



**LTC ELITE, LLC
MEMBERSHIP AGREEMENT**

This Membership Agreement (this “*Agreement*”) is made and entered into effective _____, ____ (the “*Effective Date*”), by and between LTC Elite, LLC, a Texas limited liability company (“*LTC Elite*”) and _____, a _____ (“*Member*”).

WHEREAS, LTC Elite is a group purchasing organization (“*GPO*”) specializing in the negotiating and management of discount contracts of certain medical products and services, including, but not limited to products and services related to the provision of nursing home services;

WHEREAS, Member is a duly organized entity that wishes to purchase certain products and services through the LTC Elite group purchasing organization program; and

WHEREAS, the parties desire to enter into an agreement for the purposes of permitting Member and its Facilities to obtain certain products and services under Vendor Contracts between LTC Elite and Vendors.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1) **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for one (1) year from the Effective Date (the “*Initial Term*”), unless terminated under the terms of this Agreement. Upon the expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a “*Renewal Term*”), unless either Party gives written notice of intent not to renew not less than ninety (90) days prior to the expiration of the then current Term. For purposes of this Agreement, the Initial Term and any Renewal Term may be collectively referred to as the “*Term*.”

2) **Definitions.** For purposes of this Agreement, the following terms have the following meanings:

“*Facility*” or “*Facilities*” means the Member facilities identified on Exhibit A which are either owned or managed by Member and will be purchasing products and services under vendor contracts negotiated by LTC Elite.

“*Program*” means the group purchasing program conducted by LTC Elite, pursuant to which Member and its Facilities are provided access to the Vendor Contracts.



“*Vendor Contracts*” means the purchasing agreements between Vendor and LTC Elite for the purchase of products and services, and any agreements between Vendor and third parties that have agreed that Members may purchase under such agreements.

“*Vendor*” or “*Vendors*” means the supplier of products and services under the Vendor Contracts.

3) Administrative Fees.

(a) Member acknowledges that: (i) that LTC Elite will receive payment of fees for administrative and other services provided by LTC Elite from one or more Vendors based on products and services purchased or leased by Member and its Facilities (“*Administrative Fees*”); and (ii) that the percentage of the Administrative Fees will be three percent (3%) or less.

(b) LTC Elite will report to the Member, in writing, on a basis not less frequently than annually according to regulatory requirements relating to group purchasing organizations, and to the Secretary of Health and Human Services when applicable or requested, the amount received from the vendors with respect to purchases made by or on behalf of Member.

4) Responsibilities of LTC Elite.

(a) LTC Elite is a GPO and is responsible for negotiating the pricing and terms, as well as managing the contract(s) for products and services that are to be purchased by Members of the LTC Elite GPO. LTC Elite does not take possession of the goods or perform the services offered by the GPO.

(b) LTC Elite is not responsible for any actions of any Member, Facility, Vendor, wholesaler, distributor or manufacturer.

(c) LTC Elite is not responsible for actions resulting from the use of any products or services purchased and used by Member, including, but not limited to, any damages or liability that results from Member’s use of any products or services purchased through any Vendor Contract.

(d) LTC Elite is not responsible for any damages or liabilities that result from the use of any and all goods and services purchased through the Vendor Contracts, including, without limitation, any defects or damages to the goods and services, delays in delivery and/or any other act or omission by any Vendor, wholesaler, distributor, manufacturer or any other party.



5) Responsibilities of Member. Subject to Section 7(b) of this Agreement, Member agrees to purchase regularly and substantially its needed products and services for the specific products and services available through Vendor Contracts and recognizes LTC Elite as its authorized GPO for such products and services. Member will identify itself as an LTC Elite GPO member when ordering such products and services under the terms of a Vendor Contract from any Vendor. Member is solely responsible for payment to the Vendor for any and all products and services it purchases pursuant to a Vendor Contract and understands that LTC Elite shall not be responsible for any payments for products and/or services owed to any party by Member.

6) Compliance with Applicable Laws. The parties shall comply with all applicable federal, state and local laws and regulations (“*Applicable Laws*”), including, without limitation, the federal Anti-Kickback Statute, set forth in 42 U.S.C. § 1320a-7b(b) and the statutory exceptions applicable to group purchasing organization and discounts. Specifically, it is the parties intent that this arrangement comply with each of the group purchasing organizations safe harbor set forth in 42 C.F.R. § 1001.952(j) and discounts safe harbor set forth in 42 C.F.R. § 100.952(h).

7) Purchase of Products and Services.

(a) Subject to the terms and conditions set forth in this Agreement, Member hereby engages LTC Elite to act as its independent GPO, and is hereby granted access to the Vendor Contracts, pursuant to which Member and its Facilities may purchase products and services available there under for use by Member and its Facilities.

(b) Nothing in this Agreement shall require Member to purchase anything or to purchase the products and services exclusively from Vendors to the exclusion of any other vendor of those products and services unless Member agrees to specific terms of a contract with a Vendor that requires such written agreement. Members sign individual Vendor Contracts when they choose to participate with Vendors that require such a written agreement. Member hereby authorizes LTC Elite, as its agent for such purposes, to (i) negotiate the terms of and enter into Vendor Contracts, and to cancel or modify any Vendor Contracts as it deems necessary, advisable or appropriate; and (ii) receive from data from Vendors relating to purchases of products and services under Vendor Contracts by Member and its Facilities.

(c) The Facilities identified on Exhibit A shall have access to the Program. Each Facility shall execute and deliver to LTC Elite the Membership Agreement prior to being granted access to the Program except in the case where Facilities are under the direct ownership of Member and Member is authorized and responsible for executing this Agreement for the Facilities.



8) LTC Elite Disclaimer and Member Release.

