



**SONOMA VALLEY HEALTH CARE DISTRICT
BOARD OF DIRECTORS' MEETING**

AGENDA

WEDNESDAY, AUGUST 15, 2018

SPECIAL SESSION 5:00 P.M.

COMMUNITY MEETING ROOM

177 FIRST ST WEST

SONOMA, CA 95476

<p>In compliance with the Americans Disabilities Act, if you require special accommodations to participate in a District meeting, please contact District Clerk Stacey Finn at (707) 935.5004 at least 48 hours prior to the meeting.</p>		
AGENDA ITEM	RECOMMENDATION	
<p>MISSION STATEMENT The mission of SVHCD is to maintain, improve, and restore the health of everyone in our community.</p>		
<p>1. CALL TO ORDER</p>	<p><i>Rymer</i></p>	
<p>2. PUBLIC COMMENT <i>At this time, members of the public may comment on any item not appearing on the agenda. It is recommended that you keep your comments to three minutes or less. Under State Law, matters presented under this item cannot be discussed or acted upon by the Board at this time. For items appearing on the agenda, the public will be invited to make comments at the time the item comes up for Board consideration.</i></p>	<p><i>Rymer</i></p>	
<p>3. TRANSFER OF HOME CARE</p>	<p><i>Mather</i></p>	<p>Inform/Action</p>
<p>7. BOARD COMMENTS</p>	<p><i>Board Members</i></p>	<p>Inform</p>
<p>8. ADJOURN</p>	<p><i>Rymer</i></p>	



To: Sonoma Valley Health Care District Board of Directors
Meeting Date: June 7, 2018
Prepared by: Administrative Team
Agenda Item: Proposal to Transfer Ownership and Operation of the Healing at Home Service to an Unrelated Entity

RECOMMENDATION:

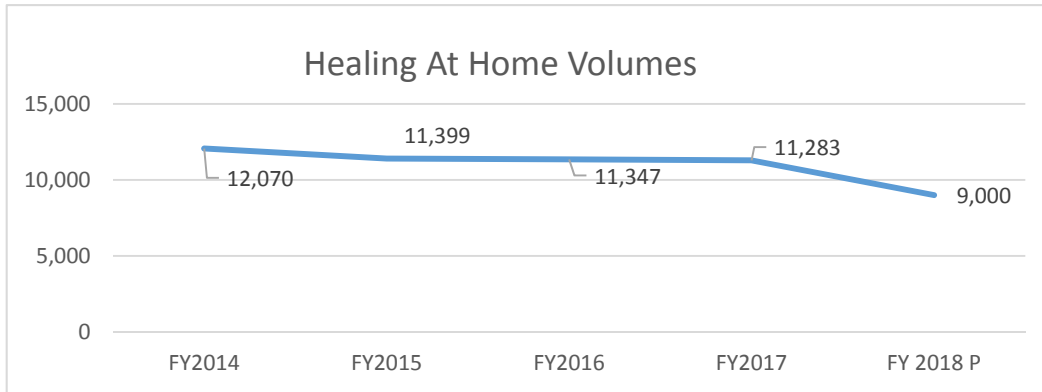
After completing an extensive analysis of reimbursement, the cost of overhead, and patient volumes, management recommends that the Sonoma Valley Health Care District Board of Directors approve moving forward with finalizing the intent of Sonoma Valley Hospital to transfer its Healing at Home service to Hospice By the Bay in order to ensure that excellent home care services remain in our community. Hospice By the Bay is recognized by the community, physicians, and patients for excellence in the care that they provide and for very high patient/family satisfaction. The agency is local and has an established presence in the Valley and is expanding its vision to include providing skilled home care, palliative care and end of life care in one seamless transition. This can only improve the level and quality of care provided to our community.

BACKGROUND AND REASONING:

Healing at Home, the Skilled Home Health Care service of Sonoma Valley Hospital, was established in 1989 to provide skilled, medically necessary and individualized care to homebound patients under physician orders. It has long been recognized for the high level of quality and patient satisfaction in the services provided. Services that enable patients to receive the care they need, delivered by exceptional medical professionals, in the comfort of their homes. This highly functioning team can be proud of their efforts not only in delivering the quality of care that places them in the top 25% of Home Care Agencies in the nation but also their commitment to the community they serve. This has made the course we are recommending a more difficult one and perhaps delayed the decision to move in this direction.

Over the course of the past 3 years, trends in volumes, acuity, reimbursement and the cost of doing business has led to questioning the viability of maintaining a hospital-based home care agency. This reflects a growing trend within the healthcare industry of hospitals closing their home care agencies in favor of partnering with outside agencies with an aligned vision.

A. VOLUMES



Healing at Home volumes have slowly declined since FY 2014. Projected volumes are anticipated to drop below 9,000 for FY18. Attempts were made, in 2014, to expand into Marin County however, volumes did not increase as anticipated and overhead increased. In calendar year 2015, management elected to stop this expansion due to the distance required to provide home care and to focus on attempts to “right size” the agency to continue to serve our community.

B. CHANGES IN ACUITY

The patient acuity (level of service needed to provide safe, quality patient care) started to increase in mid-FY17. In addition, a major payer started referring more complicated cases that required more resources but was unwilling to increase the per-unit of service payment. The direct cost per unit of service was \$50 more than what the payer was allowing.

C. NET REVENUE, OPERATION COSTS/OVERHEAD AND DIRECT MARGIN

Fiscal Year	Operating Expenses/Overhead	Net Revenue	Direct Margin
2015	\$3,319,770	\$3,161,516	(\$158,254)
2016	\$3,078,949	\$2,743,441	(\$335,509)
2017	\$2,892,630	\$2,696,820	(\$195,810)
2018 YTD	\$2,208,265	\$2,016,161	(\$192,104)

In 2016 management implemented a department performance improvement project focused on increasing the direct margin of home care by implementing a number of strategies:

- Understand the true cost of care to ensure Healing at Home profitability and long-term sustainability.

- Conduct a complete analysis of the operational cost for increased revenue as well as decreased expenses for a financially viable department.
- Implement a system to maintain specific areas hardwired to the most granular level of care and identify areas that can be directly controlled by unit front line staff and management.

While inroads were made, shifts in reimbursement and volume impacted the department’s ability to meet financial targets. Consequently net revenue and the cost of operations continued to show a negative margin.

In 2017 management further developed and implemented an action plan to reduce \$500K from the cost of operations. Cost savings were initiated but, at best, direct costs would be covered creating the risk for continued losses. Despite cost containment measures, it was projected that the direct margin would approximate a \$200K loss in 2018. Management determined the need to assess options for the future of this department.

OPTION ASSESSMENT

CLOSURE	MOVE INTO HOSPITAL	TRANSFER OF OWNERSHIP
<p>PROS:</p> <ul style="list-style-type: none"> • More resources available to the hospital 	<p>PROS:</p> <ul style="list-style-type: none"> • Maintains the business in “right sized” manner • Save \$100K / year in rent • Physician, community and employee satisfaction 	<p>PROS:</p> <ul style="list-style-type: none"> • Homecare continues in community. • Very little, if any changes for employees; no layoffs • Community and physician satisfaction • Continuity of care
<p>CONS:</p> <ul style="list-style-type: none"> • Lack of a viable homecare agency in the community • Potential for poor transition from hospital to next provider • Lay-off of staff • PTO payout of approximate \$260K 	<p>CONS:</p> <ul style="list-style-type: none"> • \$300K in infrastructure costs to move departments • Overhead costs decrease but not by much • Will still need to adjust to the market and 	<p>CONS:</p> <ul style="list-style-type: none"> • Transitional anxiety • \$70K PTO payout at time of transition for employees • \$260k severance payout at time of transition for employees

<ul style="list-style-type: none"> Physician and community dissatisfaction 	changes in reimbursement	
COST SAVINGS: \$200K based on YTD 2018 projected loss	COST SAVINGS: \$100K with net loss \$200K +/-annually	COST SAVINGS: \$200K of projected net loss annually
CONCLUSION: Not a positive move for ensuring homecare in this community.	CONCLUSION: No real savings to bottom line. Even with cost containment measures, will operate at a loss.	CONCLUSION: Most viable option for the hospital and the community.

CONSEQUENCES

Costs:

1. Projected losses per year if the hospital maintains the service: The business is at best breakeven with a potential projected loss of \$200K per year.
2. Projected savings per year if we transfer or close the service: Potential savings of \$200K annually.
3. Cost of transferring/closing the service: \$70K Paid Time Off (PTO) payout or \$260K for employee layoff per policy.

Benefits:

There is no compensation for the business and its assets. Most of the assets have been fully depreciated without salvage value. Hospital insurance is a claims based insurance, tail coverage will be added to our policy on the date the license is transferred. The community continues to enjoy the services of a respected skilled home care agency. Employees for the most part are assured of continued employment with comparable benefits. The risk of operational loss to the Hospital will be eliminated.

Management does understand the importance of this service to the community but also recognizes that it can no longer justify continued hospital support for it. Because of our commitment to our community, the hospital decided against closure. Management began a Request for Proposal (RFP) process to determine if there was any interest from an outside party to take over the service and insure that the community has access to home care.

REQUEST FOR PROPOSAL (RFP) & RESPONSE:

Management conducted a search for potential partners focusing on three criteria: high quality as identified by The Centers for Medicare and Medicaid Services (CMS) ratings, patient satisfaction, and the degree of community based focus. RFPs were sent to 9 agencies located in the Bay Area, Sonoma and Napa Counties and the East Bay. These agencies included Sutter Care at Home, St. Joseph’s Healthcare, Hospice by the Bay and UCSF Home Care (now closed).

The RFP that was issued had two main goals. The first was to guarantee continued local home care and the second was, to the extent possible, to assure employees' security.

There was not an assumption that there would be a gain or payment for the acquisition. Management received two initial inquiries; however, one large local non-profit did respond with a great deal of interest while the other dropped out. Although it is not their primary business, they do operate a home care business in the San Francisco area. A non-disclosure agreement was signed and a "Letter of Intent" was subsequently received.

LETTER OF INTENT HIGH LEVEL SUMMARY (Attachment A):

After a number of meetings, both parties agreed to the following.

- The non-profit would continue to operate Healing at Home under that name and in the Sonoma/Napa area.
- Employees would be assured a position subject to a background check (required by their insurance).
- The non-profit will assume operational responsibility and liability beginning around October 1, 2018, until a license can be obtained in their name (about six months). The current license will remain with Sonoma Valley Hospital, but through a management agreement the non-profit will take all financial responsibility.
- The non-profit will assume applicable ongoing liabilities and leases. Liabilities up until the operational responsibility date will remain with Sonoma Valley Hospital.
- Sonoma Valley Hospital will keep all outstanding accounts receivable and payable up to the responsibility date. The main issue here is that current employees have accrued PTO and severance amounting to about \$330,000 that would be due at the responsibility date.
- All assets used for the operation will be transferred to the non-profit entity with no payment for same.

CONCLUSION:

Management has explored every possible avenue to maintain this agency as part of the hospital. We have come to the point where losses are not sustainable and are very pleased as well as excited to find an agency known for excellent patient care and patient satisfaction who is just as excited and pleased to accept the invitation.

NEXT STEPS:

Upon Board approval, next step is the completion of the final agreement between Hospice By the Bay and Sonoma Valley Hospital with an agreed upon transition date. Management has developed a plan to meet all regulatory requirements in order to support this transition within the given timeframe.

Healing At home staff have been kept informed of this process since January of this year. After Board approval, the staff will be informed of Hospice By the Bay's assumption of management

of Healing at Home and what follows. Meetings with staff and Hospice By the Bay representatives have already begun and a timeline for completion of the transfer has begun.

Patient and Physician letters have been drafted and will be sent to patients and current provider physicians. Patients will be given the information about how care is transferred in the 30-day letters. Marketing will provide for community press releases. These will be completed by the required 30 day notice deadline. Hospice By the Bay will collaborate on notices to state and federal regulatory agencies and Sonoma Valley Hospital will notify the Sonoma County Board of Supervisors of the change.



May 29, 2018

VIA E-MAIL AND REGULAR MAIL

Ms. Kelly Mather, CEO
Sonoma Valley Hospital
347 Andrieux Street
Sonoma, CA 95476

Re: RESTATED Letter of Intent to Transfer Assets of Healing at Home

Dear Kelly:

We are delighted that Sonoma Valley Hospital ("Sonoma") has selected Hospice by the Bay's proposal for the transfer of the assets of Healing at Home, Sonoma's licensed home health agency. We are very excited to continue Sonoma's commitment to provide quality home care to the greater Sonoma community.

This Restated Letter of Intent ("LOI") supersedes the Letter of Intent dated April 12, 2018.

This LOI outlines the principal terms and conditions under which we are prepared to negotiate a mutually acceptable asset transfer agreement ("Transfer Agreement"), pursuant to which Sonoma will transfer the assets of Healing at Home to Hospice. The principal terms include the following terms and conditions:

- 1. Parties.** We propose that Sonoma transfer to Hospice By The Bay ("Hospice") the assets of Healing at Home, using Hospice's home health agency license.
- 2. Asset Transfer.** Hospice proposes that Sonoma transfer to Hospice, at the closing of the asset transfer (the "Closing"), all assets of Healing at Home, excluding Sonoma's pre-transfer cash and accounts receivable (the "Assets"), subject to the terms of this LOI. All pre-transfer cash and accounts receivable of Healing at Home shall remain the property of Sonoma. If and to the extent that Sonoma notifies Hospice at least seven (7) days before the Closing that Sonoma will include pre-transfer cash equivalents in the Assets transferred to Hospice, such as in the form of prepaid expenses or deposits, Hospice shall reimburse Sonoma at the Closing for all such pre-transfer cash equivalents. Sonoma reserves the right not to transfer or to limit the transfer of Healing at Home's inventory and supplies to Hospice; provided that Sonoma shall notify Hospice at least seven (7) days before the Closing of the level of Healing at Home's inventory and supplies that it will transfer to Hospice .
- 3. Limited Cash Consideration.** Except for any reimbursement of cash equivalents described in Section 2, Sonoma shall transfer the Assets to Hospice without payment of any cash consideration. The consideration for the transfer shall be the agreements by Hospice contained in this LOI.
- 4. Offers of Employment.** Effective as of the Closing, Hospice will (a) offer employment to the Director of Home Health Services at Healing at Home to continue in the same capacity; and (b) consider offering employment to other qualified employees of Healing at Home, as determined in Hospice's discretion after due diligence, including, without limitation, review of the employees' personnel files and performing background checks. All personnel offered employment shall be offered employment at salaries that Hospice deems competitive, in its discretion, and shall receive past service credit for vacation and benefits vesting purposes.

