

THERAPY SERVICES AGREEMENT

THIS THERAPY SERVICES AGREEMENT (the "Agreement") is made this 20th day of November, 2017 by and between Genesis ElderCare Rehabilitation Services, LLC, d/b/a Genesis Rehabilitation Services, a Pennsylvania limited liability company ("Genesis") and **County of Winnebago, d/b/a River Bluff Nursing Home**, ("Facility") located at **4401 North Main Street, Rockford, Illinois 61103-1277**. Services provided under this Agreement shall commence on the 1st day of **February, 2018** (the "Commencement Date").

BACKGROUND

A. Facility operates a skilled nursing facility and is in need of professionals to provide certain therapy services to it and its residents, including physical therapy, occupational therapy and speech/language pathology, and restorative services consultation. Facility's Medicare and/or Medicaid provider number(s) is/are 14-5771 and its Medicare MAC or fiscal intermediary is National Government Services (NGS).

B. Genesis employs and contracts with licensed professionals to perform said therapy services.

C. Facility desires to purchase said therapy services from Genesis and Genesis desires to furnish said therapy services and consultation to Facility on the terms set forth herein.

TERMS

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Duties and Responsibilities of Genesis.

1.1 Genesis agrees to provide fully credentialed therapists as defined by state regulation and payer requirements ("Therapists") to the Facility to perform the therapy services ("Services") listed on Schedule "A" attached hereto upon Genesis' receipt of (i) the written order of an attending physician given in accordance with accepted professional standards; and (ii) specific authorization to treat the resident from a representative of Facility. The defined term "Therapists" shall also include student therapists or volunteers supervised by Genesis at the facility. Services will be provided in accordance with professional standards and federal and state regulations and guidelines. If, in Facility's reasonable judgment, any Genesis Therapist or other personnel has failed to adequately perform his or her material job responsibilities or has failed to act in accordance with applicable standards of professional or ethical conduct, Facility shall notify Genesis in writing. Genesis shall investigate such claim and notify Facility of its result within a reasonable time. If, in the reasonable judgment of Facility, the performance of the identified individual remains unsatisfactory, Facility may request that such individual be removed from providing services at the Facility.

1.2 Genesis agrees to assist in Facility's evaluation of residents, and to plan and direct care for the Facility's residents in accordance with established plans of treatment and physician's written orders.

1.3 Genesis agrees to supervise and train the Therapists and provide clinical management services in connection with the implementation and delivery of Services consistent with a physician's care plan. Notwithstanding the foregoing, Facility is responsible for management of resident care.

1.4 Genesis agrees to operate in accordance with the Facility's policy that pertains to patient care and procedures, provided such are provided to Genesis. At the Facility's request, Therapists will: (i) attend the Facility's selected staff conferences essential to therapy care in connection with the provision or administration of Services; and (ii) participate in select on-site educational or utilization review programs.

1.5 Genesis agrees to pay the compensation and benefits of the Therapists, including all applicable payroll taxes and workers' compensation and unemployment insurance premiums.

1.6 Genesis agrees to maintain and, in accordance with applicable laws, make available to the Facility at all reasonable times all Genesis billing records required by any fiscal intermediary/MAC, governmental agency, Facility or any other party to whom billings are rendered for services hereunder.

2. Duties and Responsibilities of Facility.

2.1 Facility shall provide all equipment and supplies necessary for the provision of rehabilitation services pursuant to the provisions in Schedule A. Facility shall (i) set aside designated areas adequate for Genesis's provision of the Services (including, but not limited to, adequate storage space for equipment and supplies) and (ii) maintain such designated areas in accordance with applicable federal, state and local laws, rules, standards and regulations. Without limiting the foregoing, Facility shall supply the necessary utilities and support services (such as laundry and housekeeping) reasonably necessary to allow Genesis to provide the Services at Facility. Genesis will use such space, utilities and support services solely for the purpose of fulfilling its duties under this Agreement. Genesis has the right to procure specialized equipment or supplies on an as needed basis, and such equipment and supplies shall remain the property of Genesis. Any equipment or supplies procured by Genesis shall be and remain free and clear of all liens, claims or encumbrances of any kind created by or against the Facility and will be maintained as well as calibrated (as appropriate) in accordance with the manufacturer's recommendations.

2.2 Facility agrees to provide sufficient support personnel to have residents ready to receive rehab services at the agreed upon times and to transport residents to the rehab space. Facility agrees to provide timely notice to Genesis of admissions and discharges of therapy residents. Facility further agrees to provide timely notice to Genesis of individual resident's inability to receive therapy due to illness, discharge or any other reason that would affect the scheduled therapy for any resident. Facility acknowledges its duties under this Section 2.2 greatly impacts the efficiency of the Genesis Therapists.

2.3 Facility shall (i) have primary responsibility for filing and maintaining all resident records, and (ii) make available to Genesis for review the individual resident treatment records necessary for the proper evaluation, screening and treatment of Facility's residents. Facility shall secure written consent from its eligible residents authorizing Genesis to access

their medical records for the purpose of Genesis's fulfilling its obligations under this Agreement. Genesis agrees to abide by all federal, state and local laws, rules and regulations pertaining to the confidentiality of such resident records.

2.4 Facility shall have responsibility for performing and completing the Minimum Data Set ("MDS") assessment for all residents. Facility shall be responsible for assessing each resident and ensuring that the acuity level for each resident has been properly documented to permit the resident to be assigned to the appropriate Resource Utilization Group.

