services provided by Brightree to Client, with associated fees for such services as described explicitly in an Order Form.
- 1.15 “**Services**” means the Application Services, Professional Services and Support Services.
- 1.16 “**Support Services**” means the provision of technical support to Authorized Users via email and telephone during Brightree’s regular business hours, in accordance with Brightree’s then-current technical support policies, and any other support services set forth in an Order Form.

2. SERVICES.

- 2.1 **Services.** Brightree shall use commercially reasonable efforts to provide the Services in accordance with the terms and conditions of this Agreement. In the event of any conflict between the body of this Agreement and an Order Form, the terms and conditions set forth in the body of this Agreement shall govern. Brightree shall not be obligated to provide any particular service to Client, including without limitation installation, additional site or location setup, implementation, training and data migration services, unless such service is explicitly described in a fully executed Order Form.
- 2.2 **Client Operating Environment.** Unless otherwise explicitly set forth in an Order Form, Client shall, at its sole expense, be responsible for procuring, installing and maintaining the telecommunications services, hardware (including point of care devices on which the Licensed Software will be installed by Client) and software needed to access the Application Services that meets Brightree’s then-current telecommunications, hardware and software specifications (the “**Client Operating Environment**”). Client shall be solely responsible for the security of the Client Operating Environment.

- 2.3 Brightree Application Changes.** Brightree may from time to time develop enhancements, upgrades, updates, improvements, modifications, extensions and other changes to the Application Services ("**Brightree Application Changes**"). Client hereby authorizes Brightree to implement such Brightree Application Changes for use with the Application Services, provided that such Brightree Application Changes do not have a material adverse effect on the functionality or performance of the Application Services. When commercially practicable, Brightree shall notify Client in advance of the implementation of any material Brightree Application Changes.
- 2.4 Cooperation; Access.** Client acknowledges that the successful and timely rendering of the Services shall require the good faith cooperation of Client. Brightree shall not be liable for any failure to perform the Services that arises from Client's failure to cooperate with Brightree.
- 2.5 Special Terms.** The Application Services provided to Client shall be subject to any specific terms or limitations set forth in the Order Form. In addition, terms and conditions applicable to certain third party services included within the Application Service are located at <http://www.matrixcare.com/contracts> ("**Third Party Terms**"), which are incorporated herein by reference. Client's use of the Application Services is subject to its compliance with all Third Party Terms.
- 2.6 Business Associate Agreement.** By executing an Order Form under which Brightree will provide Services involving the use of Protected Health Information (as defined in HIPAA), Brightree and Client hereby agree to be bound by Brightree's standard Business Associate Agreement set forth as Exhibit C hereto.

