



FOUNDATIONS
HEALTH SOLUTIONS

STANDARD TERMS & CONDITIONS

A. INTEGRITY PROGRAM

Facility is committed to operating its business in an honest, ethical, and legal manner, and it strives to foster a culture of compliance among its employees and contractors. To that end, Facility has highlighted in this Section A certain key requirements and expectations for its contractors with respect to compliance. Additional compliance responsibilities of Contractor are outlined below in Section H.

- A1. **Facility Integrity Program.** Contractor acknowledges that Facility has established an Integrity Program and policies designed to prevent and detect fraud, waste, and abuse and to promote compliance by the Facility and its employees and agents, including Contractor, with the requirements of Medicare, Medicaid and other federal and state programs. Facility's policies include explanations of the legal and ethical standards governing the conduct of Facility and its employees and contractors in business activities. Some of Facility's procedures include background screening of employees and contractors, procedures for reporting suspected wrongdoing, conducting periodic reviews of the Facility's operations, and discipline for violations of the policies. **Contractor and its employees, contractors, agents, and representatives who provide services or goods to Facility agree to abide by Facility's Integrity Program and agree to immediately report to Facility's Chief Integrity Officer any violations or suspected violations of Facility's Integrity Program and/or of laws governing Medicare, Medicaid and other state and federal programs.** Reports may be submitted, on an anonymous basis if so desired, to Facility's compliance hotline at 1-877-647-3335 or through the secure compliance website www.redflagreporting.com, using the Facility's phone number as the client code. At Facility's request, Contractor agrees to complete training regarding Facility's Integrity Program for those employees, contractors, agents, or representatives providing services at the Facility. In addition, Contractor agrees to complete at least one (1) hour of training regarding the Anti-Kickback Statute (42 U.S.C. § 1320a-7b) and examples of arrangements that potentially implicate the Anti-Kickback Statute for those individuals furnishing patient care items or services or performing billing or coding functions on behalf of Facility. A copy of the Foundations Anti-Kickback Compliance Policy is available at www.foundationshealth.net/#AKS.
- A2. **Compliance with Laws.** Each party certifies that it will not violate the Anti-Kickback Statute with respect to the performance of the Agreement. Contractor represents and warrants that it is in compliance, and will maintain compliance, with all billing and claims submission laws and regulations during the term of the Agreement. Contractor shall comply with all laws and regulations that are applicable to its business and to its relationship with Facility. Contractor further agrees to comply with all plans of correction and other regulatory requirements necessary for certification, licensure, OSHA, and any other regulatory compliance requirements applicable to Facility.

B. PAYMENT TERMS

- B1. **Invoices.** To obtain payment, Contractor must invoice Facility for any goods and services that are the financial responsibility of the Facility. The invoice must include at least the following items: (a) the goods/services provided; (b) the names of the individuals to whom the goods/services were provided; (c) the time spent providing the goods/services, if applicable; (d) the date that the goods/services were provided; (e) the charge for each good/service provided; (f) the total amount due; (g) the name, email address, phone number, and address to which payment and disputes should be sent to Contractor; and (h) any other information as may be required by law or requested from time-to-time by Facility ("**Invoice**").
- B2. **Service Logs.** If Contractor does not provide any goods or services that are billed to Facility, Contractor agrees to maintain logs for all goods/services provided to Facility's residents that include at least the following items: (a) the goods/services provided; (b) the names of the individuals to whom the goods/services were provided; (c) the time spent providing the goods/services, if applicable; (d) the date that the goods/services were provided; and (e) the charge for each good/service provided ("**Service Log**"). Contractor agrees to make the Service Logs available to Facility upon its request.
- B3. **Payment Terms.** Facility will pay Contractor for non-disputed charges within sixty (60) days of Facility's receipt of a complete Invoice from Contractor. Contractor may only charge interest on non-disputed charges that are more than thirty (30) days past due. Any interest charges will not exceed the applicable federal short-term interest rate. If Contractor does not charge interest on an Invoice immediately following the month in which the interest accrues, or if Contractor does not collect interest during the month immediately following the month in which the interest accrues, Contractor waives its right to charge or collect the interest. Facility will not be responsible for payment of any late fee or other charge (including, but not limited to, collection fees

or other fees due to Facility's choice of payment method). Contractor must submit all Invoices to Facility within ninety (90) days of the date the goods/services were provided; any incomplete Invoices and/or Invoices not received by Facility within that time period will not be paid.