Marin County • 17 East Sir Francis Drake Boulevard • Larkspur, CA 94939 • (415) 927.2273 • FAX (888) 204.4081

San Francisco and San Mateo Counties • 180 Redwood Street, Suite 350 • San Francisco, CA 94102 • (415) 626.5900 • FAX (415) 563.8749

Sonoma County and the cities of American Canyon, Napa and Vallejo • 190 West Napa Street • Sonoma, CA 95476 • (707) 935.7504 • FAX (707) 935.7590

www.hospicebythebay.org

14189246.10

Hospice will offer its standard benefits to all such employees to whom it offers positions. Sonoma will remain liable for all pre-transfer workers' compensation claims. The parties shall meet and confer in good faith as necessary to accomplish a smooth transition of employee benefits.

5. Lease. Hospice will contact the lessor of Sonoma's current home health agency office at 1151 Broadway #101, Sonoma, CA 95476 (the "Office"). Assuming Hospice can obtain a new lease of the Office on reasonable terms, it will enter into a lease of the Office with the lessor.

6. Vendor Agreements. At Closing, Hospice intends to assume all assumable vendor agreements entered into by Sonoma exclusively for the operation of Healing at Home. The parties agree to consult in good faith if either party wishes to terminate or not assume any vendor agreement.

7. Interim Agreements. At Closing, the parties agree, to the extent required by law, to enter into interim agreements until the Department of Public Health approves the addition of a new Sonoma branch office to Hospice's existing home health agency license.

8. EPIC. Hospice uses EPIC for its electronic health record. After the Closing, Hospice will migrate the record for Healing at Home to EPIC.

9. Branding. Hospice intends to use the "Healing at Home" brand to describe Healing at Home's services until Hospice undergoes rebranding.

10. Paid Time Off. Sonoma agrees to make cash payments for all accrued paid time off ("PTO") to all Healing at Home employees as of the date of the Closing.

11. Debt-Free Transaction. The transaction contemplated by this LOI will be debt-free, and all debt of Sonoma related to Healing at Home will be the sole responsibility of Sonoma. Sonoma shall indemnify Hospice with respect to such debt at the Closing. Hospice will assume absolutely no debt of Sonoma.

12. Transfer Agreement. On or before July 31, 2018, or as soon as practicable thereafter, Hospice shall provide an initial draft of the Transfer Agreement reflecting the terms contained herein, for review by Sonoma. The Transfer Agreement shall contain customary representations, warranties, conditions, and indemnifications. Hospice and Sonoma shall work together to negotiate a mutually acceptable Transfer Agreement.

13. Non-Competition; Non-Solicitation. The Transfer Agreement shall also include (a) a Non-Competition Covenant in which Sonoma agrees, for a period of two (2) years after the Closing, that it shall not own, operate, manage, or have any financial interest in any business or entity located within Marin, Sonoma, Napa, Solano, Lake, Mendocino, Contra Costa, San Francisco, or San Mateo County that competes with any part of the activities of Healing at Home; (b) a Non-Solicitation Covenant in which Sonoma agrees that it shall not directly or indirectly solicit for employment any employee of Hospice for a period of two (2) years after the Closing; and (c) a provision that Sonoma shall inform its officers, directors, managers, and employees of both of the foregoing and instruct them not to take any action or fail to take any action that would cause Sonoma to violate either of the foregoing clauses. The Non-Competition Covenant shall not preclude Sonoma from using telehealth and/or similar or related

technology to monitor the health/condition of patients remotely in their homes or other places of residence.

14. Due Diligence. Hospice intends to engage in due diligence that encompasses an array of financial, legal, operational, care and compliance issues. Hospice is prepared to complete its due diligence on the later of July 31, 2018 or sixty (60) days after receiving complete due diligence materials from Sonoma (the "Feasibility Period"). Due diligence will be conducted by Hospice's Chief Financial Officer, Simone & Associates, the law offices of Hanson Bridgett LLP, and potentially other consultants. Hospice and its consultants have provided or will provide lists of all required materials after full execution of this LOI. In addition, Sonoma shall afford Hospice and its agents access to its business and records at reasonable hours on one business-day notice. Hospice may extend the Feasibility Period for one (1) thirty (30)-day period due to circumstances reasonably beyond its control. All reports and tests shall be obtained at Hospice's expense. At any time during the Feasibility Period, Hospice may, in its sole discretion and without penalty, terminate the transaction by written notice to Sonoma. All of Hospice's due diligence shall be conducted in strict compliance with that certain Confidentiality and Nondisclosure Agreement, dated January 10, 2018 (the "NDA") between the parties. Sonoma will not have any obligation to provide to Hospice any patient health information protected from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA") (45 C.F.R. Part 160, et seq.) except as allowed under HIPAA including, without limitation, the health care operations exception.

15. Warranty of No Violation. Sonoma warrants that it has received no notice of violation of any law or regulation affecting Healing at Home except as disclosed in this LOI or the Transfer Agreement.

16. Governing Body Approvals. The Transfer Agreement and the consummation of the transactions described therein shall be subject to approval by the boards of directors of Sonoma and Hospice. Sonoma acknowledges that Hospice must take into account its charitable status in approving the transaction. Hospice understands and acknowledges that, as a public agency, Sonoma (i) must approve the final version of any agreement with Hospice in a public session of its Board of Directors; and (ii) is subject to the California Public Records Act, including all provisions protecting preliminary drafts, notes, interagency and intra-agency memoranda and communications, and deliberative processes from disclosure. Sonoma acknowledges the sensitive nature of the information exchanged between the parties and agrees to cooperate in protecting it to the full extent allowed by the Brown Act and the Public Records Act.

17. Notices to Regulatory Bodies; Licensing. Sonoma will cooperate with Hospice in filing all necessary documents with the California Department of Public Health, the Centers for Medicare and Medicaid Services, the California Department of Health Care Services, and any other public or private entities, as necessary to reflect the change in ownership of the Assets contemplated by this LOI. The parties agree to cooperate in good faith to make all necessary licensing arrangements. If required to facilitate or expedite the asset transfer, Hospice reserves the right to accept transfer of the assets through its wholly controlled charitable subsidiary, InCare Home Care, LLC.

18. Closing. Unless extended by mutual agreement, and provided that Hospice has furnished Sonoma with a written notice of satisfaction or waiver of all contingencies set forth in the Transfer Agreement, the Closing shall occur within thirty (30) days after the later to occur of:

(a) completion of Hospice's due diligence; and (b) approval of the transaction by Hospice's board of directors. The parties shall attempt in good faith to close the transaction on or before August 31, 2018.

19. Exclusivity. From the date of this LOI until the Closing, unless and until this LOI or the Transfer Agreement is terminated by Hospice, Sonoma shall not directly or indirectly participate in, solicit, encourage, assist, or initiate discussions with, provide information to, or enter into a non-disclosure agreement with, any person or entity relating to a possible asset transfer from or business combination with or affecting Healing at Home, including without limitation a purchase (including in both cases a partial purchase), merger, affiliation, change in directors, change in management, change in ownership, or any other similar arrangement.

20. Costs. The parties shall bear their own legal, accounting, administrative, and other fees and costs in connection with this LOI, the Transfer Agreement, due diligence, and the transactions contemplated by this LOI or the Transfer Agreement.

21. Indemnification. Under the Transfer Agreement, Sonoma shall indemnify and hold Hospice harmless against all damages and losses incurred by Hospice as a result of any breach of Sonoma's representations, warranties, or covenants in the Transfer Agreement, any indebtedness of Sonoma not paid off at or prior to the Closing, any Sonoma transaction expenses not paid off at or prior to the Closing, and any other matters that the parties may agree upon after Hospice completes its due diligence. Likewise, Hospice shall indemnify and hold Sonoma harmless against all damages and losses incurred by Sonoma as a result of any breach of Hospice's representations, warranties, or covenants in the Transfer Agreement, any indebtedness of Hospice and/or Healing at Home first arising after the Closing, any Hospice transaction expenses not paid by Hospice, and any other matters that the parties may agree upon after Sonoma reviews Hospice's draft of the Transfer Agreement.

22. No Assignment. Neither party may assign its rights or duties under this LOI (other than an assignment by Hospice to InCare Home Care, LLC) without the prior written consent of the other party.

23. Governing Law. This LOI shall be governed by and construed under California law.

24. Notices. If to Hospice:

Hospice by the Bay
17 E. Sir Francis Drake Boulevard
Larkspur, CA 94939
Attention: Kitty Whitaker, CEO
email: kwhitaker@hospicebythebay.org

If to Sonoma:

Sonoma Valley Hospital
347 Andrieux Street
Sonoma, CA 95476
Attention: Ms. Kelly Mather, CEO
email: kmather@svh.com

25. Confidentiality. To the extent allowed by applicable law (and subject to Sonoma's obligations under the California Public Records Act, subject to all allowable exceptions), the parties shall (a) abide by the terms of the NDA; and (b) maintain the confidentiality of the terms and conditions of the proposed transaction, this LOI, and the transaction documents; *provided, however*, that any party may disclose the terms hereof to its agents, consultants, attorneys, and advisors as it deems reasonably necessary to complete the transaction described herein or as required by law.

26. Legal Effect.

(a) Hospice and Sonoma acknowledge that the transaction contemplated hereby involves terms and conditions which have not yet been agreed upon and that this LOI is in no way intended to be a complete or definitive statement of all of the terms and conditions of the proposed transaction, but that it contemplates and is subject to the negotiation and execution of the Transfer Agreement. Except as provided in Sections 13, 14, 19, 20, 21, 22, 23, 24 and 25 above, neither Hospice nor Sonoma shall be legally bound in any manner or have any obligation to the other party unless and until the Transfer Agreement has been executed and delivered by all parties. The provisions of Sections 13, 14, 19, 20, 21, 22, 23, 24 and 25 above are intended to be and shall be legally binding on all the parties.

(b) Prior to the execution and delivery of the Transfer Agreement, this LOI constitutes the entire understanding and agreement between the parties with respect to the proposed transaction. This LOI shall not be modified, revised, waived, or voided except by an express written instrument executed by all parties. Upon the full execution and delivery of the Transfer Agreement, this LOI shall automatically terminate.


(c) Notwithstanding any other provisions contained herein, this LOI shall terminate one hundred eighty (180) days after the date this LOI is fully executed if Hospice and Sonoma have not entered into a binding Transfer Agreement.

If the foregoing accurately describes your present intention concerning this transaction, please sign the enclosed counterpart of this LOI and return it to the undersigned on or before June 1, 2018, by 5:00 p.m. Pacific Time.

Thank you for your kind consideration.

Sincerely,

HOSPICE: Hospice by the Bay,
a California nonprofit public benefit corporation

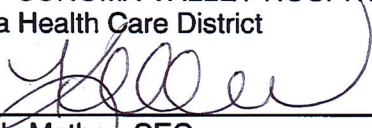
By: 
Kitty Whitaker, CEO

Ms. Kelly Mather, CEO
May 29, 2018
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Accepted and agreed to by Sonoma on June 1, 2018.

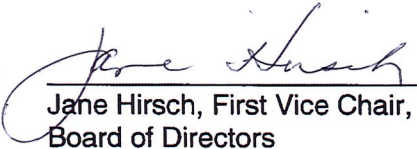
SONOMA: SONOMA VALLEY HOSPITAL,
a California Health Care District

By:



Kelly Mather, CEO

By:



Jane Hirsch, First Vice Chair,
Board of Directors

ASSET TRANSFER AGREEMENT

by and among

**SONOMA VALLEY HEALTH CARE DISTRICT, A POLITICAL SUBDIVISION OF
THE STATE OF CALIFORNIA
(Transferor)**

**HOSPICE BY THE BAY, A CALIFORNIA NONPROFIT CORPORATION
(Transferee)**

August __, 2018

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EXHIBITS

A	Definitions
B	Assets
	Annexes to Exhibit B:
	Annex A(v) Acquired Assets – Assigned Licenses and Certifications
	Annex A(vi) Acquired Assets – Intellectual Property
	Annex A(vii) Acquired Assets – Assigned Contracts
	Annex B(v) Excluded Assets – Contracts
	Annex B(vii) Excluded Assets – Other
C	Liabilities

SCHEDULES

General Schedules

4(b)	Allocations
5	Proration Items
6(f)	Cross-Over Receivables

Transferor's Disclosure Schedules

7(c)	No Conflicts; Consents and Approvals
7(f)	Licenses and Certifications
7(m)	Financial Statements
7(q)	Employee Information
7(s)	Insurance

ASSET TRANSFER AGREEMENT

This Asset Transfer Agreement (this “*Agreement*”) is made and entered into as of August ____, 2018 (the “*Signing Date*”), by and among Hospice By The Bay, a California nonprofit public benefit corporation, or any designated Affiliate (as defined in Exhibit A) (“*Transferee*”), and Sonoma Valley Health Care District, a political subdivision of the State of California (“*Transferor*”). Transferor and Transferee are each also sometimes referred to in this Agreement individually as a “*Party*” and collectively as the “*Parties.*”

R E C I T A L S

WHEREAS, Transferee and certain of its Affiliates (as defined in Exhibit A) are in the business of furnishing home health, hospice, and palliative care services in the State of California;

WHEREAS, Transferor is a health care district and, among other things, is engaged in the business of furnishing home health services by and through a licensed and certified home health agency commonly known as "Healing at Home" and located at 1151 Broadway #101, Sonoma, California 95476 (the “*Acquired Agency*”);

WHEREAS, Transferee and Transferor wish to enter into this Agreement to set forth the definitive terms and conditions upon which Transferee will acquire from Transferor and Transferor will transfer to Transferee the Acquired Agency and Acquired Assets (as defined in Exhibit A).

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements, undertakings, obligations, and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

1. DEFINITIONS. As used in this Agreement, capitalized terms and variations thereof have the meanings ascribed in Exhibit A (unless otherwise specifically defined or the context clearly requires otherwise). Other terms may be defined elsewhere in this Agreement and have the meanings so ascribed.

2. ACQUIRED ASSETS. Upon the terms and subject to the conditions in this Agreement, on the Closing Date, Transferor shall transfer, assign, and deliver to Transferee, free and clear of Liens, and Transferee shall accept, assume, and receive from Transferor, all right, title, and interest in and to the Acquired Assets. Transferor will hold in trust for the benefit of Transferee any Acquired Assets that cannot be transferred on the Closing Date until such time as the transfer is completed to Transferee’s satisfaction.

3. ASSUMED LIABILITIES. Upon the terms and subject to the conditions in this Agreement, Transferee will assume and be obligated to pay, perform, and discharge when due only the Assumed Liabilities as they exist on the Closing Date. Except for the Assumed Liabilities, (a) Transferee will not assume or otherwise be obligated to pay, perform, or discharge any Liabilities of Transferor or the Acquired Agency; and (b) Transferor will be solely

responsible for the timely payment and satisfaction of all Liabilities of Transferor and the Acquired Agency, including, but not limited to, any debt.