3. USE OF THE APPLICATION SERVICES.

- 3.1 Application Service.** Brightree hereby grants to Client a nontransferable, non-exclusive, license during the term of the applicable Order Form, to allow Authorized Users to access and use, over public and private networks, the Application Services for its homecare and hospice service business.
- 3.2 Licensed Software.** Brightree hereby grants to Client, a nontransferable, nonexclusive, license during the term of an Order Form under which Client purchases access to the Application Services to be used in conjunction with the Licensed Software. Client shall have the right to make additional copies of the Licensed Software for such use. Client shall be responsible for its Authorized Users use of the Licensed Software in compliance with the terms of this Agreement.
- 3.3 Restrictions.**
- 3.3.1** Brightree owns all right, title and interest in and to the Application Services, Brightree Application and Licensed Software. The Application Services, Brightree Application and Licensed Software are provided to Client for use only as expressly set forth in this Agreement, and Client will not use the Application Services, Brightree Application or Licensed Software in whole or in part for any other use or purpose. Client will not, and will not allow any third party to (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Brightree Application or Licensed Software by any means, or disclose any of the foregoing; (ii) except as expressly set forth in this Agreement, provide, rent, lease, lend, or use the Brightree Application or Licensed Software for timesharing, subscription, or service bureau purposes; or (iii) sublicense, transfer or assign the Brightree Application or Licensed Software or any of the rights or licenses granted under this Agreement.
- 3.3.2** Client shall not use the Application Services for storage, possession, or transmission of any information, the possession, creation or transmission of which violates any state, local or federal law, including without limitation, those laws regarding stolen materials, obscene materials or child pornography. Client shall not transmit Content over the Application Services that infringes upon or misappropriates the intellectual property or privacy rights of any third party.
- 3.3.3** Brightree shall provide a password allowing Client to give each Authorized Users a username and password to access the Application Services. Client shall establish and maintain lists of Authorized Users and comply with Brightree's procedures for verification of Authorized Users, revision of access rights to Application Services, security, and assignment and use of passwords. Client shall notify Brightree immediately in writing if the security or integrity of a password or authority level has been compromised. Client shall be fully responsible, and indemnify and hold Brightree harmless, for any charges, costs, expenses, and third party claims that may result from unauthorized use of or access to the Application Services using Client's usernames.
- 3.3.4** Client is responsible for its use of the Application Services. Brightree may, from time to time, require a person to agree to Brightree's then-current Terms of Services for the Application Service (or any part thereof) prior to permitting such person to use the Application Services. Client hereby authorizes Brightree to prominently display within the Application Services, Brightree's then-current Privacy Policy and Terms of Service. Brightree shall be free to terminate an individual's access to the Application Services if it determines, in its sole discretion, that such individual's use of the Application Services is in breach of Brightree's then-current Terms of Service, or could harm Brightree's reputation.
- 3.3.5** Regardless of whether Brightree requires its Authorized Users to agree to Brightree's then-current Terms of Service, Client agrees that it is responsible for developing and implementing appropriate policies for use of the Application Services by such persons including policies regarding such person's compliance with the terms hereof.

3.3.6 Brightree is not responsible for Client's access to or use of patients' protected health information (as defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")) stored within the Application Services. Any such access or use shall be in accordance with all applicable laws, rules and regulations, including, without limitation HIPAA.

3.4 Client Content. Client hereby grants to Brightree a worldwide, non-exclusive, fully paid-up license to use, copy, modify, enhance, display, publish, distribute, create derivative works of and otherwise use the Content in any manner reasonably necessary to perform the Services. Client represents and warrants that it has all rights necessary to grant Brightree the foregoing license. Client further represents and warrants that Client owns or all right, title and interest in and to the Content or has a license granting it the rights necessary to permit it to grant the foregoing license. If Client licenses any Content, it shall not provide such Content to Brightree until it provides Brightree with a copy of the license.

4. PAYMENTS.

4.1 Fees. Client agrees to pay Brightree for the performance of the Services in accordance with the rates and fees specified in the Order Form. Following the first year of the term, on each one year anniversary of an Order Form, Brightree may adjust the rates and fees set forth in such Order Form. Brightree shall give Client not less than thirty (30) days written notice of such increase prior to its effective date. Unless otherwise set forth in the Order Form, all payments shall be made in United States dollars no later than thirty (30) days after the date of invoice. All payments not received when due shall accrue interest at a rate per month of one and one-half percent (1.5%) or seventy-five dollars (\$75) per month, whichever is greater.

4.2 Growth Clause. Client acknowledges that the initial fees for its use of the Application Services are based upon the Active Patient Census figures identified in the Services Order. At any time during the term, if the number of Active Patients under such Active Patient Census exceeds the Active Patient Census range upon which the fees were previously based, the fees shall be increased at Brightree's then-current rates, or if pre-determined at the rate set forth in the Order Form. Installation and implementation of the Application Services at additional sites or locations (regardless of the reason for such expansion) shall be subject to the negotiation and execution of an Order Form for the appropriate Professional Services, which Services will be performed at Brightree's then-current rates.

4.3 Expenses. Client shall reimburse Brightree for its out-of-pocket travel expenses to include food, lodging and incidentals. Transportation will be reimbursed to Brightree by Client at the current IRS mileage rates or at current coach airfare rate for providing services to Client at facilities of Client. Client will bear the travel and other out-of-pocket expenses incurred by its employees and other designees who receive training at Brightree's facilities.

4.4 Taxes. The fees payable under this Agreement shall not include taxes or duties now in force or enacted in the future imposed on the transaction and/or the delivery of the Services, all of which Client shall be responsible for and pay in full.