- B4. **Invoice Audits.** Facility has the right to audit the accuracy of Contractor's billing to Facility. If Facility ever determines that it has overpaid Contractor, Contractor agrees to refund any overpaid amounts to Facility within thirty (30) days of receiving a copy of the audit findings. Audits are at Facility's sole cost and expense, unless the audit finds that Contractor has overbilled Facility by at least two percent (2%); in those cases, Contractor agrees to pay Facility for the costs of the audit in addition to refunding any overpaid amounts.
- B5. **Setoff.** Facility may offset and deduct any amounts owed by Contractor to Facility from any amount Facility owes to Contractor for any reason.
- B6. **Expenses.** If the Agreement requires Facility to reimburse Contractor for any expenses, Contractor must get written pre-approval from Facility for expenses that are greater than One Hundred Dollars (\$100.00). Facility will only reimburse Contractor for reasonable expenses that are accompanied by receipts documenting the expense.
- B7. **Internal Review.** Contractor agrees to notify Facility of any compliance or billing issue it identifies with respect to goods and/or services provided to Facility. If Facility or Contractor identifies any issue that Facility determines, in its sole discretion, requires a refund or repayment of any amounts that it received based on Contractor's goods and/or services, then Contractor agrees to pay to Facility the amounts that must be repaid immediately, including any applicable governmental interest and fines.

C. TERM & TERMINATION

- C1. **Term.** The term of the Agreement will be for the term stated in the Agreement or, if no term is stated, for a term of one (1) year ("**Initial Term**"). Following the Initial Term, the Agreement will automatically renew for successive one (1) year terms, unless the Agreement provides for a longer renewal term. After the Initial Term, either party can terminate the Agreement, without cause and without penalty, by providing the other party thirty (30) days advance written notice of the termination, provided, however, that if the Agreement provides that either party can terminate the Agreement without cause during the Initial Term, then the parties will be able to do so.
- C2. **Termination for Breach.** Either party can terminate the Agreement for cause if the other party materially breaches the Agreement and fails to cure the breach within thirty (30) days following the provision of written notice of the breach by the non-breaching party. If the breach cannot be cured, or if the breach represents a threat to the health or safety of Facility residents, then no cure period is required, and the non-breaching party may immediately terminate the Agreement for cause by providing written notice to the breaching party of the termination.
- C3. **Termination for Insolvency.** If Contractor becomes bankrupt or insolvent, makes arrangements or take steps to arrange a workout or restructuring of its debts, makes an unauthorized assignment, or goes into liquidation, or should proceedings be initiated for the purpose of having a receiving order or winding-up order made against Contractor, then Facility may, without prejudice, and in its sole discretion and in addition to any of its other rights and remedies, demand immediate adequate assurance of performance and/or suspend its obligations until the Contractor's financial position appears satisfactory to Facility, in the Facility's sole discretion. If Contractor does not provide such adequate assurance of performance, then Facility may immediately terminate the Agreement upon written notice to the Contractor.
- C4. **Transition Services.** If Facility makes a written request, Contractor agrees to continue servicing Facility for at least ninety (90) days past any termination date. The parties acknowledge that these transition services may be needed to allow for uninterrupted services to Facility's residents and transition to a new contractor. If Contractor continues to provide services to Facility pursuant to this section after termination of the Agreement, Facility agrees to pay for services or goods provided in advance at the prices in effect on the date of the notice of termination. Facility will not be liable or responsible for payment of any goods or services provided beyond the termination date unless transition services are explicitly requested pursuant to these Standard Terms & Conditions.

D. SERVICE TERMS

- D1. **Services.** Contractor certifies that all services performed pursuant to the Agreement will be performed: in an efficient, timely, professional, workmanlike and skillful manner; in accordance with requirements of federal and state laws, accrediting standards, enforceable governmental interpretations, and policies of Facility applicable to such services; in conformity with approved practices of Contractor's profession; and in accordance with applicable conditions or requirements of participation and reimbursement coverage imposed by governmental and other third-party payers.
- D2. **Visits.** If Contractor or its employees, agents, contractors or representatives visit or work on Facility premises, Contractor and its employees, agents, contractors and representatives shall comply with any applicable Facility rules and regulations.

- D3. **Qualifications.** Contractor represents and warrants that all individuals who are assigned by Contractor to provide services at the Facility shall meet the following qualifications at all times:
- a. Be licensed and/or certified in good standing under Ohio law and have any other authorizations required to perform their duties, as applicable;
 - b. Not be under suspension or subject to any disciplinary proceedings by the department or agency having jurisdiction over the professional activities of the person in Ohio and not be under any formal or informal investigation or preliminary inquiry by the department or agency for possible disciplinary action, and not be, or have ever been, excluded from participation in the Medicare or Medicaid programs;
 - c. Have had a criminal background check conducted in accordance with the Ohio Revised Code immediately preceding the date that services are first performed at Facility and the individual cannot be convicted of or have pleaded guilty to any of the offenses that would prohibit a person from providing direct care to an older adult pursuant to Ohio law; and
 - d. As required by the Ohio Administrative Code, be medically examined by a physician within thirty (30) days prior to commencing work, and as a result of the examination, be certified as medically capable of performing their prescribed duties.

