

REFERRAL RATE AGREEMENT

Between

BROWARD COUNTY

and

NORTHWEST FOCAL POINT SENIOR CENTER DISTRICT

for

COMMUNITY-BASED SERVICES FOR THE ELDERLY

16-EVSD-3411-ADC-01

REFERRAL RATE AGREEMENT

Between

BROWARD COUNTY

and

NORTHWEST FOCAL POINT SENIOR CENTER DISTRICT

for

COMMUNITY-BASED SERVICES
FOR THE ELDERLY

This is a Referral Rate Agreement ("Agreement"), made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as ("COUNTY"), and NORTHWEST FOCAL POINT SENIOR CENTER DISTRICT, a Florida profit corporation, hereinafter referred to as ("VENDOR"), collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, this Agreement will enable VENDOR to provide services, not otherwise funded by any other public funding source; and

WHEREAS, funding given to VENDOR has been found and declared to be for a County and public purpose by the Board of County Commissioners of Broward County; and

WHEREAS, COUNTY will reimburse VENDOR at the rates agreed to herein for community-based services for Broward County's elders, performed pursuant to the state of Florida licensing and legislative guidelines; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, COUNTY and VENDOR agree as follows:

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 7, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The Board of County Commissioners of Broward County, Florida.
- 1.3 **Contract Administrator** - The Broward County Administrator or the Director of the Broward County Elderly and Veterans Services Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with VENDOR and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **County Administrator** - The administrative head of COUNTY appointed by the Board.
- 1.5 **County Attorney** - The chief legal counsel for COUNTY appointed by the Board.
- 1.6 **Services** - Community-based services organized in a continuum of care to help functionally impaired older people live in the least restrictive environment. Services include, but are not limited to, adult day care services, in-home healthcare services, medical/health care supplies, emergency alert response, and veterans' community support services in the Community Care for the Elderly ("CCE") program, Home Care for the Elderly ("HCE") program, Alzheimer's Disease Initiative ("ADI"), and the Non DOEA-Program ("NDP"), not inclusive.

ARTICLE 2

SCOPE OF SERVICES AND RATES

- 2.1 VENDOR shall provide the Services set forth in Exhibit A, "Scope of Services," and shall adhere to the rates set forth in Exhibit B, "Community-Based Services for the Elderly Programs Vendor Rates." VENDOR shall further adhere to the billing/invoicing requirements further detailed in Exhibit A.
- 2.2 COUNTY shall pay VENDOR within thirty (30) calendar days of receipt of VENDOR's proper invoice, as required by the "Broward County Prompt Payment Ordinance" Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of VENDOR to comply with a term, condition, or requirement of this Agreement.
- 2.3 Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself

from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by COUNTY.

- 2.4 At the request of COUNTY, VENDOR shall participate in COUNTY's Human Services client information software system along with other health and human services organizations that receive funds from COUNTY. VENDOR shall work with COUNTY in an effort to eliminate duplication in services and personnel among agencies. VENDOR shall work with COUNTY to ensure that all federal, state, and local laws regarding confidentiality are adhered to in collecting and reporting client information. VENDOR shall use its staff that provides case management functions in a coordinated effort with COUNTY and other health and human services providers so that such staff is assigned at the client's first point of entry into the human services network. VENDOR will be responsible for: 1) coordinating services to specified families and households; and 2) conducting follow-up activities designed to prevent recipients of health and human services from becoming dependent on the system again after restorative services are completed.

ARTICLE 3 TERM AND TERMINATION OF AGREEMENT

- 3.1 The term of this Agreement shall begin on July 1, 2015, and shall end on June 30, 2016 ("Initial Term"). This Agreement may be renewed for up to two (2) additional one-year option periods (each individually referred to as an "Option Period") at the end of each term at the sole option of COUNTY's Contract Administrator. The Contract Administrator shall notify the VENDOR of renewal, in writing, prior to the expiration of the then current term of the Agreement. However, this Agreement may be terminated in accordance with the provisions contained herein.
- 3.2 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by either party. Termination for convenience shall be effective on the termination date stated in the written notice, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If COUNTY erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

- 3.3 This Agreement may be terminated for cause for reasons including, but not limited to, VENDOR's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if VENDOR is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if VENDOR provides a false certification submitted pursuant to Section 287.135, Florida Statutes.
- 3.4 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, except that notice of termination by County Administrator which County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 3.5 In the event this Agreement is terminated for convenience, VENDOR shall be paid for any Services properly performed under the Agreement through the termination date specified in the written notice of termination. VENDOR acknowledges that it has received good, valuable and sufficient consideration from COUNTY, the receipt and adequacy of which are, hereby acknowledged by VENDOR, for COUNTY's right to terminate this Agreement for convenience.
- 3.6 In the event this Agreement is terminated, the Parties agree to submit, at the time the notice of intent to terminate is delivered, a plan that identifies procedures to ensure services to clients will not be interrupted or suspended by the termination.
- 3.7 In the event funds to finance this Agreement become unavailable, COUNTY may terminate this Agreement upon no less than twenty-four (24) hours' notice to VENDOR. COUNTY shall be the final authority as to the availability of funds.
- 3.8 In the event this Agreement is terminated for any reason, any amounts due VENDOR shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Section 7.1 of Article 7.