2.4.1 Facility shall assume responsibility for essential pre-authorization of patients' services as required through the Facility's Managed Care services agreement or contract.

2.5 Facility shall be responsible for obtaining all required written orders for provision of the Services to eligible residents from their attending physicians in accordance with accepted professional practices. Facility shall also be responsible, in consultation with the physician who certifies a resident's care plan and the Therapists, for determining when to initiate, alter and/or terminate the provision of services to a Facility resident.

2.6 Except as otherwise set forth in this Agreement, Facility shall be responsible for, and incur the cost associated with, preparation and submissions of all bills and claims for reimbursement to residents and any government programs and other third-party payors.

2.7 Facility shall provide thirty (30) days' written notice of (i) the sale of all or substantially all of the assets of Facility, or (ii) the transfer of more than fifty percent of the outstanding equity of Facility (collectively or individually, "Change of Ownership"). Such notice shall include the name, address and phone number of the purchaser, as well as any person implementing the Change of Ownership, ("Escrow Agent"). At the closing, Facility shall cause Escrow Agent to disburse to Genesis all amounts owed for Services rendered through the date of closing.

2.8 Facility shall immediately notify Genesis of any legal, administrative or governmental surveys, investigations, reviews, or proceedings initiated against it or any provider that might affect Facility's ability to perform its duties and obligations under this Agreement.

2.9 **Denial of Payment.** Except as specified in Section 2.10 and 2.11, below, if Medicare or its agent notifies Facility of a determination, after final appeal, that Medicare (due to inaccurate, incomplete or untimely information required to be provided by Genesis with respect to any Service) is reclassifying a patient to a lower RUG category or is disallowing any Medicare Service, Facility will be entitled to offset against Genesis' next invoice to Facility an amount equal to the amount previously paid to Genesis for such unreimbursed Service. If the Agreement is terminated and the Facility has paid for all services accrued through the date of termination, this provision will continue in force, except that Genesis will be required to refund to Facility the amount previously paid to Genesis for those services that are disallowed and recaptured and relate to such reclassification or denial. Upon successful appeal of any denied claims that previously resulted in a retraction of monies by Medicare from Facility and an offset by Facility from Genesis, Facility will repay that portion of the overturned claim related to Genesis's services within thirty (30) days of repayment by Medicare.

2.10 **Genesis Notification of Denial.** Facility shall notify Genesis of the receipt of any such denial, RUGs reclassification notice or appeal decision ("Notice") or upon a Medicare denial of any claim or cost report adjustment related to Genesis' Services within ten (10) business days of the date of such Notice. Notification shall be via the Genesis portal unless a different method is expressly designated in writing by Genesis to Facility. If notification is received after ten (10) business days of the date of the Notice, then Genesis retains the right in its discretion to accept or reject pursuit of appeal. If Facility fails to notify Genesis as required by this section, Facility shall remain responsible for compensating Genesis for any Services which are the subject of such Notice and shall have no right to offset such unreimbursed amounts as provided in Section 2.11.

2.11 **Appeal Rights.** Upon Genesis' request, and to the extent allowed by law, Facility shall allow Genesis to timely appeal any Notice received in connection with Genesis' Services. The parties agree to cooperate in preparing such appeal. Facility shall provide any and all Facility records related to the Claim denial that are reasonably requested by Genesis to advance the appeal of the denial. If the Notice resulted from the error or omission of Genesis, Facility shall appoint Genesis to act as its agent for purposes of conducting the appeal and Genesis shall be responsible for preparing such appeal and the costs associated with the appeal. Facility shall grant to any fiscal agency involved, the right to discuss the status of the Claim with Genesis and shall provide copies of all other notices related to the appeal of denials within ten (10) days of the Notice date. (Notification will be via the Genesis portal or some other mutually agreed upon electronic means that provides a time and date stamp of when Notice was received.) If notification is received after ten (10) business days of the date of the Notice, then Genesis retains the right in its discretion to accept or reject pursuit of appeal.

2.12 Facility shall have no right of offset for any denial, disallowance or reduction in reimbursement caused by or resulting from the failure of Facility, its agents or employees to (i) comply with any provisions of this Agreement; (ii) correctly bill Medicare or the appropriate fiscal intermediary or other third-party payor; (iii) incorrectly complete and file the resident's MDS assessment, including the timelines of the assessment; or (iv) correctly determine or communicate to Genesis a resident's eligibility for coverage or change in coverage status. Facility shall also have no right to offset, or be considered a breach by Genesis, if Genesis did not provide Services to a particular resident because: (a) the resident was ill and unable to receive Services; (b) the resident refused treatment; (c) the resident was unavailable for Services; (d) the Services were not ordered by a physician or were not appropriate, as determined by Genesis. Facility shall have no right to offset for any amounts for which Medicare refuses to reimburse Facility for a Service except as otherwise specifically provided herein.

3. **Fees.**

3.1 Facility agrees to compensate Genesis for Services rendered to the Facility's residents and/or Facility in accordance with the Fees listed on Schedule "B", "C" and "D" attached hereto. Fees vary depending on: (a) the Facility's source of payment for such Services; and (b) each resident's level of care which will be agreed upon by the Facility and Genesis prior to Therapists rendering Services. Beginning on the second anniversary and continuing on each anniversary date thereafter during the term of this Agreement, the fee rates shall be adjusted up or down by the percentage increase or decrease of the Consumer Price Index, Midwest Region (all items index, not seasonally adjusted) for the most recent 12 month period ending in November.