The above statements will be an ongoing representation and warranty, and Contractor will immediately notify Facility if there is any change in the status of the representation or warranty. Contractor shall ensure that any of its employees or agents participate in any Facility credentialing or screening processes. Contractor agrees to provide Facility with evidence of the above qualifications at Facility's request, and to indemnify Facility for any losses or costs incurred as a result of Contractor's noncompliance with this section upon demand.

- D4. **Maintenance of Records.** Contractor agrees to keep records in the form and for the duration required by federal and state statutes and regulations and in accordance with currently approved methods and standards of practice in its industry. Contractor will make records related to the Agreement available to Facility for inspection upon request by Facility.
- D5. **Cost Reports.** Contractor shall prepare and submit to Facility any data requested by Facility for completion of its cost reports.

E. BUSINESS TERMS

- E1. **Insurance.** Contractor agrees to maintain the following insurance coverage during the term of the Agreement: (a) general commercial liability insurance coverage (including medical malpractice coverage if medical services are provided by Contractor) in the minimum amount of \$1,000,000 dollars per occurrence, and \$3,000,000 in the aggregate; (b) if Contractor will use automobiles to provide services, commercial automobile insurance, including bodily injury and property damage coverage for all vehicles used in performing services under the Agreement, including all owned, hired, rented and non-owned vehicles, with limits of liability not less than what would be obtained by other companies of similar size with similar operations; and (c) workers compensation insurance coverage that meets state requirements. Contractor will name Facility as an additional insured to the insurance required in this section and will provide Facility with a certificate of insurance that complies with the requirements in this section when requested by Facility. Contractor will notify Facility at least ten (10) days before any cancellation or reduction in coverage under any insurance policy.
- E2. **Indemnity.** Contractor will indemnify and hold Facility (including Facility's employees, contractors, agents, vendors, representatives, affiliates, successors, directors, officers, subsidiaries, parent companies, owners, members, managers, partners, shareholders, attorneys, consultants, and executives, individually and collectively) harmless from and against all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees, fines from any governmental agency, fees and expenses incurred in responding to a governmental investigation or appealing a governmental citation, court costs, and expert fees brought against or incurred by Facility due to the actions or inactions, breach of duties, malpractice or negligence of Contractor or its employees, contractors, agents, or representatives, except to the extent such liability is caused by Facility. If a portion of the liability is caused by Facility, the obligations of indemnification under this section will continue, but Contractor will only be required to indemnify Facility for the percentage of responsibility attributable to Contractor.
- E3. **Confidentiality.** Contractor agrees not to use or disclose resident-identifiable information except to the extent that Facility itself is permitted to do so. Contractor acknowledges that all information provided by Facility and its employees, contractors, agents, vendors, representatives, affiliates, successors, directors, officers, subsidiaries, parent companies, owners, managers, partners, shareholders, attorneys, consultants, managers, or executives constitutes confidential and proprietary information and includes trade secrets of Facility ("**Confidential Information**"). The Confidential Information may include business and marketing ideas, data, know-how, contracts, agreements, documents, plans, software, processes, designs, reports, specifications, studies, customer lists, and other information relating to Facility's operations, fiscal matters, sales, business, marketing and strategic plans, and other aspects of Facility's business. Confidential Information does not include information that is generally available to the public or information that is already in the possession of, or independently developed by Contractor on a non-confidential basis. Contractor will take all steps necessary to protect and keep Confidential Information

strictly confidential and will direct and cause its employees and agents to keep Confidential Information confidential. Contractor will not disclose or use any Confidential Information for any purpose outside the scope of the Agreement unless it obtains prior written consent to do so from Facility. If Contractor is compelled by law to disclose Confidential Information, it will notify Facility of the compelled disclosure in advance (to the extent legally permitted) and will assist Facility, at Facility's cost, if Facility wishes to object to the disclosure. Upon the earlier of (1) a written request from Facility or (2) the termination of the Agreement, Contractor will immediately return to Facility all Confidential Information provided by or through Facility and will destroy all copies, notes, reproductions and summaries of any documentation or materials containing any Confidential Information. If Contractor discloses or uses (or threatens to disclose or use) any Confidential Information in breach of this section, Facility has the right, in addition to any other remedies available to it, to seek injunctive relief, as the parties specifically acknowledge that any other available remedies are inadequate. Unless the parties agree otherwise in writing, any knowledge or information which Contractor discloses to Facility will not be considered confidential or proprietary information, and Facility may use it free from any restrictions.