4. CLOSING DATE; ALLOCATIONS.

(a) **Closing Date.** Subject to **Section 14**, the satisfaction or waiver of the conditions in **Section 10**, and compliance with the other provisions of this Agreement, the Closing will take place on the Closing Date with the Parties executing the Transaction Documents prior thereto and the same being held in escrow by counsel pending the Parties' release at Closing, following which documents will be transmitted to the respective Parties via email delivery, with an original of the Bill of Sale to be transmitted to Transferee via overnight delivery at its address set forth in **Section 15**. The Closing will be effective for Tax, accounting, and other purposes at the Effective Time.

(b) **Consideration Allocation.** The Assumed Liabilities and other relevant items or adjustments will be allocated among the Acquired Assets in compliance with Applicable Laws and consistent with Accounting Principles. To the extent required for reporting purposes, the Parties agree that the allocation of the relevant items will be agreed upon and set forth on **Schedule 4(b)** prior to the Closing Date, will be controlling for Tax purposes, and will be utilized by each Party in preparing IRS Form 8594, if required.

(c) **Payment of Expenses for Transfer of Acquired Assets.** Each Party will bear its own legal, accounting, administrative, and other fees and costs incurred in connection with the preparation of the Transaction Documents. Transferor will be responsible for and will pay applicable transfer, documentary, sales, use, stamp, recordation, registration, and all other Taxes, filing fees, and expenses associated with the transfer of the Acquired Assets and Acquired Agency as described in this Agreement, including, without limitation, (i) income taxes, if any, assessed against Transferor as a result of such transfer; and (ii) any filing fees or expenses incurred or required due to actions taken before the Closing Date.

(d) **Negotiated Value.** The Parties agree that the consideration given by Transferee to Transferor hereunder reflects the agreed fair market value of the Acquired Assets and the Acquired Agency as a result of arms' length negotiations. The Parties further agree that no consideration or anything else of value given or received under this Agreement or any other agreement between the Parties is or will be paid for the value of any patient referrals (direct or indirect) to or from Transferee, Transferor, or any of their respective Affiliates.

5. PRORATION ITEMS. At least seven (7) days before the Closing Date, Transferor will deliver **Schedule 5** to Transferee setting forth Transferor's best good faith estimate of the Proration Items that will exist as of the Closing Date. At the Closing, Transferee will pay and reimburse Transferor for the Proration Items.

6. INTERIM PERIOD STRUCTURE AND DOCUMENTATION.

(a) **Interim Period Structure.** In order to facilitate a transition of operational and financial responsibility from Transferor to Transferee during the Interim Period in a manner that will ensure the continued operation of the Acquired Agency after the Closing Date in compliance with Applicable Laws, effective as of the Closing Date, Transferor and

Transferee will enter into a management and operations Asset Transfer Agreement (“**MOTA**”) as well as a leaseback of the Acquired Agency, including a sublease of the real property upon which Transferor conducts its home health business, documenting the terms and conditions under which Transferee will manage the Acquired Agency for Transferor during the Interim Period (“**Interim Lease**”).

(b) **Interim Period Collections.** As more particularly described in the MOTA, during each Reconciliation Period, Transferee will collect the Pre-Closing Receivables and Cross-Over Receivables and, subject to Transferee’s prior receipt of true, complete, and correct documentation from Transferor, Transferee will timely file, submit, or obtain all such reports, billings, and documents required to be filed, submitted, or obtained on the Pre-Closing Receivables and Cross-Over Receivables. In so doing, Transferee will not settle, extend, or otherwise materially change the payment terms of the Pre-Closing Receivables without Transferor’s consent, which will not be unreasonably delayed or withheld. Notwithstanding the foregoing, Transferee does not guarantee the collection of the Pre-Closing Receivables or Cross-Over Receivables and will not be obligated to incur any costs or expenses different or in addition to those that reasonably could be expected to be incurred in the ordinary course of business in filing, submitting, and obtaining the reports, billings, and documents of the Acquired Agency for services furnished on and after the Closing Date. Transferee agrees to use diligent collection efforts consistent with its standard business practices to collect the Pre-Closing Receivables and Cross-Over Receivables.

(c) **Interim Period Billings.** As more particularly described in the MOTA, during the Interim Period, in order to facilitate billing and collecting for home health services furnished by the Acquired Agency to Payor Program patients in compliance with Applicable Laws, Transferor will provide to and allow Transferee to use its Medi-Cal Provider Number, Medicare Provider Number, submitter identification numbers, National Provider Identifiers and any other numbers, codes, or passwords necessary to allow Transferee to bill for services rendered at the Acquired Agency from and after the Closing Date. Transferor authorizes Transferee to open mail addressed to Transferor, or the Acquired Agency, and delivered to the offices of the Acquired Agency or otherwise received by Transferee. On a weekly basis, Transferor will deliver to Transferee a copy of all remittance advices for services rendered during the stated period. Based on the remittance advices submitted, once a month, Transferee will prepare and submit to Transferor a settlement statement for payment for services rendered during the stated period. If Transferor has any questions regarding the settlement statement submitted, Transferor will notify Transferee of the same within five (5) days of receipt. As soon as possible thereafter, Transferee and Transferor will meet and confer to resolve any issues regarding the settlement statement in question. Absent any need to meet and confer, Transferor will remit to Transferee the sums due pursuant to the submitted settlement statement within fifteen (15) days of receipt thereof.

(d) **Reconciliation.** As more particularly provided in the MOTA, on the first weekday after the end of each Reconciliation Period, Transferee will perform a reconciliation of the collections on the Pre-Closing Receivables and Cross-Over Receivables and any Payment Adjustments during such Reconciliation Period. The reconciliations under this **Section 6** will be performed on the basis of specific dates of service. Transferee will follow the allocation methodologies and the payment mechanisms described in this **Section 6** and as otherwise

described in the MOTA in performing all the reconciliations. During each Reconciliation Period, Transferee will maintain a Reconciliation Statement. Transferee will have twenty (20) days after the last day of each Reconciliation Period to deliver the Reconciliation Statement to Transferor. Transferor will then have fifteen (15) days after its receipt of the Reconciliation Statement to provide a Dispute Notice, if any, to Transferee.

(e) **Allocation**. As more particularly described in the MOTA, during each Reconciliation Period, whether collections on the Pre-Closing Receivables or other Accounts Receivable are received by Transferee or Transferor, (i) Transferor will be allocated and entitled to collections on the Pre-Closing Receivables and Transferor Cross-Over Receivables, in each case, other than Outlier Reconciliation Payments and net of all Payment Adjustments (regardless whether the Payment Adjustments, without duplication, are attributable to Accounts Receivable collected during such Reconciliation Period or any prior period of Transferor); and (ii) Transferee will be allocated and entitled to collections on Accounts Receivable arising or generated on or after the Closing Date, Transferee Cross-Over Receivables, and Outlier Payments, in each case, without any claim from Transferor. Further, collections on Accounts Receivable that are paid on an episodic basis similar to Medicare Payments will be allocated consistently with the allocation methodologies in the preceding sentence. Further, in addition to any other Payment Adjustments, the Parties agree that: (x) if any documentation (including, without limitation, the practitioner face-to-face documentation) required by Applicable Laws for Medicare reimbursed home health services, relating to Accounts Receivable allocated to Transferor in accordance with this **Section 6**, is not timely received by Transferee, either as part of the Acquired Assets in connection with the Closing or subsequently during the Final Reconciliation Period, then any Payment Adjustments resulting therefrom will be allocated entirely against Transferor in favor of Transferee as part of the reconciliation process under this **Section 6**; and (y) if Transferee receives such documentation in a timely manner but nevertheless fails to submit it, then any Payment Adjustments resulting therefrom will be allocated entirely against Transferee in favor of Transferor as part of the reconciliation process under this **Section 6**.

(f) **Cross-Over Receivables**. Transferor represents and warrants that a true, complete, and correct list of the estimated Cross-Over Receivables as of the close of business not less than three (3) days before the Closing Date (including the patient medical record number, start of care date, discharge date (if known), and estimated reimbursement amount) will be set forth on **Schedule 6(f)**, which Transferor will deliver, or cause to be delivered, to Transferee at least three (3) days before the Closing Date. No later than the fourteenth (14th) day after the Closing Date, Transferor will deliver to Transferee a true, complete, and correct list of the final Cross-Over Receivables as of the close of business on the last weekday before the Closing Date.

(g) **Payment of Proration Items and Pre-Closing Receivables**. As more particularly described in the MOTA, subject to **Section 6(h)**, the amounts owed by one Party to another under **Section 5** and this **Section 6** will be paid within fifteen (15) days following Transferee's delivery of a Reconciliation Statement under **Section 6(c)**; *provided, however*, that Transferee will not be required to pay any amount owed to Transferor unless and until the aggregate amount owed by Transferee to Transferor (taking into account applicable Payment Adjustments) exceeds the amount owed by Transferor to Transferee. If Transferor receives collections on Accounts Receivable to which Transferee is entitled under this **Section 6**,

Transferor will promptly pay over the collections to Transferee without deduction or set-off (after taking into account applicable Payment Adjustments). If Transferee or Transferor has not, for any reason, before the end of each Reconciliation Period been issued a final payment by a Payor Program equal to the full amount of any particular episodic claim, then the reconciliation and payment provisions of this **Section 6** (other than those allocating any applicable Payment Adjustments against Transferor or Transferee and any applicable Outlier Reconciliation Payments to Transferee) will not apply for purposes of such claim.

(h) **Uncollected Pre-Closing Receivables.** As more particularly described in the MOTA, if the final payments on any Pre-Closing Receivables have not been received before the end of the Final Reconciliation Period, such amount will be excluded from the reconciliation process under this **Section 6**. Any Pre-Closing Receivables that remain uncollected at the end of the Final Reconciliation Period will belong to Transferor, who may, in its discretion, elect to assign the same to a collection agency.

(i) **Dispute Resolution.** If Transferor timely delivers a Dispute Notice to Transferee, then the dispute will be resolved in accordance with the dispute resolution procedures set forth in **Section 20**.

7. REPRESENTATIONS AND WARRANTIES BY TRANSFEROR.

To induce Transferee to enter into and perform this Agreement, Transferor represents and warrants to Transferee that the following statements in this **Section 7** are true, complete, and correct on the Signing Date and will be true, complete, and correct on the Closing Date, except as the same may be expressly modified in the due diligence materials delivered by Transferor to Transferee in connection with the Transaction:

(a) **Organization and Good Standing.** Transferor is a political subdivision of the State of California, with all requisite power and authority to own and operate its properties and assets and to carry on its businesses. Transferor is in good standing in the jurisdiction in which it owns or leases real property or conducts business.

(b) **Authorization, Execution and Delivery of Agreement.** Subject to approval pursuant to **Section 10(b)(i)**, Transferor has all requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party. This Agreement has been duly executed and delivered by Transferor on the Signing Date, and the other Transaction Documents will be duly executed and delivered by Transferor on the Closing Date, and each of the Transaction Documents, once approved in accordance with **Section 10(b)(i)**, executed, and delivered, will constitute the valid and binding obligation of Transferor enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, and other similar state or federal debt relief laws in effect from time to time and to general principles of equity.

(c) **No Conflicts; Consents and Approvals.** Subject to the provisions of **Section 10(b)(i)**, the execution and delivery of this Agreement, on the Signing Date, and the other Transaction Documents, on the Closing Date, and the performance by Transferor of its obligations under the Transaction Documents will not violate or conflict with, constitute a

default or breach (either alone or with the giving of notice or the passage of time or both) under, or accelerate or permit the acceleration of the performance required by, any of the terms or provisions of: (i) any Contract; (ii) any judgment, award, order, writ, injunction, arbitration decision, or decree to which Transferor is a party or by which Transferor or any of its properties, assets, or businesses is bound; or (iii) Applicable Laws. Except as set forth on **Schedule 7(c)**, no Consent or filing with or notice to any Governmental Authority, Accreditation Body, or other Person is required for Transferor to enter into and to perform its obligations under this Agreement and the other Transaction Documents.

(d) **Absence of Adverse Changes.** Since June 30, 2017:

(i) Transferor has not sold, leased, or otherwise disposed of, or made any Contract (other than this Agreement) for the transfer, sale, lease, or disposition of, any of the Acquired Assets;

(ii) There has been no increase in the compensation payable to any employees or independent contractors of Transferor, except in the ordinary course of business and consistent with past practices;

(iii) There has been no threatened employee strike, work stoppage, or labor dispute involving Transferor and the Acquired Agency;

(iv) There has been no change in Transferor's accounting methods or practices with respect to the Acquired Agency; and

(v) There has not been a Material Adverse Effect.

(e) **Title to Assets.** Transferor has good and marketable title in and to the Equipment and all of its other properties and assets comprising the Acquired Assets, in all cases, free and clear of Liens. Transferor will convey good and marketable title in and to the Equipment and all of its other properties and assets comprising the Acquired Assets, in all cases, free and clear of Liens, on the Closing Date. There are no material assets, properties, rights, or written or unwritten contracts, agreements, commitments, leases, or mortgages that are necessary to the ongoing operations of the Acquired Agency following the Closing that will not be included in the Acquired Assets delivered to Transferee at the Closing.

(f) **Licenses and Certifications.** All Licenses and Certifications have been obtained by Transferor to operate the Acquired Agency, are in good standing, and are listed on **Schedule 7(f)**. There is no pending or, to the Knowledge of Transferor, threatened action by any Governmental Authority, Accreditation Body, or other Person to take adverse action relating to any of the Licenses and Certifications.

(g) **Assets Necessary to Conduct Business; Working Operating Condition.** The Acquired Assets constitute all the tangible and intangible rights, assets, and properties necessary to conduct the business and operations of the Acquired Agency as conducted during the periods covered by the Financial Statements. The Equipment will be transferred to Transferee, free and clear of liens or encumbrances, but otherwise "as-is" without warranty.

(h) **Assigned Licenses and Certifications.** **Annex A(v)** attached to **Exhibit B** sets forth a true, complete, and correct list of the Assigned Licenses and Certifications held by Transferor for the operation of the Acquired Agency that are assignable or otherwise transferable (whether or not any Consent is necessary) to Transferee under Applicable Laws. **Annex A(v)** to **Exhibit B** also sets forth any Licenses and Certifications held by Transferor that are not assignable or otherwise transferable (whether or not any Consent is necessary) to Transferee in the Transaction.

(i) **Third-Party Reimbursements.** Transferor has always been in material compliance with (i) all applicable provider participation and other requirements under Applicable Laws to operate the Acquired Agency as a CDPH licensed and Medicare certified home health agency; and (ii) Applicable Laws relating to payment or reimbursement under Payor Programs and requirements of Accreditation Bodies. With respect to the operation of the Acquired Agency, other than routine overpayments in the ordinary course of business, Transferor has never received payment or reimbursement from any Payor Program materially in excess of the amounts allowed by Applicable Laws.