5. TERM AND TERMINATION.

5.1 Term. Unless earlier terminated in accordance with its terms, each Order Form commences on the Effective Date and remains in effect for the Initial Term (Months) from the Billing Term Start Date (the "Initial Term"). Unless otherwise set forth in an Order Form, upon the expiration of each Initial Term, the term of an Order Form will renew automatically for additional terms of one (1) year each ("Renewal Term"), and together with the Initial Term, the "Term"), unless either a party notifies the other party, at least ninety (90) days prior to the end of the then-current Term that it has elected to terminate such Order Form, in which event such Order Form will terminate at the end of such Term. Unless earlier terminated in accordance with its terms, this Agreement will expire on the date the last Order Form then in effect expires or is terminated pursuant to the terms and conditions set forth in this Agreement.

5.2 Termination for Cause. Except as otherwise provided herein, upon the material breach of the other party, either party may terminate this Agreement or the applicable Order Form, if such breach remains uncured for thirty (30) days following written notice to the breaching party. Notwithstanding the foregoing, if the breaching party certifies to the other party in writing within the thirty (30) day period that a curable breach (other than a breach relating to the payment of fees owing under the Agreement) cannot reasonably be cured in thirty (30) days but that it will be remedied by a specified date (which date may be no later than is commercially reasonable under the circumstances), the termination will be effective on the date specified in the certification if the breach has not been remedied by that date.

5.3 Suspension of Services. In the event any payment hereunder is not received by Brightree within thirty (30) days of the due date, Brightree may, in addition to any other remedies available to it hereunder or at law, suspend access to Support Services and/or the Application Services in whole or in part under any Order Form to which Client is a party.

5.4 **Effect of Termination.** Upon the expiration or termination of an Order Form or this Agreement, Brightree will terminate Client's access to the Application Services under affected Order Forms and will cease the provision of all Services under such Order Forms.

6. WARRANTIES; DISCLAIMER

6.1 Brightree hereby warrants that during the term of an Order Form, the Application Service provided thereunder will perform, in all material respects, in accordance with its then-current published documentation. In the event of any reproducible failure of the Application Services to perform in a material respect to such documentation, Brightree will, as Client's sole and exclusive remedy for breach of the warranty set forth in this Section 6.1, use commercially reasonable efforts to repair the applicable Application Service.

6.2 **DISCLAIMER OF WARRANTIES.** EXCEPT AS SET FORTH IN SECTION 6.1, BRIGHTREE MAKES NO WARRANTIES REGARDING THE SERVICES, AND BRIGHTREE HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, COMPATIBILITY OR SECURITY. BRIGHTREE DOES NOT WARRANT THAT ACCESS TO OR USE OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ALL DEFECTS AND ERRORS IN THE APPLICATION SERVICE WILL BE CORRECTED, OR THAT THE SERVICES WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. BRIGHTREE DOES NOT PROVIDE ANY WARRANTIES REGARDING THE ACCURACY OF DATA OR INFORMATION PROVIDED BY THIRD PARTIES. The provisions of this Section allocate the risks under this Agreement between Brightree and Client. Brightree's pricing reflects this allocation of risk and the limitation of liability specified herein.

7. INDEMNITY.

7.1 **Infringement.** Brightree shall defend, indemnify and hold harmless Client, its subsidiaries, affiliates, officers, directors, agents, employees and assigns, from and against any and all claims, suits, proceedings, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "**Losses**") suffered or incurred by them in connection with a third party claim arising out of any actual or threatened claim that the Application Services infringes upon or misappropriates any copyright, patent, trademark, trade secret, or other proprietary or other rights of any third party. Brightree shall have no obligation to indemnify Client to the extent the alleged infringement arises out of (i) the use of the Application Services in combination by Client with other data products, processes or materials not provided by Brightree and such infringement would not have occurred but for Client's combination; or (ii) the Content. Should the Application Services as used by Client become, or in Brightree's opinion be likely to become, the subject of an infringement claim, Brightree shall at its option and sole expense either: (i) procure for Client the right to continue to use the Application Services as contemplated hereunder, or (ii) modify the Application Services to eliminate any such claim that might result from its use hereunder or (iii) replace the Application Services with an equally suitable, compatible and functionally equivalent non-infringing Application Services at no additional charge to Client. If none of these options is reasonably available to Brightree, then this Agreement may be terminated at the option of either party hereto without further obligation or liability on the part of either party hereto except that Brightree agrees to promptly refund to Client the pro-rata portion of any fees prepaid by Client amortized on a straight-line basis based over the term of this Agreement.