ARTICLE 4 CHANGE IN SCOPE OF SERVICES

Any change to the "Scope of Services" must be accomplished by a written amendment, executed by the Parties in accordance with the "Amendments" section below.

ARTICLE 5 INDEMNIFICATION

VENDOR shall at all times hereafter indemnify, hold harmless and defend COUNTY and all of COUNTY's current and former officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of VENDOR, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified Party, VENDOR shall, upon written notice from COUNTY, defend each Indemnified Party against each such Claim by counsel satisfactory to COUNTY or, at COUNTY's option, pay for an attorney selected by County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due VENDOR under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by COUNTY.

ARTICLE 6 INSURANCE

- 6.1 VENDOR shall maintain, at its sole expense and at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit F in accordance with the terms and conditions stated in this Article.
- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. VENDOR shall name Broward County as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is "Broward County." This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, VENDOR shall provide to COUNTY proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. VENDOR shall provide certified copy of any policies required by the Article upon request by COUNTY. Coverage is not to cease and is to remain in force until COUNTY determines all performance required of VENDOR is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of all

Services unless a different time period is stated in Exhibit F. COUNTY shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the Services, proof of insurance renewal shall be provided to COUNTY upon expiration.

- 6.4 If VENDOR uses a Subcontractor, VENDOR shall ensure that each Subcontractor names "Broward County" as an additional insured under the Subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

ARTICLE 7 MISCELLANEOUS

7.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY, and, if a copyright is claimed, VENDOR grants to COUNTY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by VENDOR, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by VENDOR to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to VENDOR shall be withheld until all documents are received as provided herein.

7.2 PUBLIC RECORDS

COUNTY is a public agency subject to Chapter 119, Florida Statutes. To the extent VENDOR is a contractor acting on behalf of the COUNTY pursuant to Section 119.0701, Florida Statutes, VENDOR shall:

- 7.2.1 Keep and maintain public records that ordinarily and necessarily would be required to be kept and maintained by COUNTY were COUNTY performing the Services under this Agreement;
- 7.2.2 Provide the public with access to such public records on the same terms and conditions that COUNTY would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 7.2.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

- 7.2.4 Meet all requirements for retaining public records and transfer to COUNTY, at no cost, all public records in possession of VENDOR upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to COUNTY in a format that is compatible with the information technology systems of COUNTY.

The failure of VENDOR to comply with the provisions set forth in this Section shall constitute a default and breach of this Agreement, and COUNTY shall enforce the default in accordance with the provisions set forth in herein.

7.3 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of VENDOR and its subcontractors, if authorized to subcontract, that are related to this Agreement. VENDOR and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Services in this Agreement. All books, records, and accounts of VENDOR and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, VENDOR or its subcontractor, as applicable, shall make same available at no cost to COUNTY in written form.

VENDOR and its subcontractors shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to VENDOR's and its subcontractors' records, VENDOR and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by VENDOR or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

VENDOR shall ensure that the requirements of this Section 7.3 are included in all agreements with its subcontractors, by written agreement, if authorized to subcontract.

7.4 EEO COMPLIANCE

No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by VENDOR to adhere to this provision shall constitute a material breach of this Agreement, which shall permit the COUNTY, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Broward County Code of Ordinances, or under the Broward County Administrative Code, or under applicable law, with all of such remedies being cumulative.

VENDOR shall include the foregoing or similar language in its agreements with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

VENDOR shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of Chapter 16½, Broward County Code of Ordinances. VENDOR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, VENDOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, VENDOR represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes. COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from VENDOR all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

7.5 HIPAA COMPLIANCE

It is expressly understood by the Parties that COUNTY personnel or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 C.F.R. §160, 162, and 164 and related regulations. In the event VENDOR is considered by COUNTY to be a covered entity or business associate and/or is required to comply with the Health

Insurance Portability and Accountability Act of 1996 (hereinafter known as "HIPAA"), VENDOR shall fully protect individually identifiable health information as required by HIPAA and, if requested by COUNTY, shall execute a Business Associate Agreement in the form attached hereto as Exhibit E for the purpose of complying with HIPAA. Where required, VENDOR shall handle and secure such PHI in compliance with HIPAA and its related regulations and, if required by HIPAA or other laws, include in its "Notice of Privacy Practices" notice of VENDOR's and COUNTY's uses of client's PHI. The requirement to comply with this provision and HIPAA shall survive the expiration or earlier termination of this Agreement. COUNTY hereby authorizes the County Administrator to sign Business Associate Agreements on its behalf.