- E4. **Status of Parties.** The Agreement is intended to create an independent contractor relationship between the parties for purposes of federal, state and local law, including the Internal Revenue Code. Contractor agrees that Contractor is an independent contractor and is not an employee of Facility. Contractor's employees, contractors, agents and representatives do not have any claim under the Agreement or otherwise against Facility for social security benefits, worker's compensation, disability benefits, unemployment insurance, vacation, sick pay or any other employee benefits of any kind. Nothing in the Agreement will be construed or implied to create a relationship of agency, partners, affiliates, joint employers or joint venturers between the parties. The parties will not be responsible for any obligation of the other party or for any act or omission of the other party. The parties do not have the power to bind or obligate the other party and will not hold themselves out as having that authority.
- E5. **Non-Solicitation.** Contractor agrees that it, and any corporation, agency or other entity controlled, affiliated, or contracted with Contractor, will not, during the term of the Agreement, and for a period of one (1) year after its termination, directly or indirectly hire, solicit, recruit, contact, retain, or allow to provide services for Contractor any current or former employee or contractor of Facility. Contractor agrees that it will not attempt to induce any current or former employee or contractor of Facility to terminate their relationship with Facility. Contractor will not provide the name or contact information of any current or former employee or contractor of Facility to any person or entity without the express written consent of Facility, unless required by law. Contractor acknowledges that the restrictions contained in this section are reasonable and necessary to protect the legitimate business interests of Facility and that any breach of this section would result in irreparable harm to Facility. In the event of a breach of this provision, in addition to any other available legal or equitable remedies to which Facility may be entitled, Contractor will pay Facility fifteen thousand dollars (\$15,000) per individual solicited in violation of this provision.
- E6. **Disparagement.** Contractor agrees, and will require its employees, contractors, agents, and representatives to agree, not to take any action which is intended or would reasonably be expected to harm Facility or its reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity of Facility. This includes Contractor or its employees, contractors, agents, and representatives disparaging Facility or its employees, contractors, agents, vendors, representatives, affiliates, successors, directors, officers, subsidiaries, parent companies, owners, managers, partners, shareholders, attorneys, consultants, or executives and includes any negative statement, whether written or oral. This provision is not intended and will not be interpreted to impede discussions regarding medical treatment for Facility's residents.
- E7. **Force Majeure.** The parties will not be liable for any failure or delay in the performance of the Agreement to the extent the failure or delay is caused by the occurrence of a natural disaster or other acts of God, war, terrorism or threats of terrorism, civil disorder, labor strikes or disruptions, medical epidemics or outbreaks, governmental regulations or orders, or any other emergency beyond the control of the party that makes it illegal or impossible to perform pursuant to the Agreement ("**Force Majeure Event**"). Contractor agrees to take all reasonable actions necessary to respond to a Force Majeure Event so that Contractor can continue to provide the goods and services under the Agreement without undue delay. Facility will not suffer any financial penalty due to a Force Majeure Event.

F. DISPUTE RESOLUTION

- F1. **Governing Law and Venue.** The Agreement has been executed and delivered in, and will be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Ohio, without regard to choice of law or conflicts of law principles. Cuyahoga County, Ohio shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding between the parties that may be brought or arise out of, in connection with, or by reason of the Agreement.
- F2. **JURY TRIAL WAIVER. EACH PARTY IRREVOCABLY WAIVES ITS RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT.**
- F3. **Arbitration.** The parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to the Agreement or otherwise, and any claim or dispute related to the Agreement or the

relationship or duties contemplated under the Agreement, including the validity of this arbitration clause, will be resolved by binding arbitration by the American Arbitration Association (“AAA”), under its Arbitration Rules in effect at the time. Any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction. Information about filing a claim may be obtained and claims may be filed with AAA at Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, Telephone: 877-495-4185, Fax: 877-304-8457, E-mail: casefiling@adr.org, Website: www.adr.org. If the AAA process is no longer in existence at the time of the dispute, or if AAA is unwilling or unable to conduct the arbitration, then the parties will mutually agree on an alternative organization to conduct the arbitration. The parties agree that Facility will pay fifty percent (50%) of the arbitrator’s fees and that Contractor will pay the remaining fifty percent (50%) of the arbitrator’s fees. Statutes of limitation and award caps that would be applicable to a comparable civil action brought in an appropriate court in Cuyahoga County will apply to the arbitration and any award. The parties agree that Facility is engaged in interstate commerce and that the agreement to arbitrate disputes and the arbitration proceeding will be governed in accordance with the Federal Arbitration Act. If for any reason there is a finding that the Federal Arbitration Act cannot be applied, then the parties make clear their intent that their disputes/claims be resolved pursuant to Chapter 2711 of the Ohio Revised Code, and that the parties do not want their disputes/claims resolved in a judicial forum. If the dispute is resolved pursuant to Chapter 2711 of the Ohio Revised Code, then any arbitration panel shall consist of three persons.

Any arbitration by Contractor must be commenced by filing a demand for arbitration within **ONE (1) YEAR** after the date Contractor first knows or reasonably should know of the act, omission, or default giving rise to the claim; and there will be no right to any remedy for any claim not asserted within that time period. A claim will be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to the Facility or received by the Contractor, and is not presented in the arbitration proceeding.