3.2 Facility agrees to pay invoices according to the Illinois prompt payment Act 50 ILCS 505. Genesis agrees to provide a detailed description of the Services rendered to each resident during the period covered by the invoice. If Facility disputes any invoice, it shall and must do so within thirty days of the date of the invoice. Facility agrees to reimburse Genesis for any and all costs incurred to collect payment of Services from the Facility, including, without limitation, reasonable attorneys' fees. In the event that Facility's payment is not received within the specified time frame, Genesis reserves the right to suspend Services until such time that all past due payments have been received.

3.3 Except to the extent required by law, Genesis agrees not to directly bill any resident, governmental agency or other third party for Services rendered pursuant to this Agreement.

4. Term and Termination.

4.1 This Agreement shall commence on the Commencement Date written above and shall continue in full force and effect until the second anniversary of such date. Following the initial two-year term, this Agreement shall automatically renew for successive one-year terms on the same terms and conditions as contained in this Agreement until terminated by one or both of the parties as provided herein. [Fee rates shall be re-established for each renewed term as provided by section 3.1 above.]

4.2 This Agreement may be terminated by either party, without cause, at the end of the initial term or the end of any renewed term, upon written notice given to the non-terminating party ninety (90) days prior to the end of the initial term or any renewed term, as the case may be.

4.3 In the event of material breach of this Agreement by either party, the non-defaulting party may terminate this Agreement by giving the breaching party thirty-five (35) days prior written notice; provided, however, that upon the date of such notice the breaching party shall have thirty (30) days to cure such breach, and if the breach is cured within that time frame the non-defaulting party's right to terminate the Agreement for that breach shall cease to exist. Notwithstanding the foregoing, Genesis shall have the right to terminate this Agreement immediately: (i) if any license, permit or approval required for the operation of the Facility cannot be obtained or is at any time suspended; or (ii) in the event of voluntary or involuntary bankruptcy or similar insolvency actions by or against the Facility.

4.4 Termination of this Agreement shall not affect the rights and obligations of the parties arising out of any Services performed prior to the effective date of such termination.

5. Independent Contractor. In performing the Services hereunder, the parties acknowledge and agree that Genesis and its Therapists are acting as independent contractors and not as the agent, partner or employee of the Facility. This Agreement shall not create a joint venture, partnership or other joint business relationship. As an independent contractor, Genesis and its Therapists are not exclusively limited to performing services for the Facility and are entitled to provide services for parties other than the Facility. Genesis agrees to indemnify and hold the Facility harmless from any and all taxes, penalties and interest arising from Genesis' failure to pay, as they become due, all federal and state taxes due and payable on the compensation paid to Genesis.

6. **Insurance.**

6.1 At all times during the term of this Agreement, Genesis agree to maintain in full force and effect sufficient general liability insurance in minimum amounts of \$2,000,000 per occurrence and \$5,000,000 aggregate amount covering Genesis and Genesis' employees, in the performance of Services.

6.2 At all times during the term of this Agreement, Genesis agree to maintain in full force and effect sufficient professional liability insurance in minimum amounts of \$2,000,000 per occurrence and \$5,000,000 aggregate amount covering Genesis and Genesis' employees, in the performance of services.

6.3 Facility is self-insured.

7. **Non-Discrimination.** Neither party shall discriminate on the basis of race, color, sex, age, religion, national origin, sexual orientation, pregnancy, marital status, veteran status or handicap in providing services under this Agreement or in the selection of employees or independent contractors.

8. **Proprietary Items.**

8.1 It is expressly understood that the systems, methods, procedures, written materials and controls employed by Genesis in its performance of Services under this Agreement, including, but not limited to: (a) Genesis' policy and procedure manuals, proposals, financial data, memoranda, and handbooks; (b) computer software developed or provided to Facility by Genesis, including all documentation related thereto; (c) all proprietary methods, techniques, and procedures utilized by Genesis to the extent same are not readily available through the public domain; (d) all marketing strategies, demographics, and other materials not readily available through the public domain; (e) all trademarks, trade names, and service marks of Genesis; and (f) all other intellectual property, information, documentation, data, and technology relating to Genesis's business, trade secrets, customers, and finances, without regard to the medium of storage or method of transmission of such information, are "Confidential Information", are proprietary in nature, and shall remain the property of Genesis. Facility agrees that it will not, without the express prior written consent of Genesis, use the Confidential Information for any purpose other than the performance of this Agreement. Facility further agrees to maintain the confidentiality of the Confidential Information, and not disclose it to any third party, except to the extent such disclosure is required by law (including, but not limited to, a disclosure required under the Freedom of Information Act). If any person or entity seeks Genesis' Confidential Information by making a Freedom of Information Act request to Facility, or otherwise seeks to compel Facility to disclose Genesis' Confidential Information, Facility shall promptly notify Genesis so that Genesis may have the opportunity to seek an appropriate protective order.

8.2 Upon termination or expiration of this Agreement, Facility shall immediately return all Confidential Information to Genesis, and Facility has no further right to use, utilize, or access such Confidential Information.

8.3 The provisions of this Article 8 shall survive the termination of this Agreement.

8.4 Facility and Genesis each recognize and agree that violation or breach of

this Section would result in irreparable harm to the other party, such that no adequate remedy at law would be available. Therefore, Facility and Genesis both agree to waive any defense that the other party has an adequate remedy at law and agree that the other party may enforce its rights in equity by injunctive or other equitable relief, in addition to whatever other remedies it may have. Both parties also waive any requirement for the securing or posting of any bond in connection with the obtaining of such injunctive or other equitable relief.