7.6 BACKGROUND SCREENING

VENDOR shall ensure compliance with Chapter 435, Florida Statutes, and all federal, state, and local statutes, whenever background screening for employment or a background security check is required by law for employment. VENDOR shall maintain these screening requirements and records of same for volunteers/employees based on the population served.

7.7 E-VERIFY

As applicable, if VENDOR is a recipient, directly or indirectly, of State of Florida funds under this Agreement, VENDOR shall enroll and participate in the E-Verify Program, in accordance with the terms and conditions governing the use of the program by:

- (1) Verifying the employment eligibility of all persons employed during the agreement term by VENDOR to perform the work under this Agreement.
- (2) Enrolling in the E-Verify Program within thirty (30) days of the effective date of this Agreement by obtaining a copy of the "Edit Company Profile" page and make such record available to Broward County within seven (7) days of request from COUNTY.
- (3) Requiring all persons, including subcontractors, assigned by the VENDOR to perform work under this Agreement to enroll and participate in the E-Verify Program within ninety (90) days of the effective date of this Agreement or within ninety (90) days of the effective date of the Agreement between VENDOR and the subcontractor, whichever is later. VENDOR shall obtain from the subcontractor a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify Program and make such record available to COUNTY within seven (7) calendar days from the COUNTY's request.

- (4) Displaying the notices supplied by the U.S. Department of Homeland Security ("DHS") in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.
- (5) Initiate E-Verify verification procedures for new employees within three (3) business days after the actual work start date of each new hire and thereafter shall respond appropriately to any additional requests from DHS or Social Security Administration ("SSA").
- (6) Maintain records of its participation and compliance with the provisions of the E-Verify Program and make such records available to COUNTY within seven (7) days of COUNTY's request.

7.8 TRUTH-IN-NEGOTIATION REPRESENTATION

VENDOR's compensation under this Agreement is based upon representations supplied to COUNTY by VENDOR, and VENDOR certifies that the information supplied is accurate, complete, and current at the time of contracting. COUNTY shall be entitled to recover any damages it incurs to the extent such representation is untrue.

7.9 PUBLIC ENTITY CRIME ACT

VENDOR represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, VENDOR further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether VENDOR has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, COUNTY shall have the right to immediately terminate this Agreement and recover all sums paid to VENDOR under this Agreement.

7.10 INDEPENDENT CONTRACTOR

VENDOR is an independent contractor under this Agreement. In providing Services under this Agreement, neither VENDOR nor its agents shall act as officers, employees, or agents of COUNTY. VENDOR shall not have the right to bind COUNTY to any obligation not expressly undertaken by COUNTY under this Agreement.

7.11 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

FOR BROWARD COUNTY:

Elderly and Veterans Services Division
Andrea Busada, Director
2995 N. Dixie Highway
Fort Lauderdale, Florida 33334

FOR VENDOR:

Northwest Focal Point Senior Center District
Karin Diaz, Project Director
6009 NW 10th Street
Margate, FL 33063

7.12 ASSIGNMENT AND PERFORMANCE

Except for subcontracting approved in writing by COUNTY at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by VENDOR without the prior written consent of COUNTY. If VENDOR violates this provision, COUNTY shall have the right to immediately terminate this Agreement. VENDOR represents that each person and entity that will provide services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. VENDOR agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

7.13 THIRD PARTY BENEFICIARIES

Neither VENDOR nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no

third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

7.14 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.15 CONFLICTS

Neither VENDOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with VENDOR's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of VENDOR's officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she, or VENDOR is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude VENDOR or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event VENDOR is permitted pursuant to this Agreement to utilize subcontractors to perform any Services required by this Agreement, VENDOR shall require such subcontractors, by written Agreement, to comply with the provisions of this section to the same extent as VENDOR.

7.16 COMPLIANCE WITH LAWS

VENDOR shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

7.17 SEVERABILITY

In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

7.18 JOINT PREPARATION

This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either party.

7.19 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

7.20 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 7 of this Agreement, the provisions contained in Articles 1 through 7 shall prevail and be given effect.

