

Exhibit D

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.

Unless otherwise provided, all capitalized terms in the Agreement will have the same meaning as provided under the HIPAA Regulations.

- a. “**Breach**” shall have the meaning given to such term under the Security Rule, 45 CFR Section 164.402.
- b. “**Business Associate**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 160.103.
- c. “**Covered Entity**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 160.103.
- d. “**Data Aggregation**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 164.501.
- e. “**Designated Record Set**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 164.501.
- f. “**Electronic Protected Health Information**” or “**Electronic PHI**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 160.103.
- g. “**Privacy Rule**” shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164.
- h. “**Protected Health Information**” or “**PHI**” means any information, whether oral or recorded in any form or medium, that: (i) relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and (ii) otherwise conforms to the meaning given to such term under the Privacy Rule, 45 CFR Section 160.103, that is created, received, maintained, or transmitted on behalf of Client by Brightree pursuant to this Addendum.
- i. “**Security Incident**”, as provided in 45 C.F.R. 164.304, shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- j. “**Security Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information codified at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- k. “**Unsecured Protected Health Information**” shall have the meaning given to such term under the Security Rule, 45 CFR Section 164.402.

2. Rights and Obligations of Brightree.

- a. **Permitted Uses.** Brightree may use Protected Health Information for the purpose of performing Brightree’s obligations under the Agreement, including this Addendum, and as permitted by law. Brightree shall not use Protected Health Information in any manner that would constitute a violation of the Privacy Rule if Brightree were to carry out one or more of Client’s obligation(s) under the Privacy Rule, in accordance with the requirements of the Privacy Rule that apply to use by Client, except that Brightree may use Protected Health Information (i) for the proper management and administration of Brightree, or (ii) to carry out the legal responsibilities of Brightree.
- b. **Permitted Disclosures.** Brightree agrees, to the extent that Brightree is to carry out one or more of Client’s obligation(s) under the Privacy Rule, to comply with the requirements of the Privacy Rule that apply to Client in the performance of such obligation(s). Brightree

shall not disclose Protected Health Information in any manner that would constitute a violation of the Privacy Rule if disclosed by Client, except that: (i) Brightree may disclose Protected Health Information in a manner permitted pursuant to the Agreement, including this Addendum, and (ii) Brightree may disclose PHI for proper management and administration of Brightree or to carry out Brightree's legal responsibilities, provided the disclosures are (a) required by law or (b) Brightree obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Brightree of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Appropriate Safeguards. In accordance with the Security Rule, Brightree shall implement such appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of Client as are necessary to prevent its use or disclosure other than as permitted by the Agreement, including this Addendum.

d. Reporting of Breach. Brightree shall report to Client any Security Incident, Breach of Unsecured Protected Health Information, or any other use or disclosure of Protected Health Information other than as provided for by the Agreement, including this Addendum, within five (5) business days of learning of such use or disclosure. Notifications related to the breach of Unsecured Protected Health Information shall be in writing and shall include: (i) the identification of each individual whose Unsecured Protected Health Information was or is reasonably believed by Brightree to have been accessed, acquired, used or disclosed during the Breach; and (ii) any other available information that Client is required to include in notification to the individual under 45 CFR 164.404(c), such as a brief description of the incident and the nature of the information disclosed, and the status of Brightree's investigation of the matter and mitigation efforts. Brightree shall take prompt corrective action to cure any deficiencies in its systems as required by applicable federal and state laws and regulations.

e. Brightree's Agents. Brightree shall ensure that any agents, including subcontractors, to whom it provides Protected Health Information, agree in writing to the same restrictions and conditions that apply to Brightree with respect to such PHI. Brightree shall ensure that any such agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Client.

f. Access to Protected Health Information. To the extent Brightree maintains PHI in a Designated Record Set, if an Individual makes a request for access directly to Brightree, Brightree shall, within ten (10) business days, forward such request in writing to Client. Brightree shall make Protected Health Information maintained by Brightree in Designated Record Sets, if any, available to Client for inspection and copying to enable Client to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524. Client shall be responsible for making all determinations regarding the grant or denial of an Individual's request for PHI and Brightree will make no such determinations. Except as required by law, only Client will release and be responsible for releasing PHI to an Individual pursuant to such a request.

g. Amendment of PHI. To the extent Brightree maintains PHI in a Designated Record Set, if an Individual makes a request for an amendment of his or her PHI or record directly to Brightree, Brightree shall, within ten (10) business days, forward such request in writing to Client. Brightree shall make such Protected Health Information available to Client for amendment and incorporate any such amendment to enable Client to fulfill its obligations under the Privacy Rule, 45 CFR Section 164.526. Client shall be responsible for making all determinations regarding the grant or denial of an Individual's request for an amendment, and except as required by law, Brightree will make no such determinations.