- F4. **Attorneys’ Fees.** With the exception of the indemnification obligations identified in Section E2, each party is responsible for payment of their own legal fees and costs in connection with any dispute regarding the relationship of the parties or the performance of the Agreement, whether formal or informal, and regardless of any statutory right to recovery of such fees.
- F5. **LIMITATION ON LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER FACILITY NOR ANY OF ITS EMPLOYEES, CONTRACTORS, AGENTS, VENDORS, REPRESENTATIVES, AFFILIATES, DIRECTORS, OFFICERS, SUBSIDIARIES, PARENT COMPANIES, OWNERS, MEMBERS, MANAGERS, PARTNERS, SHAREHOLDERS, ATTORNEYS, CONSULTANTS, MANAGERS, EXECUTIVES, OR SUCCESSORS (THE “SUBJECT PERSONS AND ENTITIES”) SHALL BE LIABLE TO CONTRACTOR FOR ANY LOSS OF USE, LOSS OF PROFIT, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR ANY OTHER CAUSE OF ACTION (INCLUDING THE ENTRY INTO, PERFORMANCE OF, OR BREACH OF THIS AGREEMENT), EVEN IF THE SUBJECT PERSONS AND ENTITIES WERE ADVISED OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, AND WITH THE EXCEPTION OF BREACH DUE TO NON-PAYMENT FOR SERVICES PROVIDED, IN NO EVENT SHALL THE SUBJECT PERSONS AND ENTITIES’ TOTAL LIABILITY TO CONTRACTOR FOR ANY DAMAGES OF ANY KIND NOT OTHERWISE BARRED BY THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR ANY OTHER CAUSE OF ACTION (INCLUDING THE ENTRY INTO, PERFORMANCE OF, OR BREACH OF THIS AGREEMENT), EXCEED THE TOTAL SUM PAID BY FACILITY TO CONTRACTOR DURING THE TWO (2) MONTHS IMMEDIATELY PRECEDING THE ALLEGED ACT OR OMISSION GIVING RISE TO SUCH DAMAGES. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE LIMITATION OF LIABILITY CONTAINED IN THIS SECTION REFLECTS ALLOCATION OF RISK AND THAT FACILITY WOULD NOT ENTER INTO THE AGREEMENT WITHOUT THIS LIMITATION OF LIABILITY.**

G. MISCELLANEOUS TERMS

- G1. **Notices.** Any notice to be provided under the Agreement will be considered provided when mailed by prepaid certified mail, return receipt requested, or sent by overnight delivery, with signature required, to the other party. All notices to Facility must be sent to the attention of the Administrator at Facility’s address, as set forth in the Agreement (or if no address for Facility is set forth in the Agreement, to the address for the Facility on the Facility’s website), with an exact copy also sent to Foundations Health Solutions, 25000 Country Club Blvd., Suite 255, North Olmsted, Ohio 44070, Attn: Notice Pursuant to Standard Terms & Conditions. All notices to Contractor must be sent to the address for Contractor set forth in the Agreement, or if no address for Contractor is set forth in the Agreement, to the most recent address on file for the Contractor at Facility. Any notice not delivered in accordance with this section will not constitute notice to the other party. Any party may change its address for notice by giving notice as provided in this section.
- G2. **Publicity/Intellectual Property.** Unless Facility agrees in advance in writing, Contractor will not issue any press release or announcement, or advertise or publish any information, mentioning Facility or containing any information relating to the subject matter of the Agreement or the relationship between the parties. The parties will not use the name, logo, symbol or trademark of the other party without the prior written approval of the other party.

