

## **GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions (“Terms and Conditions”) are made apart of and incorporated herein by reference with the Service Agreement between Windward, the Client, and the Co-Signor.

### **1. Licensing.**

1.1 Home Care Organizations in California are not authorized to arrange for the provision of medical services to a client and Home Care Aides are not authorized to provide medical services to a client. The California Department of Social Services does not have the authority to provide waivers or authorizations which allow home care organizations to provide medical services to clients.

1.2 Windward shall maintain a California Home Care License at all times. Any change in Windward’s license status will be communicated by Windward to Client within 30 days after such change becomes final.

1.3 Windward is responsible for maintaining its license with the California Home Care Service Bureau and for maintaining a \$1,000,000.00 insurance policy (\$3,000,000.00 Aggregate) for Windward employees and provides worker’s compensation insurance, pays employment taxes and other benefits to employees. Each Windward employee is bonded to the extent of \$10,000.00.

### **2. General Plan of Care.**

2.1 The Care Manager will provide assessment, care planning, care coordination, supervision of its Home Care Aide services, advocacy with health care providers, communication with family and care team members, research of resources and benefits, make referrals, and other professional services as needed. The specific services to be provided by Windward are outlined and described in the Plan of Care approved by the Client.

2.2 Within the first two weeks of service, the Care Manager will develop a specific, written Plan of Care for the Client which the Client (or Client’s authorized representative) will be asked to approve (hereinafter the “Plan of Care”). Windward agrees to provide the necessary services as set forth and summarized in the Plan of Care. The Care Manager will review the Plan of Care with the Client or Client’s authorized representative at a minimum of every 6 months.

2.3 Should modification of the Plan of Care be deemed necessary and appropriate, Windward and Client (or Client’s authorized representative) agree that Windward will discuss such modified Plan of Care with Client or authorized representative. If Windward deems it necessary and appropriate to effect an immediate change in the Plan of Care based on the surrounding facts and circumstances in order to meet Client’s needs, the Client (or Client’s authorized representative) and Windward agree that Windward may institute such immediate change in the Plan of Care to address the needs of the Client before discussing the change in the Plan of Care with Client or Client’s authorized representative; provided, however, that Windward shall promptly and as soon as reasonably possible, review the change in the Plan of Care with the appropriate party and either obtain approval for the change or confirmation that the change in the Plan of Care is to be discontinued.

### **3. Employees.**

3.1 Client acknowledges and understands that all Home Care Aides, home care personnel, companions, and aides are either employees of Windward or one of its Partner Agencies; or qualified persons employed by the Client through an independent agency or employed directly by Client (collectively “Agents”) with whom Client has contracted for the aide’s services. Windward shall coordinate the Client’s Plan of Care with the Home Care Aides employed by Windward, as well as any Agents. For any Agent caregivers employed by Client, the Client should be familiar with the requirements of the State of California Home Care Service Bureau, and the

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protections afforded by the State of California Home Care Aide registry. In the event Client directly hires someone to provide Client with any home care services, Client acknowledges and agrees that Windward shall have no responsibility for supervising the services to be provided to Client by Client's employee. Client agrees to be solely responsible for any obligations or liability to the person hired by Client and agrees to hold harmless and indemnify Windward from any claims or causes of action asserted by the Client's employee.

3.2 Windward is committed to providing a safe work environment free of violence and unlawful harassment. Windward's workplace violence and anti-harassment policies apply to all persons involved in Windward's services and the operations, including Clients and their visitors. If Client suspects any violence, harassment, or discrimination has occurred, Client should notify Client's Care Manager or the Director of Clinical Services at once. Client will maintain an environment free of violence and unlawful harassment, regardless of source (including animals), and will indemnify and hold Windward harmless for any unlawful activity that may occur in areas of the Client's control. In the event of violence or unlawful harassment, the Service Agreement may be terminated with immediate effect by Windward.

3.3 Client or Client's authorized representative(s) agree to comply with all laws and regulations, Windward's policies, and the Service Agreement. If a Windward employee is directed by Client to do anything that violates this Service Agreement, the Client will be held liable.

### **4. Policies.**

4.1 Emergencies. It is the policy of Windward to call 911 in case of a life-threatening emergency. Client agrees that if he or she has other wishes or instructions, proper documentation stating those instructions will be provided to Windward at the time the Service Agreement is made or as soon thereafter as the Client decides to make other arrangements concerning a life-threatening emergency.