(j) **Contracts; Consents to Assignment.** True, complete, and correct copies of the original copies of the Contracts have been delivered to Transferee. Each of the Contracts is a valid and binding agreement of Transferor. Neither Transferor nor, to Transferor's Knowledge, any other party to any of the Contracts is in default under the terms of a Contract to which they are a party, nor has any event occurred that (with the passage of time or the giving of notice or both) would constitute a default by Transferor or, to Transferor's Knowledge, the other party. Transferor has no material written or unwritten contracts, agreements, commitments, leases, or mortgages other than the Contracts.

(k) **Conformity with Law and Accreditation Standards.** Transferor has not materially violated, and Transferor has always been in material compliance with, Applicable Laws and the requirements of Accreditation Bodies. Transferor has not received any written or unwritten notice or other communication to the effect that, or otherwise been advised that, Transferor has not been in material compliance with Applicable Laws and the requirements of Accreditation Bodies. To Transferor's Knowledge, Transferor is not and has never been under investigation for material violation of, or failure to materially comply with, Applicable Laws.

(l) **Timely Filing.** Transferor has, in all material respects, timely filed, submitted, or obtained in the ordinary course of business all reports, billings, and documents required to be filed, submitted, or obtained for home health services furnished by it before the Closing Date under any Payor Programs. In connection with its operation of the Acquired Agency, Transferor has never furnished any services, which are paid or reimbursed by a Payor Program, other than CDPH licensed and Medicare and Medicaid certified home health services. All the reports, billings, and documents that have been filed, submitted, or obtained by Transferor were materially true, complete, and correct when filed, submitted, or obtained. With respect to reports, billings, and documents not yet due by the Closing Date for home health services furnished before the Closing Date, Transferor and the Acquired Agency possess or, to the extent not reasonably available before the Closing, will possess, materially true, complete, and correct notes, records, and other documents and information necessary for Transferee and

Transferor to timely file and receive reimbursement on those reports, billings, and documents on and after the Closing Date, all of which will be included in the Acquired Assets.

(m) **Financial Statements.** The Financial Statements are attached as **Schedule 7(m).** The Financial Statements accurately reflect and fairly present in accordance with the Accounting Principles the financial condition and results of operations of Transferor with respect to the Acquired Agency and the Acquired Assets as of the dates and for the periods indicated in the Financial Statements in accordance with the Accounting Principles and Applicable Laws. The Financial Statements make full provision for all established, deferred, and contingent Liabilities of Transferor with respect to the Acquired Agency.

(n) **Undisclosed Liabilities.** Transferor has no Liabilities with respect to the Acquired Agency that are of a type or nature required to be disclosed in the Financial Statements, except for (i) Liabilities reflected and fully reserved against in the Financial Statements, and (ii) Liabilities incurred in the ordinary course of business since the date of the most recent balance sheet of Transferor and disclosed in the Financial Statements that are individually or in the aggregate greater than Five Thousand Dollars (\$5,000.00) or otherwise material to Transferor or Transferee.

(o) **Litigation.** To Transferor's Knowledge, there is no action, suit, claim, inquiry, qui tam action, appeal, arbitration, proceeding, or investigation (whether or not purportedly on behalf of or against Transferor) filed, pending, or threatened against or affecting the Acquired Assets or the Acquired Agency by or before any Governmental Authority or any Accreditation Body or relating in any way to a violation or threatened violation of Applicable Laws or requirements of Accreditation Bodies, or that if resolved in a manner adverse to the Acquired Agency, would (or reasonably could be expected to): (i) result in the imposition of penalties, fines, sanctions, or other Damages; (ii) restrict the ability of the Acquired Agency to conduct its business following the Closing Date as currently conducted; (iii) exclude Transferor, or the Acquired Agency from licensure by CDPH, participation in any Federal Health Care Program, or accreditation by any Accreditation Body; or (iv) result in a Material Adverse Effect. The Acquired Agency is not bound by or subject to any judgment, award, order, writ, injunction, arbitration decision, or decree.

(p) **Taxes.** Any and all Taxes due in connection with the operation of the Acquired Agency have been paid by Transferor, or will be timely paid by Transferor, in accordance with Applicable Laws. Any and all Taxes that Transferor is required by Applicable Laws to withhold or to collect have been duly withheld and collected and have been paid over to the applicable Governmental Authority or segregated and set aside for such payment and, if so segregated and set aside, will be timely paid by Transferor as required by Applicable Laws. Neither the IRS nor any other Governmental Authority has asserted or threatened to assert against Transferor, the Acquired Agency, or the Acquired Assets any deficiency or claim for additional Taxes. No Tax is required to be withheld pursuant to Section 1445 of the Code as a result of the transfer of the Acquired Agency or Acquired Assets or the Transaction.

(q) **Employee Information.**

(i) **Schedule 7(q)** is a true, complete, and correct list of the following information for each employee of the Acquired Agency, including each employee on leave of absence or layoff status as of the Closing Date: name; job title; current compensation paid or payable (including any bonuses); and service credited for purposes of vesting and eligibility to participate under Transferor's pension, retirement, profit-sharing, thrift-savings, deferred compensation, stock bonus, stock option, cash bonus, employee stock ownership (including investment credit or payroll stock ownership), severance pay, insurance, medical, welfare, vacation plan, or the like. There is no accrued severance pay Liability, whether current, accrued, or deferred applicable to any employee of the Acquired Agency.

(ii) To Transferor's Knowledge, no employee of the Acquired Agency is a party to, or is otherwise bound by, any agreement or arrangement, including, without limitation, any non-disclosure, non-competition, non-solicitation, or proprietary rights agreement, between such employee and any other Person that in any way adversely affects or will adversely affect the performance of his or her, as the case may be, duties as an employee of the Acquired Agency.

(r) **Brokers and Finders.** Transferor has not engaged an investment banker, broker, or finder in connection with the Transaction.

(s) **Insurance.** **Schedule 7(s)** lists the Transferor Insurance Policies and their coverage amounts and describes whether the Transferor Insurance Policies are "occurrence" or "claims made" policies. After giving effect to the Tail Insurance Policy, and assuming such coverage provides at least the same coverage that Transferor had in effect immediately before the Closing Date, the Acquired Agency will have in effect insurance policies in such amounts, with such deductibles, on such terms and covering such risks and with commercially reasonable coverage as compared to Persons operating similar businesses to the Acquired Agency in the State of California, and Transferor is in compliance with all the terms thereof. There is no claim pending that has been denied or rejected by any insurer under the Transferor Insurance Policies and there is no loss, claim, or incident covered by any Transferor Insurance Policies that has not yet been reported to the applicable insurer. Transferor has not received any written notice or other written communication from an insurer under any Transferor Insurance Policies disclaiming coverage or reserving rights with respect to any claim or repudiating any provision of any Transferor Insurance Policies. As of Closing, Transferor will have delivered to Transferee a certificate of insurance (or other documentation satisfactory to Transferee) evidencing that (i) Transferor maintains, in effect as of the Closing Date, the Transferor Insurance Policies and Tail Insurance Policy; and (ii) the Transferor Insurance Policies and Tail Insurance Policy list Transferee and its Affiliates as an additional insured.

(t) **Workers' Compensation.** There is no pending or, to Transferor's Knowledge, threatened workers' compensation claim or claim for on-the-job injuries, including, without limitation, those relating to any termination of employment and any wages and benefits or other Liabilities. Transferor will remain liable for all pre-Closing workers' compensation claims.

8. REPRESENTATIONS AND WARRANTIES BY TRANSFEEE. To induce Transferor to enter into and perform this Agreement, Transferee represents and warrants to

Transferor that the following statements in this **Section 8** are true, complete, and correct on the Signing Date and will be true, complete, and correct on the Closing Date:

(a) **Organization and Good Standing.** Transferee is a California nonprofit public benefit corporation, duly formed, validly existing, and in good standing under the laws of the State of California, with all requisite power and authority to own and operate its properties and assets and to carry on its businesses.

(b) **Authorization, Execution and Delivery of Agreement.** Subject to approval pursuant to **Section 10(a)(i)**, Transferee has all requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party. This Agreement has been duly executed and delivered by Transferee on the Signing Date and the other Transaction Documents will be duly executed and delivered by Transferee on the Closing Date, and each of the Transaction Documents, once approved, executed and delivered, will constitute the valid and binding obligation of Transferee enforceable against Transferee in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, and other similar state or federal debt relief Applicable Laws in effect from time to time and to general principles of equity.

9. PRE-CLOSING COVENANTS.

(a) **Transferor Operation of Business Before the Closing.** From the Signing Date until the earlier of (x) the Closing; and (y) the termination of this Agreement in accordance with **Section 14**, in either case, except to the extent consented to in writing in advance by Transferee, Transferor will:

(i) Conduct its home health business only in the ordinary course of business and in a prudent and businesslike manner in compliance with Applicable Laws and requirements of Accreditation Bodies, and will continue to care for its patients in accordance with all provider participation and other requirements under Applicable Laws to operate as an CDPH licensed and Medicare certified home health agency.

(ii) Pay or otherwise satisfy in the ordinary course of business all of its Liabilities with respect to the Acquired Agency as they become due.

(iii) Not: (A) liquidate or dissolve; (B) merge, reorganize, or consolidate with or into any other Person; (C) make any assignment for the benefit of creditors or petition for or otherwise seek relief under any bankruptcy or insolvency law; or (D) agree to do any of the foregoing.

(iv) Other than in the ordinary course of its home health business, not: (A) modify or amend any Contract; (B) waive or delay enforcement of any breach or default under any Contract; (C) cancel or terminate any Contract; or (D) enter into any new written or unwritten Contract without first obtaining the consent of Transferee, which consent (or refusal to consent) will not be unreasonably delayed, but which may be withheld in Transferee's sole discretion.

(v) Not: (A) cause or suffer any of the Acquired Assets to be encumbered by a Lien; or (B) sell, exchange, or otherwise dispose of any of the Acquired Assets (other than disposition of supplies or disposition or replacement of Equipment in the ordinary course of business).

(vi) Use reasonable efforts to maintain the staff (including, without limitation, administrators and the requisite number of licensed health professionals) required to operate the Acquired Agency in the ordinary course of business and in compliance with Applicable Laws and the requirements of Accreditation Bodies.

(vii) Maintain all Licenses and Certifications.

(viii) Use commercially reasonable efforts to: (A) preserve intact the Acquired Assets; (B) maintain and preserve the goodwill of patients, referral sources, and others with whom Transferor deals; and (C) market Transferor's home health services consistent with past practices.

(ix) Materially comply with, conform to, and obey Applicable Laws.

(x) Maintain in effect the Transferor Insurance Policies.

(xi) Deliver Transferor's monthly Financial Statements (cost center income statement and balance sheet at month end) and patient census reports to Transferee upon request.

(xii) Use commercially reasonable efforts to: (A) assist Transferee in obtaining, as soon as reasonably practicable after the Signing Date, all necessary Consents of Governmental Authorities, Accreditation Bodies, and other Persons; (B) cause to be fulfilled and satisfied all the other conditions to the Closing to be fulfilled and satisfied by Transferor on or before the Closing Date; (C) take the steps and do the acts that are necessary to make all of Transferor's representations and warranties in this Agreement and the other Transaction Documents true, complete, and correct as of the Closing Date with the same effect as if the same had been made, and this Agreement dated, as of the Closing Date; and (D) not take any action, or suffer any omission that, if done as of the Closing Date, would result or reasonably could be foreseen to result in the representations and warranties contained in this Agreement or the other Transaction Documents becoming inaccurate or breached or would otherwise be inconsistent with the obligations under this Agreement or the other Transaction Documents.

(xiii) Not directly or indirectly through any representatives or agents solicit or engage in discussions or negotiations with, or provide any non-public information to or otherwise cooperate with, any other Person that seeks to, or expresses an interest in, acquiring all or any of the Acquired Agency, or the Acquired Assets, nor, directly or indirectly, enter into any agreement with or grant any option to any third-party in connection with a transaction inconsistent with the Transaction.

(xiv) Notify Transferee of, and not waive, release, assign, settle, or compromise, any claim or litigation involving amount in excess of Five Thousand Dollars (\$5,000).

(xv) Not take any action, or suffer any omission that, if done as of the Closing Date, would result in or reasonably could be foreseen to result in a Material Adverse Effect or would otherwise be inconsistent with the Transaction.

(xvi) Not authorize or enter into any formal or informal Contract to do any of the foregoing.

(xvii) Not permit or cause any of its Affiliates to do any of the foregoing or agree or commit to do any of the foregoing.

(b) **Cooperation.** Transferor will cooperate with Transferee from and after the Signing Date in filing all necessary documents with CDPH, CMS, the California Department of Health Care Services, and such other Governmental Authorities as necessary to reflect the change in ownership of the Acquired Assets and the issuance of the CDPH License.

(c) **Transferee Access to Information.** Prior to the Signing Date, Transferor has provided to Transferee and Transferee has reviewed certain due diligence documents material to the ownership and operation of the Acquired Agency and the Acquired Assets. From the Signing Date until the earlier of (x) the Closing or (y) the termination of this Agreement in accordance with Section 14, subject to HIPAA and other Applicable Laws, and in a manner that is reasonably designed to maintain the confidentiality of the transaction contemplated in this Agreement, and otherwise in strict compliance with that certain Confidentiality and Nondisclosure Agreement between the Parties dated January 10, 2018 (the “*Confidentiality Agreement*”), Transferor will continue to permit Transferee, its Affiliates, and the Transferee Representatives reasonable access during reasonable hours to all properties, books, accounts, records, Contracts, and documents of Transferor of and concerning the Acquired Agency and the Acquired Assets, including, without limitation, its financial and clinical data. In addition to those due diligence materials delivered by Transferor or otherwise made available to Transferee as of or prior to the Signing Date, Transferor expressly covenants and agrees that, to the extent additional due diligence items with respect to the Acquired Agency are discovered by, or otherwise become available to, Transferor (or Transferor becomes aware of any changes to the due diligence items previously provided to Transferee) or Transferee requests any additional due diligence items, Transferor shall promptly deliver or otherwise make such due diligence items available to Transferee or Transferee’s Representatives. In addition, subject to HIPAA and other Applicable Laws, Transferor will furnish to Transferee copies of the Contracts and will permit Transferee to review the original written reports of all Governmental Authorities and Accreditation Bodies, including, without limitation, state licensure, Payor Program, and Accreditation Body survey reports.

(d) **Lease.** If requested by Transferee, Transferor, without incurring any out-of-pocket costs, will cooperate and assist in Transferee's negotiations with the landlord of a lease of the premises located at 1151 Broadway #101, Sonoma, California.

(e) **Pre-Employment Screening and Planning.** Beginning after the Signing Date in anticipation of the Closing, Transferee or its Affiliates may conduct background checks and other pre-employment screening and planning in the ordinary course of business for any of Transferor’s employees who Transferee considers employing beginning on the Closing Date.