- G3. **Amendment.** With the exception of those modifications made pursuant to Section G4, no amendment, modification, waiver, or discharge to or of the Agreement or these Standard Terms & Conditions will be valid unless made in writing signed by both parties. Any amendment to the Standard Terms & Conditions must include the following precise language in bold, **“These terms and conditions shall supersede any conflicting or contrary language in Facility’s Standard Terms & Conditions.”**
- G4. **Modifications to Standard Terms & Conditions.** The parties agree that any additional items or conditions required by federal or state statutes and regulations applicable to the arrangement between Facility and Contractor will be automatically included by reference in these Standard Terms & Conditions and made a part of these Standard Terms & Conditions.
- G5. **Execution.** The Agreement may be executed through electronic signatures. No contract with Facility is valid unless it is stamped by Facility’s legal counsel. The stamp will be in the form of a verifiable physical or electronic stamp.
- The individual signing the Agreement on behalf of Contractor represents and warrants that they have the right, power and authority to enter into the Agreement and to perform its obligations, and the execution and performance will not violate any other agreement or obligation to which the Contractor is bound.
- G6. **Assignment.** Contractor may not assign any right or delegate any duty under the Agreement or these Standard Terms & Conditions without Facility’s prior written consent. Any attempted assignment or delegation by Contractor will be void and of no effect. Facility may assign the Agreement to any purchaser or other successor entity operating Facility (**“Assignee”**), and Contractor agrees to accept such assignment. Contractor agrees that Assignee shall be deemed to be a party to the Agreement with the same rights as Facility and that the Agreement shall continue under its existing terms following such assignment. Contractor further agrees that, as of the effective date of the assignment, Contractor will release Facility under the Agreement and Facility will have no further obligation or liability arising under the Agreement, provided that this release will not affect Facility’s obligations incurred prior to the effective date of the assignment.
- G7. **Interpretation of Agreement.** (a) Other than as explicitly agreed upon in writing between Facility and Contractor, the Agreement and these Standard Terms & Conditions constitute all the terms and conditions agreed upon between Facility and Contractor and supersede any prior agreements, understandings, and representations in relation to the subject matter of the Agreement, whether written or oral. (b) Any failure by Facility to enforce the Agreement or any Standard Terms & Conditions, or any provision thereof, will not waive Facility’s right to do so. (c) If any provision of the Agreement or these Standard Terms & Conditions is held invalid or unenforceable for any reason or to any extent, the invalidity or enforceability will affect or render invalid or unenforceable the remaining provisions of the Agreement or Standard Terms & Conditions, and the application of that provision will be enforced to the extent permitted by law. (d) Time is of the essence in the Agreement.
- G8. **Survival.** The rights and duties of the parties in the sections of these Standard Terms & Conditions relating to invoicing, payment, internal review, setoff, expenses, termination, transition services, non-solicitation, disparagement, indemnity, limitations of liability, confidentiality, status of the parties, notices, survival, publicity, maintenance of records, PBJ data, audits, attorneys’ fees, arbitration, jury trial waiver, governing law and venue, HIPAA, and any other sections that, either explicitly or by their nature, must remain in effect after termination of the Agreement, shall survive termination.

H. COMPLIANCE TERMS

- H1. **Discrimination.** Contractor agrees to comply with all applicable federal and state laws prohibiting discrimination against persons on account of race, sex, color, age, religion, military status, national origin, disability, or any other protected class.
- H2. **Reporting Violations.** Contractor agrees to report all suspected violations of the law and questionable conduct or practices of Facility to Facility’s Administrator as required by state and federal law. Contractor acknowledges that Facility’s policies and the law prohibit any retaliatory action against employees for this reporting to a supervisor or to any government agency.
- H3. **Eligibility to Participate in Federal Healthcare Programs.** Contractor represents and warrants that it and its employees and agents comply with, are not under investigation for violations of, and have never been convicted of or sanctioned for violations of, any Federal and State laws governing the Medicare and Medicaid programs (including provisions regarding the billing of services and the referral of patients), laws relating to patient abuse or neglect, health care fraud, and laws governing controlled substances. Contractor represents and warrants to Facility that neither Contractor nor any Contractor employees, contractors, agents, or representatives providing services or goods under the Agreement are currently excluded, suspended, debarred or otherwise ineligible to participate in federal healthcare programs, including Medicare and Medicaid. The representations and warranties in the section are continuous in nature, and Contractor will immediately notify Facility in writing if any of Contractor’s representations and warranties cease to be accurate.
- H4. **Prohibited Remuneration.** Nothing in the Agreement will be construed as an offer or payment by one party to the other party (or any affiliate of the other party) of any remuneration for patient referrals, or for recommending or arranging for the purchase, lease or order of any item of service for which payment may be made in whole or in part by Medicare or Medicaid. Contractor will not at any time offer, pay, solicit, encourage, or accept, whether directly or indirectly, any bribe, kickback, gift, inducement or anything of economic value from or to Facility or a Facility employee with the intent to secure business from,

purchases by, or influence the decisions of Facility. Any payment made between Contractor and Facility is intended to represent the fair market value of the supplies or services to be rendered by the respective party and are not in any way related to or dependent upon referrals by and between Facility and Contractor. Furthermore, it is the stated intent of the parties that nothing contained in the Agreement is or will be construed as an endorsement for any act of either party.