4.2 Emergency Preparedness. "Windward Staff" (Home Care Aides and employees) will make reasonable efforts to ensure the safety of Client in the event of a natural disaster (for example, fire, earthquake, catastrophic weather, etc.) or other emergency situations (for example, criminal activity, civil unrest, interruption of public services, or evacuation orders). However, Windward cannot guarantee Client's safety or that Windward will be able to be present and attend to Client's needs in the event of such events. Windward recommends that Client and/or their representative(s) make their own preparations for emergencies, such as having an emergency kit, an evacuation plan, and a neighbor or other local person who can assist Client as needed. If Client lives in assisted living or other care facilities, Windward assumes actions to provide for Client's safety will be provided by the facility's staff. Windward Staff will attempt to contact Client in the event of a natural disaster or other emergency and will reasonably assist Client within Windward's capabilities; however, Windward cannot guarantee a personal visit or evacuation to Client before, during, or after a natural disaster or other emergency occurs. If necessary, Windward will endeavor to coordinate the Client's safety with first responders to notify them if the Client is believed to be in danger or in need of medical care. Client acknowledges that Windward Staff working in a location under evacuation orders will be required to evacuate and shall assist Client in evacuating a dangerous location for their mutual safety.

4.3 Transportation. Client agrees to inform Windward promptly if the insurance on a car in Client's possession regularly used by employee for transporting Client has lapsed.

4.4 Safety. Client represents and warrants to Windward that Client's home does not have any unsafe, unhealthy, or other hazardous conditions which might cause illness, harm, or injury to any person working at

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or residing in Client's home. Client agrees to maintain Client's home in a clean, safe, and habitable condition during the term of the Service Agreement. Client shall notify Windward and any aides providing services to Client of any condition or component of Client's residence that may constitute a threat to the health or safety of any aide providing services to Client. If Client is notified by Windward or an aide that a health or safety condition exists, Client shall immediately take steps to correct or repair the condition to eliminate any threat of injury or damage to persons using or occupying the residence. Client represents that Client shall maintain in full force and effect a homeowner's insurance policy on Client's residence during the term of this Service Agreement with liability coverage for injuries or damages to invitees or others that may occur at the residence.

4.5 Privacy and Security. Client acknowledges and agrees that any in-home security cameras or other video recording devices shall not be employed or used in any bathroom areas used by a Home Care Aide for toilet or personal hygiene activities, or in other rooms where the Home Care Aide is engaged in their bathing or dressing activities. Client also agrees not to install any listening, amplifying, or audio recording devices that would potentially capture the confidential communication of the Home Care Aide without the Home Care Aide's expressed consent. Client shall respect the Home Care Aide's right to privacy in those regards and shall hold harmless and indemnify Windward for any breach or violation of this provision.

4.6 Gifts. It is Windward's policy that staff do not accept gifts from Clients. However, on occasion clients wish to give a small gift to an employee, such as on a birthday or holiday. Windward's policy is that the Care Manager must be notified first before any gift is given to an employee. This policy is designed to protect Client from any undue influence from employees, and to protect the employee from the suspicion of undue influence or theft. Employees are made aware of this policy upon starting their work with Windward.

4.7 Windward does not participate in the practice of fee splitting, accepting, or giving referral fees, or other similar arrangements with any other party providing services to our clients. Windward maintains its objectivity by focusing only on what Windward reasonably believes is in the best interest of the Client.

4.8 Windward follows the guidance of the US Center for Disease Control (CDC), Occupational Safety and Health Administration (OSHA), and California OSHA to protect the Client's well-being and ensure a safe workplace for Windward employees. Windward regularly reviews notices of change to implement any needed updates to Windward's operations. Windward uses our best efforts to protect the safety of our Clients, but we cannot completely eliminate the risk of exposure that comes from interactions with our employees. If there is a possibility of the Client having a hazardous condition, health or environmental, or a known COVID-19 exposure, Windward will evaluate and may provide the requisite PPE to protect the safety of the Client and the employees. The PPE costs are billed to the Client as out-of-pocket, reimbursable costs. The content of these kits varies depending on the situation. In addition, the cost of the Care Manager's time to deliver and set up infection controls at the home is billed to the Client at the rates in the Service Agreement. Windward may ask visitors to wear face coverings and/or limit the number of visitors to protect Client and employee safety. We ask visitors to postpone their visit if they themselves, the Client, or a member of the household is ill. The Client is responsible for reporting to the Care Manager any exposures, hospital or congregate living stays, and/or test results. The recommended treatment protocols for those with infections depend upon the individual client's underlying health status. For each situation where treatment of a Client with COVID-19 or another illness is required, Windward will need to decide whether it will be able to adequately provide the support the Client needs. Client acknowledges that Client and, as appropriate, Client Representative has been informed by Windward that there are medical situations where Windward will not be able to provide all the

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care necessary for Client and that the terms and scope of Client's medical care are subject to recommendations by Client's physician and other health care professionals.

