

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") is made and entered into as of _____, 20____, between _____ ("Primary-Care Safety-Net Provider"), , and _____ ("Hospital" or "Institution"), a hospital licensed under the laws of the State of South Carolina.

Recitals

- A. Hospital is a licensed acute care hospital located at _____.
- B. Primary-Care Safety-Net provider is an approved, licensed, and duly organized Federally Qualified Health Centers (FQHCs, entities receiving funding under Section 330 of the Public Health Services Act, and FQHC Look-A-Likes), Rural Health Clinics (RHCs), Free Clinics, other clinics serving the uninsured, and Welvista.
- C. Primary-Care Safety Net Partner has a principal location at _____.
- D. The General Assembly passed Proviso 33.34 to give health care providers in South Carolina a platform, with structure and funding, to develop local partnerships focusing on South Carolinians who are uninsured, chronically ill, and over-utilizing hospital emergency rooms.
- E. The said Primary-Care Safety-Net partner is one of the qualified types of providers which are eligible to partner with a hospital in this initiative.
- F. SCDHHS published the program criteria for the Hospital and Safety-Net Innovation Incentive on August 1, 2013 to implement the incentive beginning October 1, 2013.
- G. The hospital is entering into a Memorandum of Understanding (MOU) with selected the primary health care and other providers to co-manage chronically ill, uninsured high-utilizers of emergency room services.
- H. Hospital and Primary-Care Safety-Net-Provider wish to enter into this MOU in compliance with Proviso 33.34, Sections A(1), C, D and the Hospital and Safety Net Innovation Incentive criteria.

Agreement

NOW, THEREFORE, the parties agree as follows:

1. **Purpose of Agreement.** Each Institution agrees on the terms and conditions of this MOU to collaborate and cooperate with the other in order to implement Proviso 33.34, designed to reduce system cost and increase health outcomes. Nothing herein shall be interpreted

to create an exclusive relationship between the Institutions. Each Institution shall be free to enter into transfer memoranda of understanding and/or agreements with other entities.

2. **To Designated Representative.** Each Institution hereby designates a representative (each a “Designated Representative”) to whom all information under this MOU shall be sent and who shall be designated by such Institution to have responsibility to distribute such information to the appropriate employees or other representatives of such Institution for review, action and/or decision. The Designated Representative of each Institution as of the date of this MOU is identified on **Exhibit A** to this MOU. Each Institution may at any time change its Designated Representative by a notice in writing delivered to the other Institution and SCDHHS.

3. **Data Sharing.** It is the intent of the parties to develop a schedule of reports that will be of sufficient detail and in appropriate formats to allow Hospital and Primary-Care Safety-Net provider to receive the information it needs to fulfill its responsibilities to assure adequate and appropriate care and services to the target population. The parties will review existing reports and the capacity to produce other reports. The parties will agree to the reports to be provided and their frequency within thirty (30) days following the date of this agreement.

4. **Identification of Potential Participants.** Each institution agrees to collaborate and negotiate with the other in good faith to develop a system whereby patients who are admitted to the emergency department (“ED”) of the Hospital who may benefit from becoming a Participant can be identified. Such identification system may include factors such as:

(a) Selection standards for ED patients to identify those who may benefit from becoming Participants.

(b) Collaboration between the Institutions to develop methods to notify patients admitted to ED of the potential benefits of the Safety Net Providers.

(c) Development of a procedure to offer enrollment as Participants to those ED patients who are identified as described above.

(d) Development of a procedure under which the Hospital would notify the Primary-Care Safety-Net Provider of each ED patient who is identified as a potential Participant in the Health Home program.

5. **Parties’ Relationship.** Hospital and Primary-Care Safety-Net Provider shall have exclusive control of the management, assets, and affairs of their respective institutions. Each of the parties hereto shall be responsible only for its own acts and omissions with respect to patient care, and neither party by virtue of this Agreement assumes any liability for any debts or obligations of either a financial or a legal nature incurred by the other party to this Agreement.