9. **HIPAA Compliance.** The parties hereto acknowledge that they are both covered entities and that they are aware of and will comply with all applicable laws and regulations with respect to confidentiality of protected health information and HIPAA/HITECH.

10. **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year following the termination of this Agreement for any reason whatsoever, Facility shall not, directly or indirectly, for Facility or on behalf of any other person or business entity: (a) solicit, recruit, entice or persuade any therapist or other employee of Genesis to leave the employ of Genesis or to contract with Facility or any third party; or (b) employ or use as an independent contractor any individual who was employed or utilized as a contractor by Genesis at Facility at any time during the six (6) months prior to such proposed employment or contracting. "Indirectly employ" shall not include Facility contracting with, or receiving therapy services from, another provider who employs or contracts with any person who was employed or contracted by Genesis and provided Services to Facility within the previous six (6) months so long as Facility did not in solicit, recruit, entice or persuade the therapist or other employee to leave their employment with Genesis and becoming employed by that other provider.

11. **Exclusivity.** Genesis will be the sole and exclusive provider of Services to the residents at the Facility during the term of this Agreement, except for residents who request to be treated by a different provider.

12. **Notices.** Any notice, request, demand, consent, approval of other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given upon actual delivery by hand, email or facsimile transmittal or certified or registered mail, return receipt requested. Each such notice shall be sent to the respective parties at the addresses indicated below:

If to Genesis:

Genesis Rehabilitation Services
101 East State St.
Kennett Square, PA 19348
Attention: Lou Ann Soika, SVP

With a copy to:

Genesis Rehabilitation Services
101 East State Street
Kennett Square, PA 19348
Attention: Law Department
Facsimile: 484-813-6665
Email: lawdepartment@genesishcc.com

If to Facility:

River Bluff Nursing Home
4401 North Main Street
Rockford, IL 61103
Attention: Administrator

With Copy to:

Winnebago County Purchasing Department
404 Elm Street, Room 202
Rockford, IL 61101
Attention: Director of Purchasing

Any party may change its address for purposes of the Section by giving the other parties ten (10) days' prior written notice in accordance with this section.

13. **Access to Books and Records.** Pursuant to Section 1395X(v)(1)(I) of Title 42 of the United States Code and applicable rules and regulations thereunder, until the expiration of four (4) years after the termination of this Agreement, Genesis shall make available, upon appropriate written request by the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or the applicable state agencies or departments, or any of their duly authorized representatives a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by Genesis under this Agreement. Genesis further agrees that in the event it carries out any of its duties under this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a 12-month period, such subcontract shall contain a clause identical to that contained in the first sentence of this Section.

14. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld or delayed; provided that either party may assign this Agreement to any affiliate of such party, or to any party acquiring substantially all of the assets or stock of such party. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

15. **Amendments and Waivers.** This Agreement may be amended, modified or varied only by agreement in writing, duly executed by the party against whom enforcement of any amendment, waiver, change, modification, consent or discharge is sought. The waiver of any breach of any term or condition of this Agreement shall not be deemed to constitute the continuing waiver of the same or any other term or condition.

16. **Governing Law.** This Agreement will be deemed to have been made in and its validity and interpretation shall be governed by and construed under the laws of the State of Illinois.

17. **Headings.** The captions herein have been inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

18. **Entire Agreement.** This Agreement sets forth all of the promises, covenants, agreements, conditions and undertakings between the parties with respect to the subject matter of this Agreement.

19. **Severability.** If any provision of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

20. **Counterparts.** This Agreement may be executed in two or more counterparts each of which will be deemed an original, but together will constitute one and the same instrument.

21. **Fair Market Value.** The amounts to be paid by Facility to Genesis hereunder have been determined by the parties through good faith and arms-length bargaining to be the fair market value of the services to be rendered hereunder. No amount paid or to be paid hereunder is intended to be, nor shall it be construed as, an offer, inducement or payment, whether directly or indirectly, overtly or covertly, for the referral of residents by Facility to Genesis, or by Genesis to Facility, or for the recommending or arranging of the purchase, lease or order of any item or service. In addition, no amount paid or advanced hereunder includes any discount, rebate, kickback or other reduction in charge. For purposes of this Section, "Genesis" and "Facility" shall include each such entity and any affiliate thereof.

22. **Program Representations.** Genesis and Facility hereby represent, warrant and covenant to each other that as of the date of this Agreement, and for the entire term and any renewal hereof, with respect to any federal health care program as defined in section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(f)) or any State health care program as defined in section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(h)) (collectively, the "Programs"): neither (a) the representing party; (b) any individual with a direct or indirect ownership or central interest of five percent (5%) or more of the representing party; nor (c) any director, officer, agent or employee of the representing party; has ever been debarred, suspended or excluded from any Program, or convicted of a felony offense related to the delivery of health care services. Each party covenants to immediately notify the other in writing if this representation is no longer true, or if such party is sanctioned or has a civil monetary penalty levied under any Program.