- H5. **Costs.** Contractor represents that its charges for its services or goods are commercially reasonable and above its costs. Contractor acknowledges that Facility is relying on Contractor's representation because Facility is not in a position to know or assess Contractor's costs.
- H6. **HIPAA.** To the extent applicable, each party will comply, and will cause its employees, contractors, agents, and representatives to comply, with the requirements of all applicable laws, rules and regulations that pertain to the confidentiality, security, and privacy of patient information, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 ("HIPAA").
- H7. **Licensing and Certifications.** Contractor represents and warrants that all permits, licenses, and other governmental authorizations required for the conduct of Contractor's business related to the services or goods provided under the Agreement are current and will remain in good standing at all times during the term of the Agreement. If there is any change in status to Contractor's licenses or certifications, Contractor will promptly notify Facility in writing of the change.
- H8. **Pending Actions.** Contractor certifies that there are no actions, suits or proceedings pending or, to the knowledge of Contractor, threatened against or affecting Contractor in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of Contractor to perform its obligations under the Agreement.
- H9. **Audits.** This provision will apply if the amount paid under the Agreement is \$10,000 or more over a twelve (12) month period. Until the expiration of four (4) years after the furnishing of services or goods pursuant to the Agreement, Contractor will, upon written request, make available to the Secretary of the Department of Health and Human Services ("HHS"), the Comptroller General, or any of their authorized representatives, the Agreement, and any books, documents and records that are necessary to certify the nature, extent, and costs of provided services of goods incurred by Facility under the Agreement. The availability of Contractor's books, documents and records will at all times be subject to such criteria and procedures for seeking access as may be promulgated by the Secretary of HHS in regulations, and other applicable laws. Contractor's disclosure under this provision will not be construed as a waiver of any legal rights to which Contractor or Facility may be entitled under statute or regulation. If Contractor performs any of its duties pursuant to the Agreement through a subcontractor, with a value or cost of \$10,000 or more over a twelve (12) month period, then Contractor warrants that it will include a provision in the Agreement with the subcontractor substantially similar to this section. If Contractor is required to disclose any books, documents and/or records pursuant to this section, Contractor will immediately notify Facility and provide Facility copies of such books, documents, and/or records disclosed, to the extent allowed by law.
- H10. **PBJ Data.** If Contractor's time spent performing services must be reported by Facility pursuant to the Centers for Medicare and Medicaid Services' ("CMS") Payroll-Based Journal ("PBJ") rules and guidance, Contractor agrees to obtain and provide to Facility, by the last day of each calendar month, acceptable, accurate, auditable, verifiable and appropriate documentation of services, in the form and format requested by Facility. Given that Facility is required by law to provide this information to CMS, if Contractor fails to abide by this section, Facility may terminate the Agreement with Contractor immediately upon written notice.
- H11. **Managed Care & Third-Party Payors.** Contractor agrees and acknowledges that Facility contracts with numerous entities, including, but not limited to entities such as HMOs, Medicare, and Medicaid, to receive payment for the services it and its subcontractors and employees provide to residents. These entities typically require Facility to make assurances that its subcontractors, employees, and independent contractors are complying with (a) certain policies and procedures of the entities, such as those described in manuals, as well as any requirements in the entity's written agreement with the Facility; (b) any laws, rules, and regulations applicable to the services provided; (c) any laws, rules, regulations applicable to recipients of federal or state funds; and (d) requirements applicable to government programs. By entering into the Agreement, Contractor represents and warrants that it will abide by these policies, procedures, agreements, laws, rules and regulations, and ensure its own employees, independent contractors, and subcontractors abide by them, regardless of whether the specifics of these items are made known to Contractor in writing. Contractor likewise agrees that all services and other activities performed by Contractor will be consistent and comply with the obligations of the Facility and that Contractor will assure that any contract it executes with another person or entity that relates to the services provided to Facility includes obligations regarding government access to the entity's books and records.
- H12. **Use of Outside Resources.** Facility assumes responsibility for obtaining services for its residents that meet professional standards and principles that apply to the professionals providing services in its facility, and Facility is ultimately responsible for ensuring the timeliness of services that it provides to its residents. Consequently, Contractor certifies that all services provided

pursuant to the Agreement shall be performed: in accordance with all Federal, State and local laws applicable to such services; in conformity with the highest professional standards; in accordance with the policies and procedures of Facility; and in a timely and prompt manner.

H13. **Notices Required by Law.** Contractor agrees and acknowledges that Facility is a nursing facility and must require its contractors to comply with certain federal and state laws and provide certain notices to its contractors. This section provides Contractor the notifications required to be given to it by law.

- a. The parties acknowledge the role of the following laws in preventing and detecting fraud, waste, and abuse in federal health care programs. This information shall serve as Contractor's notice of fraud and abuse laws, as required pursuant to Section 6032 of the Deficit Reduction Act of 2005.

Sections 3801 to 3812 of Title 31 of the United States Code provide in pertinent part that:

- Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know is false, fictitious, or fraudulent; includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent; includes or is supported by any written statement that omits a material fact, is false, fictitious, or fraudulent as a result of such omission, and is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or is for payment for the provision of property or services which the person has not provided as claimed, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$10,706 for each such claim. Such person may also be subject to an assessment of twice the amount of the false, fictitious, or fraudulent claim, or the portion of such claim, which is determined to be in violation of the law.
- Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that the person knows or has reason to know asserts a material fact which is false, fictitious, or fraudulent; or omits a material fact that he/she has a duty to include, and is false, fictitious, or fraudulent as a result of such omission; and contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$10,706 for each such statement.