10. CONDITIONS PRECEDENT TO CLOSING.

(a) **Conditions Precedent to Closing for Transferee.** The obligations of Transferee to effect the Closing under this Agreement are subject to the satisfaction and fulfillment of the following conditions, any one (1) or more of which, except **Section 10(a)(i)**, may be waived, in whole or in part, by Transferee in writing:

(i) **Governing Board Approval.** Transferee's board of directors (the "*Hospice Board*") shall have approved the Transaction Documents and the consummation of the Transaction taking into account its charitable status.

(ii) **Accuracy of Representations and Warranties.** Transferor's representations and warranties in this Agreement will have been accurate as of the Signing Date, and will be accurate as of the Closing Date as if made on the Closing Date, without giving effect to any supplement to the Transferor Disclosure Schedules; *provided, however*, that any supplement to the Transferor Disclosure Schedules is deemed acceptable by Transferee, in its sole discretion.

(iii) **Pre-Closing Schedules.** At least three (3) days before the Closing Date, Transferor will have delivered to Transferee updated **Schedule 4(b)**, **Schedule 5**, and **Schedule 6(f)**, in each case, which is deemed acceptable by Transferee, in its reasonable discretion.

(iv) **Performance.** Transferor will have performed and complied with all the covenants, agreements, and obligations required to be performed or with which it must comply before or on the Closing Date under this Agreement or any of the other Transaction Documents.

(v) **Absence of Litigation.** There will have been no action, suit, claim, inquiry, qui tam action, appeal, arbitration, proceeding, or investigation (whether or not purportedly on behalf of or against Transferor) filed, pending, or threatened against or affecting the Acquired Assets or the Acquired Agency by or before any Governmental Authority.

(vi) **No Contracts.** Except in the ordinary course of business or as approved by Transferee, Transferor will not have entered into any Contract with any Person between the Signing Date and Closing Date.

(vii) **Deliveries.** At or before the Closing, Transferor will have delivered, or caused to be delivered, to Transferee the Transaction Documents other than this Agreement, duly executed by Transferor, as applicable.

(viii) **Absence of Investigations.** There will not have been any survey, inspection, audit, review, investigation, or comparable action taken related to the Acquired Agency by any Governmental Authority or its representative, including, without limitation, a Governmental Authority's administrative contractor, or by any Accreditation Body that reasonably could be expected to result in a Material Adverse Effect.

(ix) **Supervening Laws**. After the Signing Date, no (A) Governmental Authority or its representative will have passed, issued, or promulgated Applicable Laws, including, without limitation, any standards of existing Applicable Laws; or (B) court of competent jurisdiction will have rendered any decision or issued any other pronouncement, in either case, that reasonably would be expected to result in a Material Adverse Effect.

(x) **Lease**. Transferor will have in effect a valid lease, reasonably acceptable to Transferee, of the premises upon which the Acquired Agency operates that complies with all Applicable Laws (the "*Lease*").

(xi) **Transferor Insurance Policies**. Transferor will have in effect at least the same professional liability coverage as it had in effect on the Signing Date, and Transferor will be in compliance with the terms thereof. Transferor will have delivered a certificate of insurance (or other documentation satisfactory to Transferee) that Transferor maintains, in effect as of the Closing Date, the Transferor Insurance Policies, and that the Transferor Insurance Policies name Transferee and its Affiliates as an additional insured.

(xvi) **Consents**. Transferor will have obtained all Consents and submitted all filings with and notices to any Governmental Authority, Accreditation Body, or other Person that are required for Transferor to enter into and to perform its obligations under this Agreement and the other Transaction Documents, including, without limitation, the Consents set forth on **Schedule 7(c)**.

(b) **Conditions Precedent to Closing for Transferor**. The obligations of Transferor to effect the Closing under this Agreement are subject to the satisfaction and fulfillment of the following conditions, any one (1) or more of which, except **Section 10(b)(i)**, may be waived, in whole or in part, by Transferor in writing:

(i) **Governing Board Approval**. Transferor's governing board shall have approved the Transaction Documents and the consummation of the Transaction in a public session.

(ii) **Accuracy of Representations and Warranties**. Transferee's representations and warranties will have been accurate as of the Signing Date, and will be accurate as of the Closing Date as if made on the Closing Date.

(ii) **Performance**. Transferee will have performed and complied with the covenants, agreements, and obligations required or with which it must comply before or on the Closing Date under this Agreement or any of the other Transaction Documents.

(iii) **Absence of Litigation**. There will have been no filed, pending, or threatened suit, action, or proceeding before any Governmental Authority relating to the Transaction.

(iv) **Deliveries**. At or before the Closing, Transferee will have delivered, or caused to be delivered, to Transferor the Transaction Documents, other than this Agreement, duly executed by Transferee.

(c) **Exhibits and Schedules.** Notwithstanding anything herein to the contrary, Transferee and Transferor agree that Transferor will complete and deliver to Transferee, for Transferee's review and approval, all Schedules and Exhibits on or before the Closing Date. If and to the extent Transferee does not approve any such Schedule or Exhibit, Transferee shall have the right to terminate this Agreement in accordance with **Section 14(a)(iv)**.

11. POST-CLOSING COVENANTS OF TRANSFEROR.

(a) **Post-Closing Assistance.** Beginning with the Closing Date, Transferor will endeavor in good faith to ensure that a positive message is conveyed to the community about Transferee's acquisition of the Acquired Agency, and, subject to the terms of the MOTAs, will in good faith diligently assist Transferee in the transitional operations of the Acquired Agency, as reasonably requested by Transferee from time to time. In furtherance, but not in limitation, of the foregoing, Transferor will help facilitate: (i) the engagement of the current Director of Patient Care Services of the Acquired Agency by Transferee to continue to fulfill the role of Director of Patient Care Services under the Interim Licensed Services Agreement until the end of the Interim Period and thereafter on a full-time basis under an employment agreement to be entered into with Transferee upon mutually acceptable terms (to expressly include standard benefits offered by Transferee to its employees and a salary that Transferee deems competitive, in its discretion); and (ii) the engagement of the current Administrator of the Acquired Agency by Transferee to continue to fulfill the role of Administrator under the Interim Licensed Services Agreement until the end of the Interim Period and thereafter on a full-time basis under an employment agreement to be entered into with Transferee upon mutually acceptable terms (to expressly include standard benefits offered by Transferee to its employees and a salary that Transferee deems competitive, in its discretion), subject to the requirements of CDPH and Applicable Laws. Transferor acknowledges that the provision of this support and these services to accommodate Transferee in connection with the efficient and orderly transfer of responsibilities involved in the day-to-day operations of Transferor and the Acquired Agency is required to enable Transferee to realize the full value of the Transaction.

(b) Use of Names and Marks; Website.

(i) Transferor shall not make any change to the name of the Acquired Agency until after the expiration of the Interim Period. Promptly (but, in any event, no later than fifteen (15) days) after the end of the Interim Period, Transferor and its Affiliates will (i) cease use of the name "Healing at Home" and any derivative thereof; and (ii) execute and file all the instruments, agreements, and documents with the applicable Governmental Authorities in the State of California and elsewhere, if applicable, as necessary or appropriate for Transferor, and its Affiliates, to abandon all uses of the name "Healing at Home" and any derivative thereof.

(ii) Promptly (but, in any event, no later than seven (7) days) after the Closing Date, Transferor will take whatever steps are necessary or appropriate to grant Transferee access to and ownership of its website domain concerning the Acquired Agency, if any.

(c) **Payroll and Accounts Payable; Closing Date PTO.** Following the Closing, Transferor will pay its payroll and trade, account, and other payables, if any, in the

ordinary course of business. Transferor will pay in full the Closing Date PTO of Transferor's employees at the Acquired Agency due under Transferor's termination policies and procedures to all employees of Transferor as of the Closing Date.

(d) **Transferor's Employees.** Subject to compliance with Applicable Laws, Transferor agrees that if an employee of Transferor performing services for the Acquired Agency is not offered or does not accept Transferee's offer of employment, Transferor either will immediately (i) terminate the employee effective no later than the Closing Date or (ii) transfer the employee to a position within Transferor that is not part of the Acquired Agency.

(e) **Cost Reports.** With respect to the Acquired Agency and in accordance with Applicable Laws: (i) Transferor will file with the applicable Governmental Authority its final Medicare cost reports; (ii) Transferor will afford Transferee a reasonable opportunity to review Transferor's final Medicare cost reports before filing; and (iii) Transferor will promptly (but, in any event, no later than seven (7) days after issuance by the Governmental Authority) notify Transferee of any final reports relating to Transferor's final Medicare cost reports.

(f) **Open Cost Reports – Appeals.** Transferee will be entitled, at its sole cost and expense, to appeal in Transferor's name and on Transferor's behalf (i) any open cost report that adversely affected, or could adversely affect, the rate paid by Medicare relating to the home health services furnished by the Acquired Agency; or (ii) any denial of a requested extension of time to file any of Transferor's final Medicare cost reports.

(g) **Tail Insurance Policy.** For no less than three (3) years following the Closing Date, Transferor will at all times maintain in effect the Tail Insurance Policy. The total premium cost of the Tail Insurance Policy will be paid by Transferor before the Closing Date. If the Tail Insurance Policy is terminated or canceled during such three (3)-year period, Transferor will immediately cause a replacement policy with substantially the same terms to be obtained for the remainder of the period, and will promptly notify Transferee of the termination or cancellation and issuance of the replacement policy.

(h) **COBRA.** After the Closing, Transferor covenants and agrees, with respect to its employees who, with respect to the Transaction, are M&A Qualified Beneficiaries pursuant to Treasury Regulation Section 54.4980B-9, Q&A-4(a), and otherwise eligible for such coverage, to offer any required continuation coverage under COBRA in accordance with COBRA and other Applicable Laws.

(i) **Capitated Contracts.** After the Closing, Transferor covenants and agrees to negotiate timely and in good faith with Transferee the terms of an agreement whereby Transferee will provide home health services on behalf of Transferor pursuant to its capitated patient contracts.

12. HIRING OF TRANSFEROR'S EMPLOYEES. Except as otherwise provided in **Section 11(a)**, Transferee will consider offering employment to all qualified employees of the Acquired Agency, as determined in Transferee's discretion following due diligence, including, without limitation, the review of the employees' personnel files and performance of background checks. Before the Closing Date, Transferee will identify to Transferor all the employees that

Transferee will not employ. All employees offered employment by Transferee will be offered employment at salaries deemed competitive by Transferee, in its discretion, and will receive past service credit toward their employment with Transferee for vacation and benefit vesting purposes. Transferee will offer its standard benefits to all employees to whom it offers employment. The Parties will meet and confer in good faith as necessary to accomplish a smooth transition of employee benefits. Transferee and Transferor agree that this **Section 12** is for the sole benefit of Transferee and Transferor, and that nothing in this Agreement creates a third-party beneficiary or other right (a) in any other Person, including, without limitation, any employees of Transferor or the Acquired Agency; or (b) to continued employment with Transferee, Transferor, the Acquired Agency, or any of their respective Affiliates.

13. INDEMNIFICATION.

(a) **Survival.** The representations and warranties made by each Party or its Affiliates under this Agreement or any of the Transaction Documents or in connection with the Transaction will survive the Closing until the later to occur of (i) six (6) months after the Closing Date or (ii) the expiration of the Interim Period. The covenants, agreements, and obligations of each Party or its Affiliates under this Agreement or any of the Transaction Documents or in connection with the Transaction, will survive the Closing and be performable in accordance with their respective terms. Notwithstanding anything to the contrary in this **Section 13**, any Claim made before the expiration of any representation, warranty, covenant, or agreement under this **Section 13(a)**, and associated rights to indemnification, will survive until the final determination of the Claim.

(b) **Indemnification.** Each Indemnifying Party will defend, indemnify, and hold Indemnified Parties harmless from and against, and will pay and reimburse for, the Damages incurred by Indemnified Parties, arising out of or resulting from: (i) any inaccuracy in or breach of any representation or warranty of Indemnifying Party; (ii) any breach, non-fulfillment, or failure of an Indemnifying Party to timely pay, perform, or discharge, in any case, any of the covenants, obligations, or other agreements of an Indemnifying Party; (iii) with respect to Transferor, any Liability of Transferor or any Damages whatsoever arising with respect to the Acquired Agency from (A) any action or inaction of any Transferor, or any of its Affiliates before the Closing Date; (B) any event occurring or circumstance existing at or involving Transferor, or any of its Affiliates before the Closing Date; or (C) Transferor Exclusions; or (iv) with respect to Transferee, any Liability of Transferee or any Damages whatsoever arising with respect to the Acquired Agency from any action or inaction of Transferee, or any of its Affiliates, from and after the Closing Date.

(c) **Claims.** To assert a Claim, an Indemnified Party must give the Indemnifying Party from whom indemnification is sought a Claim Notice; *provided, however*, that failure to give a Claim Notice will not excuse the Indemnifying Party from any obligations under the Transaction Documents, except to the extent the Indemnifying Party is actually and materially prejudiced by the failure to have been given a Claim Notice.

(d) **Procedures for Payment.** Upon the earlier of (i) agreement with Indemnifying Party, or (ii) except as provided in **Section 13(f)**, a final, non-appealable determination, in either case, of the Damages sought in a Claim Notice, Indemnifying Party will

pay the Indemnified Party the amount so determined within thirty (30) days after the date of the Claim Notice. If there is a dispute as to the amount or manner of determination of any indemnification obligations under the Transaction Documents, Indemnifying Party will nevertheless pay when due the portion, if any, of the obligations that is not disputed, and the Indemnified Party will be free to pursue any additional remedy available to collect the remaining obligations.

(e) **Third-Party Claims.** Except as provided in **Section 13(f)**, if a third party notifies or Transferee otherwise becomes aware of a Third Party Claim for which Transferor is, or may be, obligated to indemnify Transferee or another Indemnified Party, then: (A) Transferee will be entitled to assume the defense of any claim, suit, action, investigation, proceeding, or other activity or matter arising out of or resulting from such Claim or Damages, and thereafter Transferor will cooperate with Transferee in good faith in such defense; and (B) without Transferee's prior written consent, neither Transferor, nor any other Indemnifying Party will admit liability or compromise or settle with respect to such Claim or Damages. If a third party notifies or Transferor otherwise becomes aware of a Third Party Claim for which Transferee is, or may be, obligated to indemnify Transferor or another Indemnified Party, then: (A) Transferor will be entitled to assume the defense of any claim, suit, action, investigation, proceeding, or other activity or matter arising out of or resulting from such Claim or Damages, and thereafter Transferee will cooperate with Transferor in good faith in such defense; and (B) without Transferor's prior written consent, neither Transferee, nor any other Indemnifying Party, will admit liability or compromise or settle with respect to such Claim or Damages.