h. Accounting Rights. Within ten (10) days of notice by Client of a request for an accounting of disclosures of Protected Health Information, Brightree and its agents or subcontractors shall make available to Client the information required to provide an accounting of disclosures to enable Client to fulfill its obligations under the Privacy Rule, 45 CFR Section 164.528. Client will be responsible for preparing and delivering the accounting to the Individual. Except as required by law, Brightree will not provide an Accounting of its Disclosures directly to any Individual. As set forth in, and as limited by, 45 CFR Section 164.528, Brightree shall not be required to provide an accounting to Client of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR Section 164.506; (ii) to individuals of Protected Health Information about them as set forth in 45 CFR Section 164.502; (iii) to persons involved in the individual's care or for other notification purposes as set forth in 45 CFR Section 164.510; (iv) for national security or intelligence purposes as set forth in 45 CFR Section 164.512(k)(2); (v) to correctional institutions or law enforcement officials as set forth in 45 CFR Section 164.512(k)(5); or (vi) as part of a limited data set in accordance with 45 CFR Section 164.514(e). Brightree agrees to implement a process that allows for an accounting to be collected and maintained by Brightree and its agents or subcontractors for at least six (6) years prior to the request, but not before the effective date of the Agreement; however, to the extent that Brightree uses or maintains electronic health records and the HIPAA Regulations require that those records be maintained for only three (3) years, Brightree shall only be required to maintain them for that period. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Health Information and, if known, the address of the entity or person; (iii) a brief description of Protected Health Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure, as applicable.

i. Governmental Access to Records. Brightree shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to the Secretary of the U.S. Department of Health and Human Services or his or her agents or authorized designees for purposes of determining compliance with the Privacy Rule.

j. Minimum Necessary. Brightree shall only request, use and disclose, to the extent practicable, the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.

k. Audits, Inspection and Enforcement. Within thirty (30) days of a written request by Client, Brightree shall allow Client to conduct a reasonable inspection of the facilities, systems, policies and procedures relating to the use or disclosure of Protected Health Information pursuant to this Addendum for the purpose of determining whether Brightree has complied with this Addendum; provided, however, that: (i) Brightree and Client shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Client and its agents shall protect the confidentiality of all confidential and proprietary information of Brightree to which Client has access during the course of such inspection; and (iii) Client shall execute a nondisclosure agreement with terms mutually agreed upon by the parties, if requested by Brightree.

l. Remuneration in Exchange for Protected Health Information. Brightree may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by Client or by the various exceptions contained in the HIPAA Regulations, as may be amended from time to time, or for purposes such as Brightree functions under the Agreement, treatment of the subject Individual, provision of such Individual's Protected Health Information to him or her, research activities where the price charged reflects only the cost of preparation and transmittal of the data, or public health activities.

3. Obligations of Client.

Changes in Authorization. Client shall inform Brightree, in a timely manner, of any changes in, or withdrawal of, any authorization provided to Client by any Individual pursuant to 45 CFR § 164.508, to the extent that such changes or withdrawal may affect Brightree's use or disclosure of PHI. In addition, Client shall notify Brightree, in a timely manner, of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Brightree's use or disclosure of PHI. Client shall promptly notify Brightree of any breach by Client of any obligation under the HIPAA Regulations as such breach relates to PHI as defined herein. Client shall not request of Brightree that it use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if done by Client, and Brightree is not required to use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if so used or disclosed by Client.

4. Termination.

a. Material Breach. A breach by Brightree of any material provision of this Addendum shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by Client pursuant to its terms.

b. Reasonable Steps to Cure Breach. If Client knows of a pattern of activity or practice of Brightree that constitutes a material breach or violation of Brightree's obligations under the provisions of this Addendum and does not terminate this Agreement pursuant to Section 4(a) above, then Client shall take reasonable steps to cure such breach or end such violation as applicable. If Client's efforts to cure the breach or end the violation are unsuccessful, Client may (i) terminate the Agreement, if feasible, or (ii) if termination of the Agreement is not feasible, Client may report Brightree's breach or violation to the Secretary of the Department of Health and Human Services.

c. Effect of Termination. Upon termination of the Agreement for any reason, Brightree shall return or destroy all Protected Health Information that Brightree still maintains in any form, and shall retain no copies of such Protected Health Information. If Brightree determines that return or destruction of PHI is not feasible, the parties shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(e) and 3 of this Addendum to such information, and Brightree shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy of health information are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Regulations or other applicable laws. Either party may terminate this Agreement upon thirty (30) days prior written notice in the event that the other party: (i) does not promptly enter into negotiations to amend this Addendum when requested pursuant to this Section 5; or (ii) does not enter into an amendment to this Addendum providing assurances regarding the safeguarding of PHI sufficient to satisfy the standards and requirements of the HIPAA Regulations.

6. No Third-Party Beneficiaries.

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Client, Brightree and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

7. Interpretation.

The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict, or appear inconsistent, with any provision in this Addendum. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with the HIPAA Regulations. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies, and is consistent, with the HIPAA Regulations.

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 in to this Agreement.

BRIGHTREE HOME HEALTH & HOSPICE LLC

CLIENT NAME:

Name Signed

Name Signed

By:

Name Printed

By:

Name

Title

Title

Date

Date