Sections 3729 to 3733 of Title 31 of the United States Code provide in pertinent part that:

- Any person who: knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; conspires to commit a violation described in this paragraph; has possession, custody, or control of property or money used, or to be used, by the government and knowingly delivers, or causes to be delivered, less than all of that money or property; is authorized to make or deliver a document certifying receipt of property used, or to be used, by the government and, intending to defraud the government, makes or delivers the receipt without completely knowing that the information on the receipt is true; knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government, who lawfully may not sell or pledge property; or knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government, is liable to the United States government for a civil penalty of not more than \$23,331, plus three (3) times the amount of damages which the government sustains because of the act of that person, with certain exceptions, and the costs of a civil action brought to recover such penalty or damage.
- The terms "knowing" and "knowingly" mean that a person, with respect to information: has actual knowledge of the information; acts in deliberate ignorance of the truth or falsity of the information; or acts in reckless disregard of the truth or falsity of the information; and require no proof of specific intent to defraud. "Claim" means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that: is presented to an officer, employee, or agent of the United States; or is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the government's behalf or to advance a government program or interest, and if the United States Government provides or has provided any portion of the money or property requested or demanded, or will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and does not include requests or demands for money or property that the government has paid to an individual as compensation for federal employment or as an income subsidy with no restrictions on that individual's use of the money or property. "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or

regulation, or from the retention of any overpayment. "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

- The Attorney General shall diligently investigate violations of the above, and if the Attorney General finds that a person has violated or is violating the law, then he/she may bring a civil action against the person. A person may bring a civil action for a violation of the above for the person and for the United States government. The action shall be brought in the name of the government. If the government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to certain limitations, and may have a right to share in a recovery if certain conditions are met.
- Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations above.

Ohio law provides in pertinent part that:

- Ohio Revised Code sections 2913.40 and 2913.401 prohibit a person from knowingly making a false statement for use in obtaining reimbursement from the medical assistance program, prohibits a person from charging a person for goods or services in addition to the amount of reimbursement received under the medical assistance program, excluding any deductibles or co-payments, and prohibits a person from making false statements or knowingly concealing information in an application for Medicaid benefits. Whoever violates these sections is guilty of Medicaid fraud.
- Ohio Revised Code section 2921.13 prohibits making a false statement, or swearing the truth of a false statement in a variety of situations, including to secure payment of benefits administered by a governmental agency. Whoever violates this provision is guilty of falsification, a first degree misdemeanor.
- Ohio Revised Code 5164.35 describes how if a Medicaid provider by deception, obtains or attempts to obtain payments under the Medicaid program to which the provider is not entitled, willfully receives payments to which a provider is not entitled, willfully receives payments in a greater amount than that to which a provider is entitled, or falsifies any report of document required by state or federal law, rule or provider agreement relating to Medicaid payments, this can result in fines of not less than \$5,000 and not more than \$10,000 for each deceptive claim or falsification, a fine equal to three (3) times the amount of any excess payments, and a fine equal to all reasonable expenses which a court determines were necessary for the state to incur to enforce the action. This can also result in the provider's exclusion from the Medicaid program.
- Ohio Revised Code 4113.51 to 4113.52 describes how employers are prohibited from taking any disciplinary or retaliatory action against an employee for making any report authorized by Ohio Revised Code 4113.52(A)(1) or (2), or as a result of the employee having made any inquiry or taken any other action to ensure the accuracy of any information reported under either such division. Ohio Revised Code 4113.51 to 4113.52 also describes how no employer shall take any disciplinary or retaliatory action against an employee for making any report authorized by division (A)(3) of Ohio Revised Code 4113.52 if the employee made a reasonable and good faith effort to determine the accuracy of any information so reported, or as a result of the employee having made any inquiry or taken any other action to ensure the accuracy of any information reported under that division.

b. The parties acknowledge Contractor's duty to report crimes under Section 1150B of the Social Security Act as follows:

- Any owner, operator, employee, manager, agent, or contractor of a long-term care facility that receives federal funds of at least \$10,000 in the preceding year ("**covered individual**") shall report to the Secretary and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility. If the events that cause the suspicion result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion. If the events that cause suspicion do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.
- The term "law enforcement" includes the full range of potential responders to elder abuse and neglect, including police, sheriffs, detectives, public safety officers, corrections personnel, prosecutors, medical examiners, investigators, and coroners. The term "serious bodily injury" means an injury involving extreme physical pain,

involving substantial risk of death, involving protracted loss or impairment of the function of a bodily member, organ or mental faculty, or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.

- If a covered individual violates this section, the covered individual shall be subject to a civil money penalty of not more than \$200,000; and the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any federal health care program. If a covered individual violates this section and the violation exacerbates the harm to the victim of the crime or results in harm to another individual, the covered individual shall be subject to a civil money penalty of not more than \$300,000; and the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any federal health care program.