7.2 **Client Indemnity.** Client shall defend, indemnify and hold harmless Brightree, its subsidiaries, affiliates, officers, directors, agents, employees and assigns, from and against any and all Losses suffered or incurred by them in connection with a third party claim arising out of (i) a breach by Client of this Agreement, (ii) Client's use of the Licensed Software or Application Services or (iii) Client's failure to comply with laws, rules, regulations or professional standards.

7.3 **Mechanics of Indemnity.** The indemnifying party's obligations are conditioned upon the indemnified party: (i) giving the indemnifying party prompt written notice of any claim, action, suit or proceeding for which the indemnified party is seeking indemnity; (ii) granting control of the defense and settlement to the indemnifying party; and (iii) reasonably cooperating with the indemnifying party at the indemnifying party's expense.

8. CONFIDENTIAL INFORMATION.

8.1 Except as expressly permitted in this Section 8, no party will, without the prior written consent of the other party, disclose any Confidential Information of the other party to any third party. Information will be considered Confidential Information of a party if either (i) it is disclosed by the party to the other party in tangible form and is conspicuously marked "Confidential", "Proprietary" or the like; or (ii) (a) it is disclosed by a party to the other party in non-tangible form and is identified as confidential at the time of disclosure; and (b) it contains the disclosing party's customer lists, customer information, technical information, pricing information, pricing methodologies, or information regarding the disclosing party's business planning or business operations. In addition, notwithstanding anything in this Agreement to the contrary, the terms of this Agreement will be deemed Confidential Information of Brightree. Brightree may, in any manner, publicly announce the relationship with Client. Brightree may also develop, with customer review and approval, a business use case that may be used for Brightree marketing purposes.

- 8.2 Other than the terms and conditions of this Agreement, information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.
- 8.3 Each party will secure and protect the Confidential Information of the other party (including, without limitation, the terms of this Agreement) in a manner consistent with the steps taken to protect its own trade secrets and confidential information, but not less than a reasonable degree of care. Each party may disclose the other party's Confidential Information where (i) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving reasonable notice to the other party with adequate time for such other party to seek a protective order; (ii) if in the opinion of counsel for such party, disclosure is advisable under any applicable securities laws regarding public disclosure of business information; or (iii) the disclosure is reasonably necessary and is to that party's, or its Affiliates', employees, officers, directors, attorneys, accountants and other advisors, or the disclosure is otherwise necessary for a party to exercise its rights and perform its obligations under this Agreement, so long as in all cases the disclosure is no broader than necessary and the person or entity who receives the disclosure agrees prior to receiving the disclosure to keep the information confidential. Each party is responsible for ensuring that any Confidential Information of the other party that the first party discloses pursuant to this Section 8 (other than disclosures pursuant to clauses (i) and (ii) above that cannot be kept confidential by the first party) is kept confidential by the person receiving the disclosure.

9. **LIMITATIONS OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, BRIGHTREE AND ITS SHAREHOLDERS, AFFILIATES, DIRECTORS, MANAGERS, EMPLOYEES OR OTHER REPRESENTATIVES SHALL NOT BE LIABLE TO CLIENT, AUTHORIZED USERS OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING REASONABLE ATTORNEYS' FEES AND LOST PROFITS) THAT RESULT FROM OR ARE RELATED TO THIS AGREEMENT, EVEN IF BRIGHTREE HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, BRIGHTREE'S AGGREGATE LIABILITY TO CLIENT FOR DAMAGES, COSTS, AND EXPENSES SHALL NOT EXCEED THE AMOUNTS RECEIVED BY BRIGHTREE FROM CLIENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES.