23. **Change in Law.** Notwithstanding anything to the contrary contained in this Agreement, in the event that any Medicare and/or Medicaid law, rule, regulation or payment policy, or any other applicable law or regulation, or any interpretation thereof, at any time, is modified, implemented, threatened to be implemented, or determined to prohibit, restrict or in any way materially change the terms of this Agreement, or by virtue of the existence of this Agreement has or will have a material adverse affect on either party, then Genesis and Facility agree to negotiate in good faith to amend this Agreement in a manner consistent with such change and the intent of the parties.

24. **Indemnification.** Each party agrees to indemnify the other, its affiliates and its respective officers, directors, employees and agents against, and hold the same harmless from, all liability, losses, damages, obligations, judgments, court costs and attorney's fees resulting solely from or arising solely out of, any act or omission (including, but not limited to, any neglect, reckless or intentional act or failure to act) by its officers, directors, employees and agents or any failure by its officers, directors, employees and agents to perform any obligation undertaken

in or any covenant made under this Agreement. Upon notice, each party shall resist and defend at its own expense, and by counsel reasonably satisfactory to the other, any such claim or action.

25. **Confidentiality.** In order to facilitate the performance of this Agreement each party may deem it necessary to disclose to the other certain proprietary and/or confidential personnel information, financial information, market information, pricing information and service delivery information. Facility agrees that all prices referenced in this Agreement are to be kept confidential and will not be disclosed to another person or entity except as required by law. Each party agrees to keep all such information strictly confidential. No attorney-client, accountant-client or other legal privilege will be deemed to have been waived by Genesis or Facility by virtue of this Agreement.

26. **No Violation.** Neither party shall be deemed to be in violation of this Agreement if it is, or reasonably determines that it is, prevented from performing any of its duties or obligations hereunder for any reason beyond such party's control, including without limitation flood, storm, strikes, acts of God or the public enemy, or statute, ordinance, rule or action of any applicable governmental entity.


27. **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of this Agreement, whether of a similar or dissimilar nature.

28. **No Construction Against Drafter.** No inference in favor of, or against, any party to this Agreement shall be drawn from the fact that such party has drafted any portion of this Agreement.

[This space intentionally left blank]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed this Agreement as of the day and year first written above.

Genesis Eldercare Rehabilitation Services, LLC

By: 
Lou Ann Soika
SVP

Winnebago County River Bluff
Nursing Home

By: 
Authorized Signature

Name: Frank Haney

Title: Chairman of the Board

Date: 2/8/2018

Date: 1/26/18

SCHEDULE "A"

SERVICES

Genesis agrees to provide the following clinical rehabilitation services:

Physical Therapy

Occupational Therapy

Speech Language Pathology

Screenings on the following basis:

- Admission
- Re-Admission
- Referral

Care Plan Participation

- Residents on Active Caseload
- Resident and Caregiver Family Education for Residents on Active Caseload

Regulatory Updates via email, conference calls and Adobe Connect Presentations

Performance Reports: Clinical, Financial and Operational Reporting* to include:

- Utilization Report (CRM)
- MBI: Modified Barthel Index

*Additional and/or customized reporting will be subject to a fee.

Timely and Accurate Provision of MDS Data

Billing information via electronic upload

Access to Customer Portal

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Initials

3/8/2018
Date

GENESIS

[Signature]
Initials

1-26-2018
Date

FACILITY

SCHEDULE "B"

ADDITIONAL SERVICES

The services outlined below as well as any additional non-routine services requested and agreed upon by both parties will be provided for up to 16 hours per month by Genesis at no cost to Facility.

Participation in Clinical Meetings - falls prevention, contractures prevention, restraint reduction, wound rounds, weight loss

Daily Admission/Medicare Meetings

4 In-services per year (1 per quarter) to be chosen from Customer Selection Form

2 Formal Clinical programs/year to be chosen from Customer Selection Form

Facility may request Genesis to provide additional services above the 16 hours per month outlined above. Such request must be approved, in advance, by Facility's Administrator or Deputy Administrator. All services above the allotted 16 hours per month will be billed at a rate of sixty-five dollars (\$65.00) per hour.

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Initials

2/8/2018
Date

GENESIS

[Signature]
Initials

1-26-2018
Date

FACILITY

SCHEDULE "C"

**FEES FOR RESIDENTS OTHER
THAN THOSE COVERED UNDER
MEDICARE "A"**

1. For residents covered under Medicare Part B, and other Fee for Service arrangements, Facility agrees to compensate Genesis for all clinical rehabilitation services and related activities provided by Therapists at 68% of the Full Outpatient Fee Schedule established by the Centers for Medicare and Medicaid Services ("CMS")
2. For residents covered under Per Diem Managed Care Contracts, Facility agrees to compensate Genesis for all direct clinical treatment at ninety-four cents (\$0.94) per minute. Direct clinical treatment time will be established prior to treatment being delivered.
3. None of the provisions of this Schedule "C" apply to residents covered under Medicare "A" and other Payers reimbursed on a RUG Basis, see Schedule "D".


Initials

2/8/2018
Date

GENESIS


Initials

1-26-2018
Date

FACILITY

SCHEDULE "D"

FEES FOR RESIDENTS COVERED UNDER MEDICARE "A"

Facility agrees to compensate Genesis at a rate equal to ninety-four cents (\$0.94) per delivered minute.

"Delivered Minute" means all minutes for which evaluation, treatment or other billable services are provided.

None of the provisions of this Schedule "D" apply to residents who are NOT covered under Medicare "A"; see Schedule "C."