(f) **Transferor Receivables Adjustment Claims.** Notwithstanding **Section 13(d)**, **Section 13(e)**, or any other provision of this **Section 13**, upon Transferor's receipt of a Claim Notice reflecting a Transferor Receivables Adjustment Claim from Transferee, Transferor will pay Transferee the full amount of such Transferor Receivables Adjustment Claim within thirty (30) days after the date of the Claim Notice, provided that Transferee furnishes to Transferor, as an attachment or enclosure to the Claim Notice, supporting documentation relating to the Transferor Receivables Adjustment Claim, which may include, without limitation, a copy of any correspondence or transmittal received by Transferee from the applicable Payor Program or Governmental Authority notifying Transferee of, or a copy of the electronic check file reflecting, the Damages giving rise to the Transferor Receivables Adjustment Claim. Upon Transferor's payment of the full amount of such Transferor Receivables Adjustment Claim, Transferor will prepare such Appeal Documentation as it reasonably determines to be appropriate for the appeal of the Transferor Receivables Adjustment Claim to the applicable Payor Program or Governmental Authority. Such Appeal Documentation will be materially accurate, will be prepared in accordance with all Applicable Laws and in a manner that fully complies with HIPAA, and otherwise will be reasonable and appropriate for submission to the applicable Payor Program or Governmental Authority. Transferor will provide such Appeal Documentation to Transferee for review at least fifteen (15) days prior to the expiration of the applicable deadline for appeal. Transferor thereafter will submit the Appeal Documentation to the applicable Payor Program or Governmental Authority and will provide Transferee with a copy of such submission. In preparing the Appeal Documentation, Transferor may engage counsel of its own choosing, and Transferee will cooperate in good faith with Transferor in the preparation of such Appeal Documentation, as appropriate or necessary (with Transferor being

responsible for all costs and expenses of the preparation of the Appeal Documentation, including reasonable fees and expenses of counsel and expert witnesses).

Neither Transferor nor any of its Affiliates or representatives will, without the prior written consent of Transferee, enter into any compromise, settlement, or admission of liability, or take any other action, that: (A) would lead to liability or create any financial or other obligation on the part of Transferee, any of its Affiliates, or the Acquired Agency; (B) involves any limitation or restriction on any future activities of Transferee, any of its Affiliates, or the Acquired Agency; (C) involves an injunction or other equitable or non-monetary relief or civil, administrative, or other enforcement action; or (D) adversely affects Transferee, any of its Affiliates, or the Acquired Agency's licensure, enrollment, certification, or participation in or with any Payor Program or Governmental Authority.

Transferor will be entitled to any recovery resulting from the submission of Appeal Documentation under this **Section 13(f)** up to the amount of the Transferor Receivables Adjustment Claim, but only if it has timely paid Transferee the full amount of such Transferor Receivables Adjustment Claim in accordance with the first sentence of this **Section 13(f)**.

14. TERMINATION.

(a) **Events of Termination.** Before the Closing, this Agreement may be terminated and the Transaction abandoned:

(i) By the mutual written consent of the Parties;

(ii) By Transferee, by delivery of notice of termination to Transferor, if there is any inaccuracy in or breach of any of Transferor's representations and warranties in this Agreement or failure to comply with any of the covenants, agreements, or obligations in this Agreement to be complied with or performed by Transferor before or at the Closing;

(iii) By Transferor, by delivery of notice of termination to Transferee, if there is any inaccuracy in or breach of any of Transferee's representations and warranties in this Agreement or failure to comply with any of the covenants, agreements, or obligations in this Agreement to be complied with or performed by Transferee before or at the Closing;

(iv) By Transferee, by delivery of notice of termination to Transferor if any of the conditions in **Section 10** has not been satisfied or if any such condition becomes impossible (other than through the failure of Transferee to comply with its obligations under this Agreement) to satisfy (other than conditions waived in writing by Transferee); or

(v) By Transferor, by delivery of notice of termination to Transferee if any of the conditions in **Section 10** has not been satisfied or if any such condition becomes impossible (other than through the failure of Transferor to comply with its obligations under this Agreement) to satisfy (other than conditions waived in writing by Transferor).

(b) **Payments Upon Termination.** Upon termination of this Agreement under this **Section 14**, each Party will pay the fees and expenses relating to the preparation of this Agreement and any due diligence or other activities undertaken in connection with the

proposed Transaction, including, but not limited to, any legal, accounting, and administrative costs, and the Parties will have no further liability under this Agreement after termination, except that each Party will remain liable to the other Party for any inaccuracy in, breach, or failure to comply or perform with respect to any representation, warranty, covenant, agreement, or obligation of the Party in this Agreement occurring before the date of termination.

15. NOTICES. All notices and other communications required or permitted to be given under this Agreement must be in writing and will be deemed duly given on the earlier of (a) the date actually received by the applicable Party, by whatever means and however addressed; (b) the date sent if properly addressed and sent by electronic transmission; and (c) the date of personal delivery if delivered by hand or the date signed for if sent by reputable overnight courier service (charges prepaid), to the following addresses (or to another address a Party may request, in the case of Transferor by notifying Transferee, and in the case of Transferee, on the other hand, by notifying Transferor):

If to Transferee:

Hospice By The Bay
17 E. Sir Francis Drake Boulevard
Larkspur, CA 94939
Attention: Kitty Whitaker, CEO
Phone: (415) 526-5561
Facsimile: (415) 925-9302
Email: kwhitaker@hospicebythebay.org

With a copy to:

Hanson Bridgett, LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Attention: Pamela S. Kaufmann, Esq.
Phone: (415) 995-5043
Facsimile: (415) 995-3449
Email: pkaufmann@hansonbridgett.com

If to Transferor:

Sonoma Valley Health Care District
347 Andrioux Street
Sonoma, CA 95476
Attention: Kelly Mather, CEO
Phone: (707)935-5005
Facsimile: (707) 935-5433
Email: kmather@svh.com

With a copy to:

Archer Norris
2033 North Main Street, Suite 800
Walnut Creek, CA 94596
Attention: Michael Peterson, Esq.
Phone: (925) 930-6600
Facsimile: (925) 930-6620
Email: mpeterson@archernorris.com

16. FURTHER ASSURANCES. From time to time after the Closing Date, without further cost or expense to Transferee, Transferor will take, and cause its Affiliates and other Persons under its direction or control to take, such further actions as Transferee reasonably may request to more effectively transfer to and vest in Transferee and to put Transferee in possession of the Acquired Agency and Acquired Assets, including, without limitation, completing filings with Governmental Authorities and Accreditation Bodies, processing change of ownership or information documentation, or preparation of financial information, or cost reports.

17. GOVERNING LAW. This Agreement will be governed by and construed and enforced in accordance with the substantive laws of the State of California, without giving effect to the principles of conflict of laws.

18. CONFIDENTIALITY.

(a) In addition and subject to the terms and provisions of the Confidentiality Agreement and the Public Records Act, and without limiting the scope thereof, Transferor agrees to (and to cause its employees, contractors, representatives, agents, and Affiliates to) treat confidentially and not to disclose to any Person (other than an Affiliate, employee, contractor, representative, or agent of such Party who needs to know such information) Confidential Information, and not to use Confidential Information in any manner or for any other purpose, except in connection with pursuing or consummating the Transaction. Notwithstanding anything to the contrary in this **Section 18**, if Transferor is requested or required to disclose Confidential Information of Transferee or the Acquired Agency, Transferor will promptly notify Transferee and will afford Transferee the opportunity to obtain a protective order or other appropriate remedy to maintain the confidentiality of the Confidential Information. If a protective order or other remedy is not available, Transferor will furnish only the portion of Confidential Information that Transferee is advised in writing by its counsel that it is legally required to furnish and will use reasonable efforts to obtain, prior to disclosure, assurances that confidential treatment will be given thereto. Notwithstanding the foregoing, Transferor is permitted to disclose Confidential Information to the minimal extent necessary to receive the Consents which are necessary for timely consummation of the Transaction.

(b) In addition and subject to the terms and provisions of the Confidentiality Agreement and without limiting the scope thereof, unless and until a Closing occurs, Transferee agrees to (and to cause its employees, contractors, representatives, agents, and Affiliates to) treat confidentially and not to disclose to any Person (other than an Affiliate, employee, contractor, representative, or agent of such Party who needs to know such information) Confidential Information of Transferor (including the contents or details of any letter of intent or this Agreement, and the fact that such documents exist), and not to use Confidential Information in any manner or for any other purpose, except in connection with pursuing or consummating the Transaction. Notwithstanding anything to the contrary in this **Section 18**, if Transferee is requested or required to disclose Confidential Information of Transferor, the Acquired Agency, Transferee will promptly notify and will afford Transferor the opportunity to obtain a protective order or other appropriate remedy to maintain the confidentiality of the Confidential Information. If a protective order or other remedy is not available, Transferee will furnish only the portion of Confidential Information that Transferor is advised in writing by its counsel that it is legally required to furnish and will use reasonable efforts to obtain, prior to disclosure, assurances that confidential treatment will be given thereto. Notwithstanding the foregoing, Transferee is permitted to disclose Confidential Information to the minimal extent necessary to receive the Consents which are necessary for timely consummation of the Transaction.

19. EXCLUSIVITY. From the Signing Date until the Closing, unless and until this Agreement is terminated by Transferee, Transferor will not, directly or indirectly, participate in, solicit, encourage, assist, or initiate discussions with, provide information to, or enter into a non-disclosure agreement with, any Person relating to a possible asset transfer from or business

combination with the Acquired Agency, including, without limitation, an asset transfer (including a partial transfer), a merger, an affiliation, a change in management, a change in ownership, or any other similar arrangement; provided, however, that unless extended by Transferor, in its sole and absolute discretion, this exclusivity provision will expire regardless upon the earlier of (x) October 31, 2018 if the Transaction has not otherwise been completed or (y) the termination of this Agreement in accordance with **Section 14**.

20. DISPUTE RESOLUTION. The Parties agree to use the dispute resolution procedures set forth in this **Section 20** with respect to all disputes, disagreements, claims, or controversies between the Parties arising out of or relating to this Agreement (“*Disputed Matter*”).

(a) **Internal Resolution.** First, within fifteen (15) days after receipt of written notice of a dispute relating to this Agreement and demand to invoke this dispute resolution process, the Parties shall meet and use their commercially reasonable efforts to resolve the Disputed Matter. If the Parties do not agree upon a resolution within thirty (30) days, the complaining party may proceed to mediation as set forth below. The Parties intend that these initial negotiations will be conducted without legal representation. The location, format, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Discussion and correspondence among the representatives for purposes of these negotiations will be treated as confidential information exchanged for purposes of settlement, exempt from discovery and production, which will not be admissible in any lawsuit, mediation, or arbitration, without written concurrence of both Parties. Documents identified in or provided with such communications, which are not prepared solely for purposes of the negotiations, are not so exempted and, if otherwise discoverable, may be the subject of discovery in any proceeding.

(b) **Mediation.** If both parties agree, within fifteen (15) days after the conclusion of the internal resolution procedure, the Disputed Matter may be referred to non-binding mediation before a single impartial mediator to be jointly agreed upon by the Parties. The mediation hearing will be attended by Parties possessing authority to resolve the Disputed Matter and will be conducted no more than forty-five (45) days after a party serves a written notice of an intention to mediate (barring scheduling difficulties with the mediator or counsel). The Parties will share equally all costs of retaining a neutral mediator. If the Disputed Matter cannot be resolved at mediation, the complaining party may proceed to Arbitration.

(c) **Arbitration.** In the event that the Disputed Matter has not been resolved through internal resolution or mediation, if applicable, the complaining party may submit the Disputed Matter to binding arbitration before the American Arbitration Association (the “AAA”) pursuant to its Commercial Arbitration Rules. The arbitrator will have the authority to render any award or remedy allowed by law; provided, however, that the arbitrator will have no authority to award consequential damages or punitive damages under any circumstances (whether it be exemplary damages, treble damages, or any other penalty or punitive type of damages) regardless of whether such damages may be available under California law, the Parties hereby agreeing that neither party will be liable for consequential damages or punitive damages in connection with any Disputed Matter. The arbitrator will have no authority to change, add to, or subtract from this Agreement. The Parties agree that any arbitration award whereby damages

are awarded will identify the injury to which each portion of the award relates and will specify the amount and nature of damages (compensatory damages, future damages, and so forth) for each injury, if any. All disputes will be decided by a single neutral arbitrator. The arbitrator will be selected from the AAA's Panel of Commercial Arbitrators and the arbitration hearing will be conducted in San Francisco, California. The cost of the arbitration proceeding will be shared equally by the Parties, but the prevailing party in any arbitration proceeding will be entitled to recover its reasonable attorneys' fees, costs, and expenses incurred in connection with the arbitration, including costs, and fees of expert witnesses. The arbitration will be governed by and construed in accordance with the domestic laws of the State of California, excluding any conflicts-of-laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. The arbitrator will be bound to apply such California law. Both Parties and the arbitrator will agree to an arbitration schedule before the start of the arbitration hearings. Such schedule will include the date on which the arbitrator's decision will be rendered. Any and all necessary delays in the schedule may extend the date on which the arbitrator's decision will be rendered on a day for day basis. If the decision is not rendered within sixty (60) days of the scheduled decision date, either party may proceed to commence an action in state or federal court. The arbitrator will prepare in writing and provide to the Parties an award including factual findings, reasons, and legal basis on which the decision and award is based. The arbitrator will render and serve by same day messenger a written decision to the Parties within five (5) days after the close of hearings. The arbitrator will have the power to issue an interim decision and to retain jurisdiction in the event he or she determine that a party is entitled to an opportunity or further opportunity to rectify a Disputed Matter and to thereafter decide all disputes concerning the sufficiency or performance of any rectification or cure of a Disputed Matter. This **Section 20** will survive any termination or expiration of this Agreement and will continue to be enforceable in the event of the bankruptcy of a party. Nothing in this **Section 20** will prevent either party from resorting to judicial proceedings if interim relief from a court is necessary to prevent serious and irreparable injury to a party or to others.

TO THE EXTENT NOT OTHERWISE PROHIBITED BY APPLICABLE LAW, EACH OF THE PARTIES SPECIFICALLY ACKNOWLEDGES THAT BY EXECUTING THIS AGREEMENT, EACH PARTY WAIVES THE RIGHT TO A CIVIL TRIAL, AS TO ALL ISSUES ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ITS ENFORCEMENT, TERMINATION, OR VALIDITY.