10. **GENERAL PROVISIONS.**

- 10.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to the choice of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any contract dispute or claim arising out of, or in connection with, this Agreement shall be finally settled by binding arbitration in Atlanta, Georgia, and the then current rules and procedures of the Judicial Arbitration and Mediation Services (JAMS) by one (1) arbitrator appointed by JAMS. The arbitrator shall apply the law of the State of Georgia, without reference to rules of conflict of law or statutory rules of arbitration, to the merits of any dispute or claim. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award punitive or exemplary damages against any party. In the event that any arbitration, action or proceeding is brought in connection with this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees. Notwithstanding the foregoing, nothing herein shall preclude either party from seeking injunctive relief in any state or federal court of competent jurisdiction without first complying with the arbitration provisions of this Section.
- 10.2 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, it shall be deemed omitted and the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- 10.3 **Waiver.** The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- 10.4 **Assignment.** This Agreement shall be binding upon the parties' respective successors and permitted assigns. Client shall not assign this Agreement, and/or any of its rights and obligations hereunder, without the prior written consent of Brightree, which consent shall not be unreasonably withheld. This Agreement, and the rights and obligations herein, may be assigned by Brightree to any person or entity without the written consent of the Client.
- 10.5 **Permission for Data Aggregation.** Client agrees that Brightree may utilize data that comes into the possession of Brightree by virtue of its performance under this Agreement for the purpose of aggregating statistics that may be helpful for Client's benefit, for research and trend analysis, and for other lawful purposes, as determined by Brightree. Brightree

shall only aggregate data in a manner that is fully compliant with HIPAA and applicable legislation regarding private personal information. The data utilized or shared pursuant to this provision that is not directly connected to the provision of Services under this Agreement shall not contain any Protected Health Information, as such term is defined by HIPAA

- 10.6 Excluded Entity.** Each party represents that it and its employees, that perform services in connection with the business relationship between the parties is not presently debarred, suspended, ineligible, or excluded from participation in any state or federal health care programs. Each party will periodically check itself and its employees for listing within applicable federal and state databases and will notify the other party if it discovers that it or any of its employees has become so debarred, suspended, ineligible, or excluded (such a person, an **"Excluded Person"** or such an entity, an **"Excluded Entity"**). Neither party shall allow an Excluded Person to provide services to the other party. If a party becomes an Excluded Entity, the other party may terminate its relationship with the Excluded Entity.
- 10.7 Independent Contractors.** Brightree is acting in performance of this Agreement as an independent contractor.
- 10.8 Notices.** All notices required to be given under the terms of this Agreement or which any of the parties hereto may desire to give hereunder, shall be in writing, shall be delivered via one of the following methods, and shall be deemed to have been received: (i) on the day given delivered by hand (securing a receipt evidencing such delivery); or (ii) on the second day after such notice is sent by a nationally recognized overnight or two (2) day air courier service, full delivery cost paid; or (iii) on the fifth day after such notice was mailed, registered mail, prepaid, return receipt requested, and addressed to the party to be notified at the addresses set forth in the Order Form.
- 10.9 Survival.** All provisions of Sections 3.3.1, 4, 6.2, 7, 8, 9 and 10 of this Agreement shall survive the expiration or termination of any Order Form or any termination of this Agreement.
- 10.10 Legal Fees.** In the event of any proceeding or lawsuit brought by Brightree or Client in connection with this Agreement, the prevailing party shall be entitled to recover its costs and legal fees (including, but not limited to, allocated costs of in-house staff counsel) and court costs.
- 10.11 Force Majeure.** Neither party will be liable to the other for failure to meet its obligations under this Agreement where such failure is caused by events beyond its reasonable control such as fire, failure of communications networks, riots, civil disturbances, embargos, storms, acts of terrorism, pestilence, war, floods, tsunamis, earthquakes or other acts of God.
- 10.12 Subsequent Modifications.** No amendment, alteration or modification of this Agreement shall be effective or binding unless it is set forth in a writing signed by duly authorized representatives of both parties.
- 10.13 Entire Agreement.** This Agreement and any exhibits and schedules attached hereto, constitutes the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations and/or agreements among the parties in conjunction with the subject matter hereof except as set forth in this Agreement.

Exhibit C

HIPAA Business Associate Addendum

This HIPAA Business Associate Addendum (“**Addendum**”) supplements and is made a part of the Services Agreement (“**Agreement**”) by and between Client and Brightree Home Health & Hospice LLC (“**Brightree**”), and is effective as of the Effective Date of the Agreement.