### **5. Payment for Services.**

5.1 If payment is not made to Windward within five (5) days, Windward will add a continuing monthly finance charge of 1.5% per month on any unpaid balance. If an account becomes delinquent and because of such delinquency Windward elects to seek legal advice or services regarding collection of the account, Client (and any Co-Signor) will also be liable for reasonable attorney's fees and collection costs incurred by Windward even if litigation or arbitration proceedings are not commenced. Acceptance of a payment which is less than the amount then due shall not be a waiver of Windward's rights to payment of the balance of any unpaid amount due on the account, regardless of Client's endorsement of any check so stating. If any check, draft, or other instrument of payment given by Client to Windward is dishonored for any reason, Client agrees to pay to Windward the sum of Fifty dollars (\$50.00) in addition to any finance charge and Windward, at its option, may require all future billing invoices be paid by cashier's check. Payments will be applied first to accrued late charges and collection costs, including any attorney's fees, second to accrued interest, then to the service charges and any costs described in the billing invoice, and any remaining amount to any other outstanding charges or costs.

5.2 State and Federal wage and hour rules with regards to regular time worked and overtime are very specific with regards to breaks and rates of pay and must be followed. When the Home Care Aide (HCA) works a 24-hour shift, it is our policy to allow the HCA to eat from the food prepared for the Client, unless other arrangements are made.

5.3 At the termination of the Service Agreement, any Service Deposits paid by Client at the initiation of services pursuant to the Service Agreement shall be applied to any balance that remains due and owing to Windward and any remainder will be returned to Client. Client acknowledges that the Service Deposit shall not earn any interest and no interest shall accrue or be payable by Windward to Client.

5.4 If there is any dissatisfaction with services or other complaints, Client shall promptly notify the Care Manager or a Vice President of Windward at the address for notices on the Service Agreement. If the invoice for the services is paid when due or, after thirty (30) days from the date the services have been provided under the Service Agreement no complaints have been received by Windward from Client, the parties agree that the services provided to Client as described in the paid invoices shall be deemed satisfactory.

### **6. Termination.**

6.1 The Service Agreement shall continue in full force and effect while the Plan of Care services are performed by Windward. Windward and Client each have the right to terminate the Service Agreement, with or without cause and at any time by providing seven (7) days advance written notice to the other party of such termination at the then current address of record. In the event of termination by Windward and if requested by Client, Windward will provide Client with referrals for other service providers. The notice of termination by either party shall be given by the means or methods described in the Service Agreement and this document.

6.2 Notwithstanding the foregoing notice provision, in the event Client fails to pay Windward's statement for services as provided in the Service Agreement and this document, Windward shall have the right to immediately terminate this Service Agreement upon 72 hours advance notice and stop rendering Plan of Care services by delivery of written notice to Client. Client shall be liable for payment of Windward's services

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through the last date on which services are rendered, including services rendered during the three-day notice period.

**7. Amendment to Service Agreement.** The Service Agreement and any addendum may be amended by a writing signed by Windward and the Client (or Client's authorized representative) from time to time if the scope of the Care Management services changes. Windward agrees to monitor all provided services and to modify, when necessary or appropriate upon the approval and consent of Client or Client's authorized representative, such services to assure the proper level of care and assistance is rendered to Client.

**8. Effective.** The Service Agreement is effective on the date it is signed by both parties and the Co-Signor, if any.

**9. Collection and Legal Responsibility.** Any controversy or claim arising out of, or relating to, the performance of the Service Agreement by Windward or an alleged breach of the Service Agreement by Windward will be resolved by binding arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having competent jurisdiction thereof. Notwithstanding the above, in the event (a) that Client commits a material breach of the Service Agreement by failing to pay Windward's statements for services as provided in the Service Agreement; or (b) commits a tort against Windward, its agents, employees, shareholders, officers or directors, Windward may, in its sole discretion and after giving notice to Client, elect to waive and forego arbitration and may seek all legal, equitable or contractual remedies available to it by filing an action in the San Diego Superior Court or other appropriate court in San Diego County, including an award for all attorney's fees and costs incurred by Windward in prosecuting the legal proceeding.