6. **Term.** This Agreement shall be effective for the period beginning October 2, 2013 and ending June 30, 2014. Notwithstanding the foregoing, this Agreement may be terminated by either party for any reason by giving thirty (30) days prior written notice to the other party of its intention to withdraw from this Agreement and by ensuring the continuity of care to patients who already are involved in the transfer process. If this Agreement shall be

terminated under this provision or any other term, covenant, or condition of this Agreement, the parties agree that they shall not, under any circumstances, enter into a new or replacement agreement for the same or similar services at any time during the remainder of the nine-month term during which the termination occurred.

7. Default.

(a) **Hospital Default.** If Hospital commits a breach of this Agreement, the Primary-Care Safety-Net Provider may terminate this Agreement if the breach is not cured within twenty (20) days of Hospital's receipt of notice of the breach from Primary-Care Safety-Net Provider; provided, however, that Primary-Care Safety-Net Provider may terminate this Agreement immediately upon the occurrence of either of the following events: (i) Hospital's loss or restriction of licensure or Medicaid certification, (ii) dissolution, reorganization or change in business of Hospital, (iii) Primary-Care Safety-Net Provider receives a Statement of Deficiencies from the SCDHHS, CMS, or any successor agency which alleges that any services performed by Hospital were not in compliance with applicable law, rule, or regulation, (iv) an investigation of Hospital by any governmental agency regarding health care fraud that results in denial or delay of payment for services, including a pre-payment audit, (v) the imposition of any sanction against Hospital for health care fraud and abuse under applicable law, rule, or regulation or a plea or conviction of criminal liability or settlement or judgment of civil liability for health care fraud and/or abuse in any state or federal tribunal, or (vi) if any event occurs which would constitute a breach of any of the warranties and certifications described in paragraph 13 of this Agreement.

(b) **Primary-Care Safety-Net Provider Default.** If Primary-Care Safety-Net Provider commits a breach of this Agreement, Hospital may terminate this Agreement if the breach is not cured within twenty (20) days of Primary-Care Safety-Net Provider's receipt of notice of the breach from Hospital; provided, however, that Hospital may terminate this Agreement immediately upon the occurrence of any of the following events: (i) Primary-Care Safety-Net Provider's loss or restriction of licensure or Medicaid certification or (ii) dissolution of Primary-Care Safety-Net Provider.

8. Criminal Background Checks.

(a) **General.** Each Institution acknowledges that no employees or independent contractors of either Institution providing services to any of the patients of the other Institution can do so if he/she has been convicted of or pled guilty or nolo contendere to any criminal offense related to that person's involvement in any program established under Medicare, Medicaid, or the title XX Services Program.

Therefore, each Institution shall perform a criminal background check regarding each of its employees and all independent contractors it hires who will provide services to any of the patients of the other Institution prior to those persons performing such services.

(b) **Notice of Disqualifying Crime.** If any employee or independent contractor of either Institution is found to have been convicted of or pled guilty or nolo contendere to any disqualifying criminal offense as specified in paragraph 9(a) or has been placed on a State

Employee Disqualification List, the employing Institution shall notify the other Institution immediately and immediately prohibit the person from providing services to patients of the other Institution.

9. **Notices.** Any notices permitted or required by this Agreement will be deemed made on the day personally delivered in writing or mailed by certified mail, postage prepaid, to the other party at the address set forth below or to such other person and address as either party may designate in writing:

If to Primary-Care Safety-Net Provider:

Attn: _____

And to:

If to Hospital:

Attn: _____

And to:

10. **Licensure, Certification and Insurance.** Each Institution hereby warrants and certifies the following:

(a) **Licensure.** It is licensed by the appropriate agency of the State of South Carolina, if required.

(b) **Certification.** It has all other approvals and certificates required by the appropriate state and federal agencies in order to qualify for and participate in Medicaid.