INITIALS FOLLOW

INITIALS:

TRANSFEEE: _____

TRANSFEROR: _____

21. MISCELLANEOUS. Except as otherwise provided in this Agreement, each Party will pay all costs, fees, and expenses it incurs in connection with the Transaction, including, without limitation, Taxes and accountant and attorneys' fees. The titles and headings of sections and subsections in this Agreement are inserted for convenience of reference only, and

are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Agreement will be construed in accordance with its plain meaning. Each Party was represented by counsel who participated in the negotiation and drafting of this Agreement and the other Transaction Documents, and consequently no rule of construction against the drafting party is applicable in the interpretation of this Agreement or the other Transaction Documents. This Agreement, together with the schedules and exhibits to this Agreement and the Confidentiality Agreement, constitutes the entire agreement of the Parties and supersedes all prior agreements and understandings among them relating to the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by all the Parties. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person, other than any Transferee Indemnitee. No waiver of any of provision of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver of any other provision constitute a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver. No Party will be entitled to assign its rights or delegate its obligations under this Agreement without the prior written consent of the other Parties, except that Transferee may assign its rights to any of its Affiliates.

22. COUNTERPARTS. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one (1) and the same agreement. Telecopied or faxed signatures or signatures emailed in a “pdf” format may be used in place of original signatures on this Agreement. Transferor and Transferee intend to be bound by the signatures on telecopied, faxed or pdf documents; are aware that the other party will rely on the telecopied, faxed or pdf signatures; and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of a telecopied, facsimile or pdf signature.

SIGNATURES FOLLOW

IN WITNESS WHEREOF, each Party has caused its duly authorized representative to execute this Agreement on and as of the Signing Date.

TRANSFeree:

HOSPICE BY THE BAY, a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

TRANSFEROR:

SONOMA VALLEY HEALTH CARE DISTRICT, a political subdivision of the State of California

By: _____

Name: _____

Title: _____

EXHIBIT A

DEFINITIONS

“AAA” has the meaning ascribed in **Section 20**.

“*Accounting Principles*” means United States generally accepted accounting principles in effect from time to time and as consistently applied by Transferor throughout the periods covered by the Financial Statements.

“*Accounts Receivable*” mean the Acquired Agency’s accounts receivable arising or generated from furnishing home health services, whether before or after the Closing Date.

“*Accreditation Body*” and “*Accreditation Bodies*” mean, individually and collectively, all Persons with jurisdiction over the accreditation, evaluation, or operation of Transferor or the Acquired Agency, and any successor Person exercising similar authority.

“*Acquired Agency*” has the meaning ascribed in the Recitals.

“*Acquired Assets*” has the meaning ascribed in **Exhibit B**.

“*Affiliate*” and “*Affiliates*” of any Person, means any Person that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

“*Agreement*” has the meaning ascribed in the introductory paragraph of this Agreement.

“*Appeal Documentation*” means all documentation and information in response to, or in connection with, the appeal of, the Damages giving rise to a Transferor Receivables Adjustment Claim.

“*Applicable Laws*” means any statute, law, ruling, ordinance, rule, requirement, judgment, decision, decree, order, or regulation of any Governmental Authority applicable to the ownership or operation of the Acquired Agency or Acquired Assets, including, without limitation, Applicable Healthcare Laws, all relevant federal and state laws, the Code, and ERISA, and the regulations promulgated pursuant to such laws.

“*Applicable Healthcare Laws*” means any statute, law, ruling, ordinance, rule, requirement, judgment, decision, decree, order, or regulation of any Governmental Authority applicable to the ownership or operation of the Acquired Agency or Acquired Assets and regulating or relating to the furnishing, reimbursement, or payment for health care services, including, without limitation, Title XVIII and Title XIX of the Social Security Act, the Anti-Inducement Law (42 U.S.C. Section 1320a-7a(a)(5)), Civil Monetary Penalties Law (42 U.S.C. Section 1320a-7a), False Claims Act, False Claims Law, the administrative simplification provisions of HIPAA, the exclusion laws (42 U.S.C. Section 1320a-7), the anti-misleading statements provision (42 U.S.C. Section 1320a-8), and the regulations promulgated pursuant to such laws.

“*Assigned Contracts*” has the meaning ascribed in **Exhibit B**.

“*Assigned Licenses and Certifications*” has the meaning ascribed in **Exhibit B**.

“*Assumed Liabilities*” has the meaning ascribed in **Exhibit C**.

“*Bill of Sale*” means that certain Bill of Sale, Assignment and Assumption Agreement, dated as of the Closing Date, pursuant to which Transferor transfers to Transferee all right, title, and interest in and to the Acquired Assets.

“*CDPH*” means the California Department of Public Health, and any successor Governmental Authority exercising similar authority.

“*CDPH License*” means the license to operate a home health agency issued by CDPH to Transferee.

“*Claim*” and “*Claims*” mean, individually and collectively, the claim of an Indemnified Party to recover Damages from and against an Indemnifying Party under **Section 13**.

“*Claim Notice*” means a prompt written notice of any claim, demand, action, suit, proceeding, investigation, or discovery of facts for which indemnification is being claimed under **Section 13**, including (i) a statement that the Indemnified Party is entitled to indemnification under **Section 13** for Damages, (ii) a description in reasonable detail and a good faith estimate of the amount of Damages incurred or reasonably expected to be incurred by the Indemnified Party, and (iii) a demand for payment of Damages.

“*Closing*” means the closing and consummation of the Transaction, which the Parties will endeavor to accomplish on or before October 31, 2018, subject to fulfillment of the conditions precedent set forth in Section 10.

“*Closing Date*” means the date on which the Closing actually occurs.

“*Closing Date PTO*” means paid time off, paid sick leave, and paid vacation days as of the Closing Date.

“*CMP Law*” means the Civil Monetary Penalties Law (42 U.S.C. Section 1320a-7a).

“*CMS*” means the Centers for Medicare and Medicaid Services, and any successor Governmental Authority exercising similar authority.

“*COBRA*” means the continuation coverage requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B(f) of the Code, and any similar state Applicable Laws.

“*Code*” means the Internal Revenue Code of 1986 (26 U.S.C.).

“*Confidential Information*” as to any Party, means all confidential information, knowledge, materials, or data concerning the business affairs, operations, trade secrets, dealings, or finances

of another Party or Parties furnished, directly or indirectly, by such other Party or Parties. Confidential Information further includes all preliminary drafts, notes, interagency and intra-agency memoranda and communications, deliberative processes, and any other items subject to protection by the California Public Records Act (the “**Public Records Act**”) to the full extent allowed by the Brown Act and the Public Records Act.

“**Consent**” and “**Consents**” mean, individually and collectively, any authorization, consent, or approval of a third party or Governmental Authority, in either case, that are necessary or advisable in order: (i) for Transferor to transfer, assign, and deliver to Transferee, and Transferee thereupon to acquire, accept, assume, and receive from Transferor, the Acquired Agency and Acquired Assets, including, without limitation, the Assigned Licenses and Certifications and Assigned Contracts; or (ii) to otherwise consummate the Transaction.

“**Contract**” and “**Contracts**” mean, individually and collectively, any written or unwritten contract, agreement, commitment, lease, or mortgage relating to the Acquired Agency or the Acquired Assets.

“**Courts**” means the state and federal courts located in The City and County of San Francisco, California.

“**Cross-Over Receivables**” means Medicare Payments relating to Episodes of Care that straddle the Closing Date, meaning Episodes of Care that started before the Closing Date and will end on or after the Closing Date.

“**Damages**” means all liabilities, damages, losses, fines, penalties, deficiencies, assessments, recoupments of overpayments, demands for refunds or adjustments, charges, Taxes, actions, suits, proceedings, claims, demands, incidental damages, consequential damages, special damages, exemplary damages, punitive damages, judgments and settlements, and costs and expenses (including interest, penalties and reasonable attorneys’ fees).

“**Dispute Notice**” means a statement setting forth the items in a “Reconciliation Statement” with which Transferor disagree.

“**Disputed Matters**” has the meaning ascribed in **Section 20**.

“**Effective Time**” means 11:59 p.m. (local San Francisco, California time) on the Closing Date.

“**Episode of Care**” means the sixty (60) day period of time, serving as the measure by which Medicare pays a home health provider for furnishing home health services to a Medicare beneficiary (regardless of (i) the date of the beneficiary’s discharge as a patient of the home health provider, and (ii) whether the discharge occurs before, on or after the Closing Date).

“**Episodes of Care**” means each and every Episode of Care of a particular patient.

“**Equipment**” means Transferor’s furniture, fixtures, leasehold improvements, computer hardware, machinery, and equipment used in connection with the Acquired Agency.

“**ERISA**” means the Employee Retirement Income Security Act of 1974 (Pub. L. No. 93- 406, codified in part at 29 U.S.C. § 1002 et seq.).

“**Excluded Assets**” has the meaning ascribed in **Exhibit B**.

“**Excluded Contracts**” has the meaning ascribed in **Exhibit B**.

“**Excluded Liabilities**” has the meaning ascribed in **Exhibit C**.

“**False Claims Act**” means the False Claims Act (31 U.S.C. § 3729 et seq.).

“**False Claims Law**” means the False Claims Law (42 U.S.C. Section 1320a-7b(a)).

“**Federal Health Care Program**” and “**Federal Health Care Programs**” mean, individually and collectively, Medicare, Medicaid or any other “Federal Health Care Program,” as defined in 42 U.S.C. § 1320a-7b(f).

“**Final Reconciliation Period**” means the period beginning on the Closing Date and ending on the one hundred eightieth (180th) day after the Closing Date.

“**Financial Statements**” means Transferor’s home health cost center income statements and balance sheets for the fiscal years ending June 30, 2017 and June 30, 2018 and any additional available home health cost center income statements and balance sheets of Transferor subsequent to June 30, 2018.

“**Governmental Authority**” and “**Governmental Authorities**” mean, individually and collectively, all federal, state, municipal, or other governmental bodies, courts, departments, commissions, boards, bureaus, agency, or instrumentalities, or a contractor or designee of any of the foregoing.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. §§ 1320 et seq.).

“**Indemnified Party**” and “**Indemnified Parties**” mean, individually and collectively, any Transferee Indemnitee, on the one hand, or Transferor, on the other hand, that are entitled to indemnification from an Indemnifying Party under **Section 13**.

“**Indemnifying Party**” means Transferee, on the one hand, or Transferor (or any successor, heir, legal representative, and permitted assign), on the other hand, that is required to indemnify an Indemnified Party under **Section 13**.

“**Intellectual Property**” has the meaning ascribed in **Exhibit B**.

“**Interim Lease**” means the Interim Lease, dated as of the Closing Date, by and between Transferor and Transferee, of the assets of the Acquired Agency, including a sublease of the real property upon which the business is operated, to allow Transferee to perform the operations and functions required of a home health agency operator pursuant to the rules and regulations of

CDPH and Applicable Laws from the Closing Date until such time as the CDPH License is issued.

“Interim Licensed Services Agreement” means the Interim Licensed Services Agreement, dated as of the Closing Date, by and between Transferee and the Director of Patient Care Services and the Administrator for the Acquired Agency until the end of the Interim Period.

“Interim Period” means the period beginning on the Closing Date and ending on the date that Transferee gives Transferor notice that the following conditions have been completed: (i) Transferee has received the CDPH License issued by CDPH to furnish home health services through the Acquired Agency; (ii) Transferee has received the seal of accreditation or other applicable notice of continuing accreditation status of the Acquired Agency from an applicable Accreditation Body; and (iii) the Tie-In is complete and Transferee has received electronic fund transfer deposits from Medicare and Medicaid into Transferee’s own bank account designated in the change in ownership process following the Closing.

“IRS” means the United States Internal Revenue Service and, to the extent relevant, the United States Department of Treasury, and any successor Governmental Authority exercising similar authority.

“Knowledge” means the actual knowledge of Transferor based upon a reasonable duty of inquiry and investigation.

“Lease” has the meaning ascribed in **Section 10(a)(x)**.

“Liability” and ***“Liabilities”*** mean, individually and collectively, any direct or indirect liability, obligation, guarantee or endorsement of any kind, nature or description (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Licenses and Certifications” means all licenses, permits, approvals, provider numbers and agreements, qualifications, registrations, accreditations, certifications, and other authorizations of any Governmental Authority that are required for Transferor to operate as a home health agency that is CDPH licensed and Medicare certified, including, but not limited to, the license to operate a home health agency issued by CDPH to Transferor, number 2200003457, the Medi-Cal Provider Number and the Medicare Provider Number.

“Liens” means all liens (including workmen, mechanics and materialmen’s liens), Liabilities, claims, encumbrances, security interests, charges, mortgages, deeds of trust, suits, proceedings, options, easements, trusts, restrictions, obligations, or other adverse claims of any kind, nature, or description.

“Material Adverse Effect” means any event or circumstance that, individually or in the aggregate with all other events or circumstances, has resulted in, or could be reasonably expected to result in, a material adverse change in or a material adverse effect upon, the Acquired Assets or in the business, prospects, financial condition, operations, operating results, patient census, payor mix, amount of or methodology for payment or reimbursement under Payor Programs,

customer or patient relations, referral source relations, employee relations, or vendor relations of the Acquired Agency.

“**Medicaid**” means the state governmental healthcare program pursuant to which healthcare providers are paid or reimbursed for care given or goods afforded to indigent individuals and administered pursuant to a plan approved by CMS under Title XIX of the Social Security Act.

“**Medi-Cal Provider Number**” means provider number 1548342637 issued to Transferor by CMS.

“**Medicare**” means the federal governmental healthcare program established under Title XVIII of the Social Security Act and administered by CMS.

“**Medicare Payments**” means all payments by Medicare to Transferor before the Closing Date or to Transferee on or after the Closing Date for furnishing home health services to Medicare beneficiaries.

“**Medicare Provider Number**” means provider number 557041 issued to Transferor by CMS.

“**MOTA**” means that certain Management and Operations Asset Transfer Agreement, dated as of the Closing Date, by and between Transferor and Transferee, that facilitates a transition of operational and financial responsibility from Transferor to Transferee from the Closing Date until such time as the CDPH License is issued.

“**Non-Competition Agreement**” means that certain Non-Competition Agreement, dated as of the Closing Date, by and among Transferee and Transferor, pursuant to which Transferor agrees, on behalf of itself and any Affiliates, and its and their officers, directors, managers, and employees, for a period of two (2) years after the Closing Date, not to (i) own, operate, manage, or have any financial interest in any business or entity located within Alameda, Contra Costa, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Solano, or Sonoma County that competes with any component of the business of the Acquired Agency; or (ii) solicit or hire any employee of Transferee. Among other things, the Non-Competition Agreement will require Transferor to inform its Affiliates, and its and its Affiliates' officers, directors, managers, and employees, of the terms and provisions thereof and instruct them not to take any action or fail to take any action that would result in a violation of the same.

“**Outlier Payments**” means Medicare Payments made pursuant to Medicare’s outlier payment policy in Medicare’s CMS Manual System Transmittal 1883, CR 6759 (published December 27, 2009) and other Applicable Laws.