RECITALS

Client wishes to disclose certain information, some of which may constitute Protected Health Information (as defined below), to Brightree pursuant to the terms of the Agreement.

Client and Brightree intend to protect the privacy and provide for the security of PHI disclosed to Brightree pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”), as amended by the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act, Public Law 111-005, and their respective implementing regulations, including the Privacy Rule, the Security Rule, the Breach Notification Standards adopted by the U.S. Department of Health and Human Services, as they may be amended from time to time, at 45 C.F.R. part 164, subpart D, as well as related state laws and/or regulations (the preceding collectively referred to as the “**HIPAA Regulations**”), all as may be amended from time to time.

The HIPAA Regulations require Client to enter into an agreement with Brightree containing specific requirements with respect to the disclosure of PHI and Electronic PHI, as set forth in, but not limited to, Title 45, Sections 164.308(b)(1), 164.310, 164.312, 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“**CFR**”), and as contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

1) DEFINITIONS

- a) Terms used, but not otherwise defined, in this Business Associate Agreement (the “**Agreement**”) shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (“**HITECH**”) and their implementing regulations (the “**Electronic Transaction Rule**,” the “**Privacy Rule**,” the “**Security Rule**,” and the “**Breach Notification Rule**” as set forth at 45 CFR Parts 160, 162 and 164, and collectively, the “**HIPAA Rules**”).
- b) “**Business Associate**” shall mean **Brightree**.
- c) “**Covered Entity**” shall mean Client.

2) OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a) Business Associate agrees not to use or disclose Protected Health Information including electronic Protected Health Information other than as permitted or required to perform the services under the Master License and Services Agreement (the “**Services**”), as permitted or required by this Agreement, as permitted by HIPAA, or as Required by Law.
- b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of electronic Protected Health Information other than as provided for by this Agreement. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains or transmits from or on behalf of Covered Entity. Business Associate further agrees to ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information. Business Associate shall comply with 45 CFR §§ 164.308, 164.310, 164.312, and 164.316 of the Security Rule as such regulations are amended from time to time.
- c) Business Associate agrees to report to Covered Entity (i) any use or disclosure of Protected Health Information in violation of this Agreement of which it becomes aware and (ii) any security incident of which it becomes aware. Business Associate agrees to report to Covered Entity any Breach of Unsecured Protected Health Information, as such terms are defined at 45 CFR § 164.402, in accord with Section 2(d) of this Agreement.
- d) Business Associate agrees that, with the exception of law enforcement delays that satisfy the requirements under 45 CFR § 164.412 or as otherwise required by applicable state law, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than sixty (60) calendar days upon discovery of a Breach of Unsecured Protected Health Information, as such terms are defined at 45 CFR § 164.402. Such notice must include, to the extent possible, the name 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. Business Associate shall also provide, to the extent possible, Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 CFR § 164.404(c) at the time of Business Associate’s notification to Covered Entity or as promptly thereafter as such information becomes available. For purposes of this Agreement, a Breach of Unsecured Protected Health Information shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach, who is an employee, officer, or other agent of Business Associate, as determined in accordance with the federal common law of agency) or should reasonably have been known to Business Associate following the exercise of reasonable diligence.
- e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity agrees to substantially the

same restrictions and conditions that apply through this Agreement to Business Associate with respect to such Protected Health Information.

- f) Business Associate agrees to make internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity available to the Secretary, for purposes of the Secretary's determining Covered Entity's compliance with the Privacy Rule, if and to the extent Required by Law.
- g) Business Associate agrees to document such disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- h) Business Associate agrees to provide to Covered Entity information collected to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. In the event the request for an accounting of disclosures is delivered directly to Business Associate, Business Associates shall, as soon as practicable, forward such request to Covered Entity.
- i) Business Associate agrees to meet the requirements of 45 CFR § 164.504 if it knows of a pattern of activity or practice of one of its subcontractors that constitutes a material breach or violation of the subcontractor's obligation under a contract or other arrangement with the Business Associate.