(c) **Insurance.** Primary-Care Safety-Net Provider and Hospital shall at all times during the term of this Agreement maintain at its sole cost and expense, comprehensive general public liability and property damage insurance with limits of liability not less than \$_____ and professional malpractice insurance in an amount not less than \$_____ per occurrence and \$_____ annual aggregate. Primary-Care Safety-Net Provider and Hospital will, upon execution of the Agreement and on request thereafter, furnish the other with certificates of insurance evidencing such coverage. Primary-Care Safety-Net Provider and

Hospital will notify the other promptly in the event that either receives notice or knowledge of any proposed amendment, change, cancellation or modification to such insurance coverage.

11. **Confidentiality.**

(a) **Facility Information.** Hospital recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Primary-Care Safety-Net Provider hereunder, Hospital may have access to certain information of Primary-Care Safety-Net Provider that is confidential and constitutes valuable, special, and unique property of Primary-Care Safety-Net Provider. Hospital agrees that Hospital will not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy, or permit to be copied, without Primary-Care Safety-Net Provider's express prior written consent, except pursuant to Hospital's duties hereunder, any confidential or proprietary information of Primary-Care Safety-Net Provider, including, but not limited to, information which concerns Primary-Care Safety-Net Provider's patients, costs, prices, and treatment methods at any time used, developed, or made by Primary-Care Safety-Net Provider and which is not otherwise available to the public.

(b) **Patient Identifying Information.** All medical information and data concerning specific patients (including, but not limited to, the identity of the patients), derived from the business relationship set forth in this Agreement, shall be treated and maintained in a confidential manner by the parties to this Agreement and their employees and agents and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. The parties to this Agreement shall comply with all applicable state and federal laws and regulations regarding confidentiality of patient records, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and the Privacy and Security Standards (45 C.F.R. Parts 160 and 164) and the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162) (collectively, the "Standards") promulgated or to be promulgated by the Secretary of Health and Human Services. To the extent either party believes the Standards require any additional agreement regarding the access to Protected Health Information, both parties agree to sign any such additional agreement. In the event either party requests the other party to sign such an agreement and the other party refuses, the party shall have the right to immediately terminate this Agreement.

(c) **Confidentiality Provision Included in Service Contracts.** Hospital shall include substantially similar confidentiality provisions in each of the contracts Hospital negotiates with any party which Hospital shall engage to perform any of the services which Hospital is obligated to perform if such personnel or service providers shall have access to Protected Health Information.

(d) **Survival.** The provisions of this section shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

12. **Warranties and Certifications.** Hospital represents and warrants to Primary-Care Safety-Net Provider that neither Hospital nor any of its owners officers, directors, managers, or employees are excluded from participation in any federal health care programs, as defined under 42 U.S.C. 1320a-7b(f), or any form of state Medicaid program, and to Hospital's knowledge, there are no pending or threatened governmental investigations that may lead to such

exclusion. Hospital agrees to notify Primary-Care Safety-Net Provider of the commencement of any such exclusion or investigation within seven (7) business days of Hospital's first learning of it. Primary-Care Safety-Net Provider shall have the right to immediately terminate this Agreement upon learning of any such exclusion or investigation. Hospital agrees to notify Primary-Care Safety-Net Provider of the status of any such investigation.

13. **Miscellaneous.**

(a) **Severability.** The invalidity or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provision.

(b) **Interpretation.** The headings used herein are for convenience only and do not limit or expand the contents of this Agreement.

(c) **No Waiver.** No waiver of a breach of any provision of this Agreement will be construed to be a waiver of any other breach of this Agreement, whether of a similar or dissimilar nature.

(d) **Survival.** Any provisions of this Agreement creating obligations extending beyond the term of this Agreement will survive the expiration or termination of this Agreement, regardless of the reason for such termination.

(e) **Amendments.** Any amendments to this Agreement will be effective only if in writing and signed by the parties hereto.