“**Outlier Reconciliation Payments**” means all payments to the Acquired Agency resulting from Medicare’s reconciliations after the Closing Date of Outlier Payments with respect to a particular Medicare beneficiary who received home health services from the Acquired Agency before the Closing Date (regardless of when the beneficiary’s applicable Episode of Care began or ended).

“**Party**” and “**Parties**” have the meanings ascribed in the introductory paragraph of this Agreement.

“Payment Adjustments” means the net amount of all charge backs, take backs, and negative and positive adjustments on the Pre-Closing Receivables or Transferor Cross-Over Receivables.

“Payor Program” and **“Payor Programs”** mean, individually and collectively (i) Medicare, Medicaid, TRICARE (formerly known as CHAMPUS), and any other federal or state governmental healthcare programs in which Transferor is a participating provider in good standing, (ii) any health maintenance organization, preferred provider organization, health care service plan, health benefit plan, health insurance plan, or other third-party reimbursement and payment program in which Transferor is a participating provider in good standing, and (iii) any contractor or designee of any of the foregoing, whether an administrative contractor, reviewing contractor, audit contractor, or otherwise, including but not limited to Zone Program Integrity Contractors, Recovery Audit contractors, Medicare Administrative Contractors, and Program Safeguard Contractors, and (iv) the designee of any of them.

“PTO” means paid time off, paid sick leave, and paid vacation days.

“Person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, other business entity, or Governmental Authority.

“Pre-Closing Receivables” means Transferor’s Accounts Receivable arising or generated from furnishing home health services before the Closing Date, whether or not reflected on Transferor’s balance sheet as of the Closing Date and whether billed or unbilled on the Closing Date.

“Proration Items” means Liabilities that properly relate to the period on or after the Closing Date, but that have been paid by Transferor before the Closing Date, including, without limitation, advance payments and other prepaid items and expenses, deposits, and current trade, accounts, and other payables of Transferor.

“Reconciliation Period” means each of the following periods, including (i) the period beginning on the Closing Date and ending one hundred twenty (120) days after the Closing Date, (ii) the period beginning on the one hundred twenty-first (121st) day after the Closing Date and ending one hundred fifty (150) days after the Closing Date, and (iii) the period beginning on the one hundred fifty-first (151st) day after the Closing Date and ending one hundred eighty (180) days after the Closing Date.

“Reconciliation Statement” means a statement itemizing the collections covered by Section 6 that Transferee will receive during the applicable Reconciliation Period, which statement will include, without limitation, the applicable patient medical record number, start of care date, discharge date (if known), actual reimbursement amount and any Payment Adjustments.

“Signing Date” has the meaning ascribed in the introductory paragraph of this Agreement.

“Social Security Act” means the Social Security Act (42 U.S.C. §§ 666 et seq.).

“Tail Insurance Policy” means an insurance policy to provide at least the same coverage as Transferor Insurance Policies identified as being “claims made” policies in **Schedule 7(u)** for

events or losses of the Acquired Agency occurring before the Closing Date. Further, the Tail Insurance Policy must provide coverage of at least One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate with an annual deductible acceptable to Transferee.

“**Tax**” and “**Taxes**” mean, individually and collectively, all taxes and other assessments and levies (including all interest and penalties), including, without limitation, income, franchise, real estate, sales, gross receipts, use, excise, and service taxes and employee withholding taxes.

“**Third Party Claim**” means a third-party Claim or Damages involving a third-party for which Transferor or Transferee, as applicable, is, or may be, obligated to indemnify Transferee or Transferor, as applicable, or another Indemnified Party under this Agreement.

“**Tie-In**” means that both of the following have occurred: (i) in the case of Medicare, after automatic assignment of Licensee’s Medicare provider agreement, CMS has issued a tie-in notice and the fiscal intermediary has completed the process of tying the Medicare Provider Number to Transferee’s NPI number and tax identification number; and (ii) in the case of Medicaid, the Medicaid provider agreement has been assigned to Transferee by the Medi-Cal Provider Certification Unit and a Medi-Cal Provider Number has been issued to Transferee by the Medi-Cal Provider Enrollment office. The Tie-In is complete when the Medicare Provider Number and Medi-Cal Provider Number have been assigned over and transferred to Transferee, allowing Transferee to bill directly for services provided at the Acquired Agency.

“**Transaction**” means the transactions described in this Agreement.

“**Transaction Documents**” means this Agreement, the Bill of Sale, the MOTA (including the Business Associate Agreement attached thereto as Exhibit B), the Non-Competition Agreement, the Lease, the Interim Lease, and the Interim Licensed Services Agreement.

“**Transferee**” has the meaning ascribed in the introductory paragraph of this Agreement.

“**Transferee Cross-Over Receivables**” means the portion of the amounts collected on Cross-Over Receivables (other than Outlier Reconciliation Payments) net of all Payment Adjustments relating to Cross-Over Receivables (regardless whether the Payment Adjustments are attributable to receivables or payments collected during the Final Reconciliation Period or any prior period of the Acquired Agency) that relate to the period after the Closing Date.

“**Transferee Indemnitee**” and “**Transferee Indemnitees**” mean, individually and collectively, Transferee and its Affiliates and any present or former officer, shareholder, member, partner, director, manager, contractor, employee, agent, or representative of Transferee (other than Transferor to the extent any of them would otherwise be included in any such capacities).

“**Transferee Representatives**” means, collectively, Transferee and its authorized counsel, accountants, consultants, and other agents and representatives.

“**Transferor**” has the meaning ascribed in the introductory paragraph of this Agreement.

“Transferor Cross-Over Receivables” means the portion of the amounts collected on Cross-Over Receivables (other than Outlier Reconciliation Payments) net of all Payment Adjustments relating to Cross-Over Receivables (regardless whether the Payment Adjustments are attributable to receivables or payments collected during the Final Reconciliation Period or any prior period of the Acquired Agency) that relate to the period prior to or on the Closing Date.

“Transferor Exclusions” means a Claim or Damages arising out of or relating to: (i) any inaccuracy in or breach of any representation or warranty made by Transferor in **Section 7(k)** (Conformity with Law and Accreditation Standards) relating to the CMP Law, False Claims Act, or False Claims Law; (ii) any Excluded Assets or Excluded Liabilities; or (iii) any criminal activity, willful misconduct, fraud, gross negligence, or knowing, intentional, or grossly negligent misrepresentation by Transferor.

“Transferor Insurance Policies” means all fire, casualty, general liability, and other forms of insurance policies maintained by Transferor.

“Transferor Receivables Adjustment Claim” means a Claim relating to any Payment Adjustment, overpayment demand, recoupment, or similar payment adjustment by any Payor Program or Governmental Authority with respect to Pre-Closing Receivables or Transferor Cross-Over Receivables.

EXHIBIT B

ASSETS

A. Acquired Assets. The term “*Acquired Assets*” means all the assets, properties, and businesses of every kind, nature, and description, real, personal and mixed, tangible, and intangible, and wherever located, except the Excluded Assets, as they exist at the Closing, including, without limitation:

(i) **Acquired Assets – Personal Property; Equipment.** All tangible personal property of Transferor, and all transferable warranties, guarantees, and service contracts relating to the Equipment in connection with the Acquired Agency;

(ii) **Acquired Assets – Supplies.** All supplies, drugs, and other disposables and consumables in stock at the Acquired Agency on the Closing Date, which stock level has been maintained in the ordinary course of business consistent with past business practices and as required by Applicable Laws or by applicable Governmental Authorities or Accreditation Bodies; provided however, that Transferor, on not less than seven (7) days written notice to Transferee before the Closing Date, may elect not to transfer or to limit the transfer of supplies;

(iii) **Acquired Assets – Records.** Subject to HIPAA and other similar state Applicable Laws, all records, files, patient records, and documents of any kind whatsoever, whether in hard copy or on computer tapes or disks relating to the operations of the Acquired Agency;

(iv) **Acquired Assets – Intangible Assets.** All intangible assets other than the Intellectual Property (as defined in this **Exhibit B**), further, including, without limitation, (a) all rights, if any, of Transferor in and to the telephone and facsimile numbers of the Acquired Agency listed on **Annex A(iv)** attached to this **Exhibit B**; and (b) all of the Acquired Agency’s lists of referral sources that have been active in the three (3) years immediately preceding the Closing Date and all related documents;

(v) **Acquired Assets – Assigned Licenses and Certifications.** To the extent assignable, all Licenses and Certifications listed on **Annex A(v)** attached to this **Exhibit B** (collectively, the “*Assigned Licenses and Certifications*”);

(vi) **Acquired Assets – Intellectual Property.** To the extent assignable, all license agreements, copyrights, trademarks, assumed names, trade names, service marks, internet domain names and websites, computer software, patents, applications for patents, know-how, proprietary information, licenses, and telephone and facsimile numbers of the Acquired Agency (the “*Intellectual Property*”), including, but not limited to, the name "Healing at Home;"

(vii) **Acquired Assets – Assigned Contracts.** All rights of Transferor in and to all Contracts, other than the Excluded Contracts (as defined in this **Exhibit B**), including, without limitation, all security deposits, that, in each case, are listed on **Annex A(vii)** attached to this **Exhibit B** (collectively, the “*Assigned Contracts*”); and

(viii) **Acquired Assets – Business and Goodwill.** The business and goodwill of Transferor relating to the Acquired Agency as a going concern and the other Acquired Assets.

B. Excluded Assets. Notwithstanding any other provision of this Agreement to the contrary, the Acquired Assets do not include (collectively, the “*Excluded Assets*”):

(i) **Excluded Assets – Cash; Deposits.** All of Transferor’s cash, cash equivalents, and, subject to Transferee’s rights under **Section 6**, deposits in banks or other financial institutions on the Closing Date,

(ii) **Excluded Assets – Accounts Receivable.** Subject to **Section 6**, the Pre-Closing Receivables and Transferor Cross-Over Receivables;

(iii) **Excluded Assets – Records.** The originals of any records that Transferor or its Affiliates are required by Applicable Laws to retain in their possession;

(iv) **Excluded Assets – Contracts.** All rights of Transferor in and to the Contracts listed on **Annex B(v)** attached to this **Exhibit B** and any additional Contracts not listed on **Annex A(vii)** to this **Exhibit B** (collectively, the “*Excluded Contracts*”); and

(v) **Excluded Assets – Other.** The additional assets and properties, if any, specifically listed on **Annex B(vii)** attached to this **Exhibit B**.

ANNEX A(v) TO EXHIBIT B

Acquired Assets – Assigned Licenses and Certifications

ANNEX A(vi) TO EXHIBIT B

Acquired Assets – Intellectual Property

ANNEX A(vii) TO EXHIBIT B

Acquired Assets – Assigned Contracts

ANNEX B(v) TO EXHIBIT B

Excluded Assets - Contracts

ANNEX B(vii) TO EXHIBIT B

Excluded Assets - Other

EXHIBIT C

LIABILITIES

A. Assumed Liabilities. The term “*Assumed Liabilities*” means only the following known Liabilities of Transferor arising exclusively in connection with the operation of the Acquired Agency (collectively, the “*Assumed Liabilities*”):

(i) **Assumed Liabilities – Proration Items.** The Proration Items of Transferor to be paid on or after the Closing Date that are expressly prorated to Transferee at the Closing pursuant to **Section 5**;

(ii) **Assumed Liabilities – Assigned Contracts.** Any unfulfilled obligations of Transferor arising or accruing on or after the Closing Date under the Assigned Contracts, provided that the rights under the Assigned Contracts have been duly and effectively assigned to Transferee, but excluding Liabilities of Transferor under such Assigned Contracts that (a) are the result of Transferor’s violation or breach thereof, (b) should have been paid or performed by Transferor before the Closing Date, or (c) constitute an inaccuracy in or breach of any of Transferor’s representations or warranties; and

(iii) **Assumed Liabilities – Assigned Licenses and Certifications.** The unfulfilled obligations of Transferor arising or accruing on or after the Closing Date under the Assigned Licenses and Certifications, but excluding Liabilities under Payor Programs for overpayments or adjustments for home health services furnished by Transferor or the Acquired Agency before the Closing Date or for criminal activity, willful misconduct, fraud, or knowing, intentional, or grossly negligent misrepresentation.

B. Excluded Liabilities. Notwithstanding any other provision of this Agreement to the contrary, the Assumed Liabilities do not include, and Transferee does not assume, become responsible for, or otherwise obligated to pay, perform, or discharge any Liabilities of Transferor, or the Acquired Agency, including, without limitation, any of the following (the “*Excluded Liabilities*”):

(i) **Excluded Liabilities – Acquired Agency and Acquired Assets.** All Liabilities arising from events occurring or conditions existing before the Closing Date (except as otherwise specifically provided in this Agreement relating to the Assumed Liabilities assumed by Transferee), relating to the ownership, conduct, or operations of the Acquired Agency, the Acquired Assets, or otherwise, including, without limitation, rent, accrued insurance expenses, accounts payable, notes payable, and any other debt;

(ii) **Excluded Liabilities – Transferor’s Employees.** All Liabilities relating to Transferor’s employees, including, without limitation, accrued salaries, wages, vacation of Transferor’s employees, payroll taxes, retirement plan payables, and any obligations relating to any other employee benefits agreements, if any, Liabilities for any Equal Employment Opportunity Commission claim, wage and hour claim, unemployment compensation claim, or workers’ compensation claim or personnel policy, or claim for on-the-job injuries, including, without limitation, those relating to any termination of employment and all other wages and benefits or Liabilities arising from events occurring or conditions existing before the Closing Date;

(iii) **Excluded Liabilities – Contracts.** All Liabilities under the Excluded Contracts;

(iv) **Excluded Liabilities – Taxes.** All Liabilities for Taxes of Transferor arising or accruing before the Closing Date or as the result of the consummation of the Transaction; and

(v) **Excluded Liabilities – COBRA.** Without limiting the foregoing, all Liabilities for COBRA relating to Transferor’s employees and former employees and its “qualified beneficiaries” (as defined in the Code and ERISA).

SCHEDULE 4(b)

Consideration Allocation

Schedule 4(b)

SCHEDULE 5

Proration Items

Schedule 5

SCHEDULE 6(f)

Cross-Over Receivables

Schedule 6(f)

TRANSFEROR'S DISCLOSURE SCHEDULE 7(c)

No Conflicts; Consents and Approvals

Transferor's Disclosure Schedule 7(c)

TRANSFEROR'S DISCLOSURE SCHEDULE 7(f)

Licenses and Certifications

Transferor's Disclosure Schedule 7(f)

TRANSFEROR'S DISCLOSURE SCHEDULE 7(m)

Financial Statements

Transferor's Disclosure Schedule 7(m)

TRANSFEROR'S DISCLOSURE SCHEDULE 7(q)

Employee Information

TRANSFEROR'S DISCLOSURE SCHEDULE 7(s)

Insurance

Transferor's Disclosure Schedule 7(s)