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2/8/2018
Date

GENESIS

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Initials

1-26-2018
Date

FACILITY

Equipment and Supply List

Equipment

Accessoried Multi-purpose Combo Rack
4x7 Valueline Economy Mat Table
Standard Automatic Table
Sammons Preston Revolving Stool
Mettler Electrotherapy Cart
Sonicator 930 Plus Combo Unit
8-Pac Tropic Heater
Mounted Platform Parallel Bars
Portable Mirror
Pulse Oximeter
Work Nesting Stools (set of 3)

Physical Therapy Supplies

EZ Trolld Electrodes (2" Diameter)
Ultrasound Gel
Cervical Hot Packs
BP Cuff
72" transfer belt – neutral
8" Goniometer
12 ½ Goniometer
Electronic Stopwatch
Economy Pedal Exerciser
60" Transfer Belt – Pastel
Cando Plyometric Weighted Balls – set of 6
Cervical Hot Pack Cover
Standard Hot Pack Cover
Geriatric exercise Prescription Kit

Occupational Therapy Supplies

Stacking Cones
Theraputty – set of 5
Latex power free gloves – Med Size
Rolyan Graded Pinch exerciser
Graded ROM Arc
Therabath Pro w/scent free paraffin
Assistive Device Kit 4
Hand helper
Rolyan Reach'n Range Overhead Pulley
Jamar Hand Evaluation Kit

Speech Therapy Supplies

The Souce for Alzheimers & Dementia
Arizona Battery for Communication Kit
Language Activity Resouce Kit
Accessorized Multi-purpose Combo Rack
SR-Cognition: A Cognitive-Communication kit

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Initials

2/8/2018
Date

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Initials

1-26-2018
Date

GENESIS

FACILITY

AMENDMENT TO THERAPY SERVICES AGREEMENT

This **Amendment to Therapy Services Agreement** (this "Amendment") is made as of 6th day of August, 2019 by and between Genesis ElderCare Rehabilitation Services, LLC, d/b/a Genesis Rehabilitation Services, a Pennsylvania limited liability company ("Genesis"), and County of Winnebago d/b/a River Bluff Nursing Home ("Facility") located at 4401 North Main Street, Rockford, Illinois 61103-1277.

RECITALS

Whereas Genesis and Facility are parties to a Therapy Services Agreement, dated 1st day of February, 2018 (the "Agreement"); and

Whereas Genesis and Facility desire to amend the Agreement on the terms and conditions set forth in this Amendment.

Now, therefore, in consideration of the foregoing and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Genesis and Facility agree to amend the Agreement as follows:

TERMS

1. **Effective Date**. This Amendment is effective as of October 1, 2019.
2. **Amendments**. The Agreement is amended as follows:

Section 2.4 of the Agreement is replaced in its entirety with the following:

2.4 Facility shall have responsibility for performing and completing the Minimum Data Set ("MDS") assessment for all residents. Facility shall be responsible for assessing each resident and ensuring that the acuity level for each resident has been properly documented and that the resident is coded into the correct Patient Driven Payment Model ("PDPM") category or, to the extent applicable under a managed care agreement or other arrangement, assigned to the appropriate Resource Utilization Group ("RUG").

Sections 2.9, 2.10, 2.11, and 2.12 of the Agreement are replaced in their entirety with the following:

2.9 **Denial of Payment**. Except as specified in Section 2.11 and 2.12, if Medicare or its agent notifies Facility of a determination, after final appeal, that Medicare is denying, disallowing, or reducing payment for any resident, which denial, disallowance, or reduction is solely attributable to Facility's failure to meet medical necessity requirements for Services including (i) Genesis's provision of unwarranted or unskilled therapy or (ii) Genesis's incorrect or inadequate therapy documentation (a "Therapy Denial"), Facility will be entitled to offset against Genesis's next invoice to Facility an amount equal to the amount previously paid to Genesis for such unreimbursed Service. If the Agreement is terminated and the Facility has paid for all

Services accrued through the date of termination, this provision will continue in force, except that Genesis will be required to refund to Facility the amount previously paid to Genesis for such unreimbursed Service. Upon successful appeal of any Therapy Denial that previously resulted in a retraction of monies by Medicare from Facility and an offset by Facility from Genesis, Facility will repay that portion of the overturned claim related to Genesis's Services within thirty (30) days of repayment by Medicare.

2.10 **Genesis Notification of Denial.** Facility shall notify Genesis of the receipt of any payment denial, appeal decision, or upon a Medicare denial of any claim or cost report adjustment related to Genesis's Services (each a "Notice") within ten (10) business days of the date of Notice. Notification shall be via the Genesis portal unless a different method is expressly designated in writing by Genesis to Facility. If notification is received after ten (10) business days of the Notice, then Genesis retains the right in its discretion to accept or reject pursuit of appeal. If Facility fails to notify Genesis as required by this section, Facility shall remain responsible for compensating Genesis for any Services which are the subject of such Notice and shall have no right to offset such unreimbursed amounts as provided in Section 2.9.

2.11 **Appeal Rights.** Upon Genesis's request, and to the extent allowed by law, Facility shall timely appeal any Notice received in connection with Genesis's Services. The parties agree to cooperate in preparing such appeal. Facility shall provide any and all Facility records related to the Claim denial that are reasonably requested by Genesis to advance the appeal of the denial. If the Notice resulted from the error or omission of information provided by Genesis, Facility shall appoint Genesis to act as its agent for purposes of conducting the appeal and Genesis shall be responsible for preparing such appeal and incurring the costs associated with the appeal. Facility shall grant to any fiscal agency involved the right to discuss the status of the claim with Genesis.