(f) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

(g) **Assignment.** Neither party may assign its rights or obligations hereunder without the prior written approval of the other; provided, however, that such an assignment may be made to an entity which is directly or indirectly, wholly-owned or controlled by the same entity as the assigning party.

(h) **Changes in Law or Regulation.** In the event that legislation is enacted or regulations are promulgated or a decision of a court or administrative tribunal is rendered which affects or may affect, in the opinion of legal counsel of Primary-Care Safety-Net Provider, the legality of this Agreement or adversely affect the ability of either party to perform its obligations or receive the benefits intended hereunder, then, within fifteen (15) days following notice, each party will negotiate in good faith an amendment to this Agreement which will carry out the original intention of the parties to the extent possible in light of such legislation, regulation, or decision, and each party will execute such amendment. In the event that the parties cannot reach agreement on the terms and provisions of any such amendment within sixty (60) days following the notice provided in this paragraph, this Agreement may be terminated upon not less than thirty (30) days' prior written notice of termination from Primary-Care Safety-Net Provider to Hospital.

(i) **Referrals.** Nothing in this Agreement shall be construed as an offer or payment by one party to the other party or any affiliate of the other party of any cash or other re-

muneration, whether directly or indirectly, overtly or covertly, specifically for patient referrals or for recommending or arranging the purchase, lease, or order of any item or service. Any payments made by Hospital to Primary-Care Safety-Net Provider represent the fair market value of the supplies and/or services to be rendered by Primary-Care Safety-Net Provider hereunder and are not in any way related to or dependent upon referrals by and between Primary-Care Safety-Net Provider and Hospital.

(j) **South Carolina Law.** This Agreement shall be governed in all respects, including validity, interpretation, and effect in accordance with the laws of the State of South Carolina.

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

(l) **No Joint Venture.** It is understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the parties, or a relationship of landlord and tenant, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. In no event shall either party be liable for the debts or obligations of the other of them, except as otherwise specifically provided in this Agreement.

(m) **Notice of Request for Information.** Each party shall notify the other party within five (5) days of any request by any governmental agency, whether local, state or federal, of any request for information of any kind pertaining to the other party. Said Notice shall be given pursuant to the directions and requirements contained in paragraph 10 of this Agreement.

(n) **Access to Records.** If Hospital should be deemed a subcontractor subject to the disclosure requirements of 42 U.S.C. 1395X(v)(1), Hospital shall, until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, make available upon request to the Comptroller General, or any of its duly authorized representatives, a copy of the Agreement and the books, documents and records of services that are necessary to certify the nature and extent of the costs incurred under this Agreement by Hospital or Primary-Care Safety-Net Provider. If services or any duties of this Agreement are through a subcontractor with a value or cost of \$10,000 or more over a twelve (12) month period with a third party, such subcontract shall contain a clause to the effect that should the third party be deemed a related organization, until the expiration of four (4) years after the furnishing of services pursuant to such subcontract, the third party shall make available upon request to the Comptroller General, or any of its duly authorized representatives, a copy of the subcontract and the books, documents and records of such third party that are necessary to verify the nature and extent of the costs incurred under this Agreement by Hospital or Primary-Care Safety-Net Provider. No attorney-client, accountant-client or other legal privilege will be deemed to have been waived by Hospital or Primary-Care Safety-Net Provider by virtue of this Agreement.

(o) **Non-Discrimination.** Each Institution agrees that it shall not deny service or otherwise discriminate against any patient or potential patient on the basis of age, sex, race, religion, national origin, ancestry, creed or disability.

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

("Primary-Care Safety-Net Provider")

("Hospital")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SAMPLE

EXHIBIT A

Designated Representatives

Designated Representative for Hospital

Name: _____

Title: _____

Address: _____

Telephone: _____

**Emergency
Telephone:** _____

E-mail: _____

Designated Representative for Primary-Care Safety-Net Provider

Name: _____

Title: _____

Address: _____

Telephone: _____

**Emergency
Telephone:** _____

E-mail: _____