3) GENERAL USE AND DISCLOSURE PROVISIONS

- a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform the Services for, or on behalf of, Covered Entity provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity except as otherwise permitted by the Privacy Rule. Business Associate agrees to limit, to the extent practicable and except as permitted by 45 CFR § 164.502(b)(2), its uses, disclosures and requests of Protected Health Information under this Agreement to the minimum necessary to accomplish the intended purpose of such use, disclosure or request in accord with HIPAA, HITECH and the HIPAA Rules.

4) SPECIFIC USE AND DISCLOSURE PROVISIONS

- a) Business Associate and its affiliates may use Protected Health Information (i) for the proper management and administration of Business Associate or its affiliates, (ii) to carry out the legal responsibilities of Business Associate, (iii) to provide data aggregation services relating to the healthcare operation of the Covered Entity or other covered entities to permit the creation of data for analyses that related to the health care operations of the respective covered entities; and/ or (iv) to review and/or improve Business Associate Services.
- b) Business Associate may disclose Protected Health Information (i) for the proper management and administration of Business Associate and its affiliates, (ii) to other covered entity(ies) or health care provider(s) for the payment activities or healthcare operation activities of the entity that received the Protected Health Information if that entity has or had a relationship with the individual, or (iii) to carry out Business Associate's legal responsibilities if (a) the disclosures are either permitted or Required By Law or (b) Business Associate obtains reasonable assurances from the person to whom such information is disclosed that such information will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it becomes aware in which the confidentiality of such information has been breached.
- c) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.512(j)(1).
- d) Business Associate and its affiliates may de-identify Protected Health Information in accord with 45 CFR § 164.514 and use it in any manner determined by Business Associate.

5) OBLIGATIONS OF COVERED ENTITY

- a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520 within five (5) business days of the imposition of said limitation, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, within five (5) business days of such changes, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522 within five (5) business days of such restriction, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- d) Covered Entity shall limit its uses, disclosures and requests of Protected Health Information under this Agreement to the minimum necessary to accomplish the intended purpose of such use, disclosure or request in accord with HIPAA, HITECH, and the HIPAA Rules.
- e) Electronic Protected Health Information transmitted or otherwise transferred from Covered Entity to Business Associate must be encrypted by a process that renders the electronic Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of HITECH § 13402 and any implementing guidance.

6) PERMISSIBLE REQUESTS BY COVERED ENTITY

- a) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity.

7) TERM AND TERMINATION

- a) **Term.** The Term of this Agreement shall be effective as of the date on which the Master License and Services Agreement is signed, or, if earlier, as of the date on which any Protected Health Information is provided by Covered Entity to Business Associate or created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such Protected Health Information, in accordance with the termination provisions in this Section 7.
- b) **Termination for Cause.** Upon one Party’s knowledge of a material breach by the other Party, the non-breaching Party shall:
 - i) Provide a reasonable opportunity for Business Associate to cure the material breach or end the violation;
 - ii) Immediately terminate this Agreement (and any underlying agreement) if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - iii) If neither termination nor cure is feasible, the non-breaching Party may report the violation to the Secretary of the U.S. Department of Health and Human Services.
- c) **Effect of Termination.**
 - i) Except as provided Section 7(c)(2), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information except as retained pursuant to Section 4, as set forth in this Section 7, or as permitted by applicable law.
 - ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If the return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

8) MISCELLANEOUS

- a) **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b) **Amendment.** The Parties mutually agree to enter into good faith negotiations to amend this Agreement from time to time in order for each of the Parties to comply with the requirements of the HIPAA Rules and any other applicable law as may be in effect.
- c) **Survival.** The respective rights and obligations of Business Associate under Section 7(c) of this Agreement shall survive the termination of this Agreement.
- d) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the HIPAA Rules.
- e) **Scope.** This Agreement shall apply only if and to the extent Brightree is a “business associate” to a “covered entity” as such terms are defined at 45 CFR § 160.103, and Brightree does not, merely by signing this agreement, concede that it holds such legal status.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date, and each represents and warrants to the other that it is legally free to enter into this Agreement.

BRIGHTREE HOME HEALTH & HOSPICE LLC

CLIENT NAME:

Name Signed

Name Signed

By: _____
Name Printed

By: _____
Name

Title

Title

Date

Date