2.12 Facility shall have no right of offset for any denial, disallowance or reduction in reimbursement, nor any right to indemnification by Genesis for a claim, caused by or resulting from the failure of Facility, its agents or employees to (i) comply with any provisions of this Agreement; (ii) correctly bill Medicare or the appropriate fiscal intermediary or other third-party payor; (iii) incorrectly complete and file the resident's MDS assessment, including the timelines of the assessment; or (iv) correctly determine or communicate to Genesis a resident's eligibility for coverage or change in coverage status. Facility shall also have no right to offset, or be considered a breach by Genesis, if Genesis did not provide Services to a particular resident because: (a) the resident was ill and unable to receive Services; (b) the resident refused treatment; (c) the resident was unavailable for Services; (d) the Services were not ordered by a physician or were not appropriate, as determined by Genesis. Facility shall have no right to offset for any amounts for which Medicare does not reimburse Facility for a Service except as otherwise specifically provided herein.

Section 4.1 of the Agreement is revised with the following changes:

4.1 This Agreement shall commence on October 1, 2019 and shall continue in full force through January 31, 2021. Following this term, the agreement shall automatically renew for successive one-year terms on the same terms and conditions as contained in this Agreement

until terminated by one or both of the parties as provided herein. [Fee rates shall be re-established for each renewed term as provided by section 3.1 above].

A new section 4.5 is added to the Agreement as follows:

4.5 **Medicare Part A Fee Negotiation.** Between January 1, 2020 and September 30, 2020, if either party finds that the fee or fee structure for residents covered under Medicare Part A differs materially from market rates for comparable series, that party may request in writing a proposal for a revised fee or fee structure for residents covered under Medicare Part A (a "PDPM Fee Adjustment Request"). Upon delivery of a PDPM Fee Adjustment Request, the parties shall negotiate in good faith to amend the fee or fee structure for residents covered under Medicare Part A to make the fee or fee structure consistent with market rates. If the parties are unable to reach such an agreement within thirty (30) days of the date of delivery of the PDPM Fee Adjustment Request, either party may request a resolution of the PDPM Fee Adjustment Request through arbitration administered by the American Health Lawyers Association Dispute Resolution Service. Such arbitration shall be conducted with one arbitrator pursuant to the AHLA Rules of Procedure for Arbitration; provided, however, that the parties agree (i) to waive any discover or pre-hearing motions, (ii) to waive any oral hearing, and (iii) to submit evidence and arguments solely in writing.

Section 5 of the Agreement, titled "Independent Contractor," is replaced in its entirety with the following:

5. Independent Contractor.

5.1 In performing the Services hereunder, the parties acknowledge and agree that Genesis and its Staff are acting as independent contractors and not as the agent, partner or employee of the Facility. This Agreement does not create a joint venture, partnership or other joint business relationship. As an independent contractor, Genesis and its Staff are not exclusively limited to performing services for Facility and are entitled to provide services for parties other than Facility. Genesis agrees to indemnify and hold the Facility harmless from any and all taxes, penalties and interest arising from Genesis's failure to pay, as they become due, all federal and state taxes due and payable on the compensation paid to Genesis.

5.2 Facility acknowledges and agrees that it has no right under this Agreement to review any individual Genesis employee's salary or benefit information, nor to direct Genesis regarding staffing or salary issues pertaining to Genesis's personnel. Genesis is and remains the sole employer of its Staff and other personnel who may provide Services to Facility, and retains full discretion, subject to Paragraph 1.1 of the Agreement, regarding staffing and personnel decisions.

Section 10 of the Agreement, titled "Non-Solicitation," is replaced in its entirety with the following:

10. Employee Transfer Fee.

10.1 Facility acknowledges and agrees that Genesis has expended, or will expend, a substantial sum of money and significant time and effort to identify, recruit and train its Staff. Facility further acknowledges that Genesis and it receive a substantial benefit from Genesis's specially trained workforce. Accordingly, to the extent that Facility, during the Term and for one year following the termination of this Agreement for any reason whatsoever, directly or indirectly employs or uses as an independent contractor any individual who was employed or used as a contractor by Genesis to provide services to Facility during the six months prior to that individual's employment by Facility, Facility shall pay Genesis an Employee Transfer Fee equal to \$10,000 for each individual. "Indirectly employ or use" shall include, but not be limited to, Facility contracting with, or receiving therapy services from, another provider who employs or contracts with any person who was employed or contracted by Genesis and provided Services to Facility within the previous six months.

10.2 Nothing in this Section 10 is intended to nor shall it be deemed to restrain the ability of any current or former Genesis employee to engage in a lawful profession, trade, or business of any kind. Notwithstanding the foregoing, however, no current or former Genesis employee is a third-party beneficiary of this Section 10.

Section 24 of the Agreement, titled "Indemnification," is replaced in its entirety with the following:

24. Indemnification.

24.1. Each party agrees to indemnify the other, its affiliates and its respective officers, directors, employees and agents against, and hold the same harmless from, all liability, losses, damages, obligations, judgments, court costs and attorney's fees (collectively "Claims") resulting from or arising out of, (i) the indemnifying party's breach of this Agreement, and/or (ii) the indemnifying party's negligence or willful misconduct in performing or providing services under this Agreement.

24.2. An indemnifying party shall not be obligated to indemnify an indemnified party from and against a Claim if such claim results from or arises out of the negligence or criminal or malicious act of the indemnified party.