LTC ELITE DOES NOT MAKE AND EXPRESSLY DISCLAIMS, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSES, OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, AS TO ANY PRODUCTS AND SERVICES SOLD BY ANY VENDOR; AND MEMBER AND ITS FACILITIES HEREBY EXPRESSLY RELEASE LTC ELITE FROM ANY AND ALL LIABILITY AND CLAIMS RELATING TO THE PRODUCTS AND SERVICES, AND ANY BREACH OR ALLEGED BREACH OF WARRANTY IN CONNECTION WITH THE PRODUCTS AND SERVICES.

9) Termination.

(a) LTC Elite may terminate this Agreement on thirty (30) days' notice to Member if:

- (i) Member or any of its Facilities fails to comply with the terms and conditions of any of the Vendor Contracts; or
- (ii) Member or any of its Facilities otherwise breaches any provision of this Agreement; provided, however, that LTC Elite may terminate this Agreement in the event of such a breach if LTC Elite shall have given Member written notice of the specifics of the breach and Member shall not have cured such breach or caused such breach to be cured within fifteen (15) days thereafter.

LTC Elite shall also have the right to terminate this Agreement upon (60) sixty days' prior notice upon the transfer, directly or indirectly, by sale, merger or otherwise, of substantially all of the assets of Member or its ultimate parent or any permitted assignee or in the event that more than forty-nine percent (49%) of Member capital stock or the capital stock of its ultimate parent or any such permitted assignee is transferred to an independent third-party entity.

(b) Member has the right to cancel membership at any time upon thirty (30) days' written notice to LTC Elite.

10) Effect of Termination.

Unless otherwise provided in this Agreement, immediately upon termination of this Agreement under Section 9, this Agreement shall have no further force or effect. Notwithstanding the immediately preceding sentence, the terms, conditions and obligations of the following Sections shall survive the termination of this Agreement: Sections 6, 8, 11, 12, 15 and 16.



11) Confidentiality.

(a) Member acknowledges that as a Member of the LTC Elite GPO, it may receive certain confidential and proprietary information related to LTC Elite including without limitation, all forms of contracts (including the terms and conditions of this Agreement) and other business procedures, protocols, programs, vendor lists, customer lists, documents or information of LTC Elite, whether currently or in the future developed, licensed, or maintained by LTC Elite including any and all deletions, additions, modifications and amendments thereto (“*Confidential Information*”). Except as required by law, Member shall at all times maintain the confidentiality of such Confidential Information, including the terms and conditions of any Vendor Contracts and any information provided to Member related to LTC Elite or the LTC Elite GPO. Upon termination of this Agreement, Member shall return to LTC Elite all such Confidential Information.

(b) Member acknowledges that all contract, prices and terms offered through the LTC Elite GPO are confidential and proprietary information considered property of LTC Elite. Member may not disclose such pricing to any other third party, including other group purchasing organizations, wholesalers, distributors, or manufacturers without the prior written consent of LTC Elite, except when Member is required to by law.

12) Representations, Warranties and Covenants of Members. Member, for itself and for each other of its Facilities that purchase under the Vendor Contracts, whether or not set forth hereby covenants with LTC Elite as follows:

(a) Member and its Facilities shall indemnify and hold LTC Elite, its respective affiliates, agents, officers, directors and employees (“*Indemnitees*”) harmless from and against any and against all losses, liabilities, damages, costs and expenses (whatsoever, including, without limitation, reasonable attorney’s fees) that are awarded against or incurred after the date hereof by any of them, relating to acts or omissions of Member and/or Facilities which relate in any way to this Agreement, including, without limitation, any claims resulting from a failure to pay for any products and services purchased by Member or any of its Facilities.

(b) Member agrees to cause each of its Facilities (i) to comply with all terms of this Agreement as if a party hereto, (ii) to comply with all terms of the Vendor Contracts, including without limitation, payment terms and (iii) to execute separate agreements or acknowledgements as requested by LTC Elite or any particular Vendor evidencing such Facility’s agreements to comply with the terms of the relevant Vendor Contract.

(c) Member warrants that all products and services purchased by it or its Facilities through the LTC Elite GPO and/or under the Vendor Contracts will be for use by the Member or its Facilities, and not for resale or distribution to third parties.



13) Notice.

Any notice, demand, or communication required, permitted, or desired to be given pursuant to this Agreement shall be deemed effectively given (i) when personally delivered, (ii) upon receipt when delivered by telephonic document transfer, (iii) three (3) business days next following the day the notice is, mailed by prepaid certified mail, return receipt requested, or (iv) the next business day following deposit with a reputable overnight courier, addressed as follows:

LTC Elite: LTC Elite, LLC
 1701 River Run STE 304
 Fort Worth, Texas 76107
 Attn: Chris Slimmer

Member: _____

 Attn: _____

Or to such other address, and to the attention of such other person or officer as any party may designate. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given in accordance with the provisions hereof, shall be deemed to be receipt of the notice sent.

14) Assignment.

Member rights and obligations under this Agreement are not assignable without the prior written consent of LTC Elite.

15) Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of laws principles thereof.

16) Severability.

To the extent that any provision herein, or part thereof, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.



17) Amendment and Waiver.

No amendment, modification or discharge of this Agreement, and no waiver hereunder shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, waiver, modification or discharge is sought. The waiver by either party of a breach of any provision of this Agreement shall not operate as, or be construed to be a waiver of any subsequent breach of any other term or provision of this Agreement.

18) Entire Agreement.

This Agreement contains the entire understanding of the parties, and supersedes all previous oral agreements and discussions, with respect to the subject matter set forth herein.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LTC ELITE:

LTC Elite, LLC, a Texas limited liability company

By: _____

Name: _____

Title: _____

MEMBER:

By: _____

Name: _____

Title: _____



EXHIBIT A

FACILITIES

[To be completed]