**10. Attorney's Fees.** If any legal action is brought by either party to enforce any provision of the Service Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs, expert witness fees, and court costs in such amounts as shall be allowed by the court or an arbitrator. This includes reasonable attorney's fees incurred in connection with any arbitration, in any legal action, or in any bankruptcy proceeding and for anticipated post-judgment collection activities. Notwithstanding the foregoing, if a Client's account becomes delinquent and because of such delinquency Windward elects to seek legal advice or services regarding collection of the account, Client (and any Co-Signor) will also be liable for reasonable attorney's fees and collection costs incurred by Windward even if litigation or arbitration proceedings are not commenced. The provisions and terms of this Section shall survive the termination of the Service Agreement by the Client or Windward.

**11. Notice.** For the purpose of providing notice under the Service Agreement, the parties' current and correct addresses are listed on the Service Agreement. All notices and other communications that are required or permitted to be given to a party (including a Co-Signor, if any) under the Service Agreement shall be in writing and may be sent to such party by first class mail (delivery deemed complete 3 days after mailing), by personal delivery, by overnight delivery service, by e-mail, by fax, or by certified first-class mail, return receipt requested. Except for first class mail, all such notices and communications shall be effective upon delivery of such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving fifteen (15) days' notice to the other party in the manner set forth above.

**12. Venue and Applicable Law.** The Service Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of California (without respect to principles of conflicts of law), and the General Terms and Conditions - 1.27.2025

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Parties hereby submit to the jurisdiction of, and venue in, County of San Diego, State of California in any legal proceeding necessary to interpret or enforce the Service Agreement or any part of the Service Agreement.

**13. Validity of Service Agreement.** If any provision of the Service Agreement or Terms and Conditions is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way. By signing, the person signing represents that they have the authority to enter into the Service Agreement for the Client.

**14. Signatures and Counterparts.** The Service Agreement and any Amendments or addenda may be executed in one or more counterparts, each of which shall be deemed an original. Signatures and initials transmitted by facsimile or e-mail, through scanned or electronically transmitted .pdf, .jpg or .tif files, shall have the same effect as the delivery of original signatures or initials and shall be binding upon and enforceable against the parties hereto as if such facsimile or scanned documents were an original executed counterpart.

**15. Interpretation of Section Headings.** Section headings used in the Service Agreement and these Terms and Conditions shall not be construed to be a part of the Service Agreement, nor to limit the scope of meaning of any paragraph to which they refer.

**16. Time of Essence.** Time is expressly made of the essence of the Service Agreement.

**17. Indemnification.** To the extent allowed under the laws of the State of California, Client on its own behalf and on behalf of its agents, employees, successors and assigns (“Indemnifying Parties”), hereby agrees to indemnify, release, discharge and hold harmless Buena Vista Management Services, a California Limited Liability Company and its agents, employees, successors, members, managers, independent contractors and assigns (collectively, “Windward”) from all losses both known and unknown, damages, costs and expenses, including reasonable attorneys’ fees (collectively, the “Losses”): (1) Alleged to have arisen directly or indirectly out of any alleged violation of or noncompliance with applicable State, Federal or local laws on the part of Windward, and (2) Losses alleged to have arisen directly or indirectly from any bodily injury to, or death of Client or damage to or destruction of any property alleged to be caused directly or indirectly by Windward (collectively the above obligations are the “Indemnity”). If the Losses are a direct result of any willful, wanton or grossly negligent act or omission on the part of Windward, then to the extent caused by Windward, the Indemnifying Parties shall be under no obligation to indemnify Windward for those Losses under this Indemnity.

### **18. Co-Signor Acceptance, Consent and Agreement**

The Co-Signor and Client acknowledge they have read and reviewed the terms of the Service Agreement made by and between Windward and the Client and agrees and acknowledges:

1. Co-Signor shall be jointly and severally responsible for payment of Windward’s statements for services in the event Client fails to pay the statements as provided in the Service Agreement
2. Co-Signor agrees to be bound by the Terms and Conditions set forth in the Service Agreement