24.3. Notwithstanding any other provision in this Agreement, Genesis shall have no obligation to indemnify Facility for any Claims by Facility's employees including Claims for wages, provision of benefits and/or Claims arising from alleged workplace injuries which are covered by the Facility's workers' compensation program.

24.4. Notwithstanding any other provision in this Agreement, Genesis shall have no obligation to indemnify Facility for any Claims involving, arising out of, resulting from, or relating to a Therapy Denial, regardless of whether such Claims are asserted directly by third-party payors or by federal or state governmental agencies or authorities. The provisions of Paragraphs 2.10, 2.11, 2.12, and 2.13 shall be Facility's exclusive remedy with regard to Therapy Denials.

24.5 A party seeking indemnification under this Agreement shall (i) provide written notice to the indemnifying party as to the existence of a Claim within a reasonable timeframe so as to not compromise defense and/or appeal rights, and (ii) if indemnification and defense request is not timely accepted, defend at its own expense, and by counsel reasonably satisfactory to the other, any such claim or action.

A new section 29 is added to the Agreement as follows:

29. Employee Information; Confidentiality.

29.1 It is expressly understood that Genesis's Staff have a protectable privacy interest in personally-identifying information and other data that may be included in an employee personnel file, credential or licensing report, background check report, or other reports that Genesis may maintain ("Employee Information"). Accordingly, to the extent Employee Information is requested by a government agency pursuant to an audit or other investigation of Facility, Facility shall relay such request directly to Genesis, and Genesis shall respond directly to the agency responsible for the request.

29.2. Notwithstanding Paragraph 29.1, no Genesis employee is a third-party beneficiary of this Agreement with respect to a disclosure by Genesis of Employee Information.

Schedule "A" to the Agreement is replaced in its entirety with the Schedule "A" attached to this Addendum.

Schedules "C" and "D" to the Agreement are replaced in their entirety with the Schedule "C" attached to this Addendum.

Effectiveness of Amendment. Except as provided in this Amendment, all other terms and provisions of the Agreement shall remain in full force and effect.

In witness whereof, Genesis and Facility, intending to be legally bound, have duly executed this Amendment as of the last of the dates set forth below.

**Genesis Eldercare Rehabilitation
Services, LLC**

By: _____

Lou Ann Soika
Chief Strategy and Administrative
Officer

Date: _____

10/01/2019

**Winnebago County d/b/a River Bluff
Nursing Home**

By: _____

Authorized Signature

Name: _____

Title: _____

Date: _____

Frank Hone

Chairman

9/30/19

SCHEDULE "A"
SERVICES

Genesis agrees to provide the following clinical rehabilitation services:

Physical Therapy

Occupational Therapy

Speech Language Pathology

Screenings

Care Plan Participation – Residents on active case load

Participation in Clinical Meetings up to 2 ½ hours per week (regarding, e.g. falls prevention, contractures prevention, restraint reduction, wound rounds, weight loss)

Daily Admission/Medicare Meetings up to 2 hours per week

Las 10/01/2019
Initials Date
GENESIS

GP 9/30/19
Initials Date
FACILITY

SCHEDULE "C"
FEES FOR SERVICES

1. Fees for residents covered under Medicare A and any payor following PDPM

Facility agrees to compensate Genesis for all Services and related activities provided by Staff at the rate of \$0.85 per delivered minute. "Delivered minute" means all minutes for which evaluation, treatment, or other patient care related services are provided.

2. Fees for residents covered under Medicare Part B, Medicaid, and other Fee for Service Arrangements

Facility agrees to compensate Genesis for all Services and related activities provided by Staff at the rate of 68% of the Outpatient Full Fee Schedule established by CMS.

3. Fees for residents covered by per diem managed care contracts

For residents covered under a managed care agreement or other arrangement that reimburses on a per-diem basis, Facility agrees to compensate Genesis for all Services and related activities provided by Staff at the rate of \$0.94 per minute. Direct clinical treatment time will be established prior to treatment being delivered.

4. Fees for residents covered under alternative Part A payment models, other managed care services and other payor sources

Facility agrees to compensate Genesis for all Services and related activities provided by Staff at the rate of \$0.94 per delivered minute. "Delivered minute" means all minutes for which evaluation, treatment, or other patient care services are provided.

Las 10/01/2019
Initials Date
Genesis

ES 9/30/19
Initials Date
Facility



WINNEBAGO COUNTY

— ILLINOIS —

July 29, 2020

Mr. John Price
Genesis Rehab Services
101 East State Street
Kennett Square, PA 19348

CONTRACT DESCRIPTION: Therapy Services

CONTRACT: # 17P-2116

RENEWAL CONTRACT PERIOD: Through January 31, 2023.

ORIGINAL CONTRACT START DATE: February 1, 2017

Dear Mr. Price,

Winnebago County's current contract with your company needs to be renewed. Based on performance and continuing need, the County has renewed this contract through the end of its term, January 31, 2023.

Per our mutual agreement, the costs from the previous year will remain the same for the remainder of the contract. Please make sure to send an updated insurance certificate to the Purchasing Department as soon as possible.

Please use this as formal notice to renew the agreement. If you have any concerns please contact me at ajohns@WinCoil.us or by phone at (815) 319-4380.

Thank you for your continued interest in doing business with Winnebago County.

Sincerely,

Ann Johns
Director of Purchasing