7.21 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, VENDOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY**

TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

7.22 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and VENDOR or others delegated authority or otherwise authorized to execute same on their behalf.

7.23 PRIOR AGREEMENTS

This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

7.24 PAYABLE INTEREST

7.24.1 COUNTY shall not be liable to pay any interest to VENDOR for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof VENDOR waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This paragraph shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

7.24.2 Rate of Interest. If, for whatever reason, the preceding subsection is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by COUNTY under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

7.25 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this

Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

7.26 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibits A, B, C, D, and E, are incorporated into and made a part of this Agreement.

7.27 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have made and executed this Referral Rate Agreement on the respective dates under each signature: BROWARD COUNTY, signing by and through its County Administrator, authorized to execute same by Board action on the 23rd day of June 2015, and NORTHWEST FOCAL POINT SENIOR CENTER DISTRICT, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through its
County Administrator

Signature

By _____

County Administrator

Print/Type Name Above

____ day of _____, 2015.

Signature

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Print/Type Name Above

Insurance requirements
Approved by Broward County
Risk Management Division

By _____
Signature (Date)

By _____
Karen S. Gordon (Date)
Assistant County Attorney

Print Name and Title above

KSG:dp
NW-FocalPoint.RefRate.2016.a01
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REFERRAL RATE AGREEMENT BETWEEN BROWARD COUNTY AND
NORTHWEST FOCAL POINT SENIOR CENTER DISTRICT FOR COMMUNITY-
BASED SERVICES FOR THE ELDERLY

VENDOR

WITNESSES:

NORTHWEST FOCAL POINT
SENIOR CENTER DISTRICT

Signature

Agency's Name

Print or Type Name Above

Authorized Signature

Signature

Print or Type Signator's Name and Title

Print or Type Name Above

____ day of _____, 2015.

(Seal)

EXHIBIT A

SCOPE OF SERVICES

Agency Name: Northwest Focal Point Senior Center District

Program Name: Community-Based Services for the Elderly

Service(s): Adult Daycare Services

Division: Elderly and Veterans Services Division

One purpose of this Agreement is to promote the development of a coordinated service delivery system to meet the needs of the elderly who are at risk of premature institutionalization. Another purpose of this Agreement is to enable eligible elderly adults to receive Services that include adult day care services, in-home healthcare services, medical/health care supplies, emergency alert response, and veterans' community support services through programs, including, but not limited to, CCE, HCE, ADI, and NDP, from qualified vendors with oversight of the quality of care by the Contract Managers and Case Managers employed by COUNTY. These Services are provided so that the participant may remain in the least restrictive setting and avoid or delay premature nursing home placement. Services and care are to be furnished in a way that fosters the independence of each participant to facilitate aging in place. The Parties acknowledge that the routines of care provision and that service delivery must be consumer driven to the maximum extent possible. The Parties agree to and will treat each participant with dignity and respect.

I. Objectives

- A. To maintain a climate of cooperation and consultation between agencies, in order to achieve maximum efficiency and effectiveness.
- B. To promote programs and activities designed to prevent the premature institutionalization of older adults.
- C. To require the Parties to this Agreement to provide technical assistance and consultation to each other on matters pertaining to actual service delivery and share appropriate assessment information and care plans so duplication may not occur.
- D. To establish an effective working relationship between COUNTY, who is responsible for the development of care plans and authorization of Services in the various programs available, and VENDOR, who is responsible for direct provision of those Services to clients.

II. Responsibilities of VENDOR:

- A. Accept clients authorized for Services, including those enrolled in all programs under this Agreement, and provide quality Services to all clients. Provision of Service(s) is subject to quality monitoring and/or observation by COUNTY.
- B. Include VENDOR's name and other appropriate information on a list of approved Elderly and Veterans Services Division Vendors, which must be shown to client during development of an individualized plan of care, and understanding that the client reserves the right at all times to a choice of vendors approved by COUNTY.
- C. Understand that new referrals through the programs in this Agreement are made, and Services are authorized by COUNTY's Case Managers in accordance with the Department of Elder Affairs' client prioritization criteria.
- D. If the plan of care authorizes in-home services, VENDOR shall verify, at the service sites, that such services are being provided as authorized and that quality-assured workers'/aides' time tickets comply with the approved plan of care. As applicable, VENDOR shall conduct such site verifications no less than every six (6) months during each term of this Agreement.
- E. Provide only those Services specifically outlined in the Plan of Care and authorized by COUNTY's Case Managers.
- F. Immediately report any changes in the client's condition to the Case Manager.
- G. Immediately notify COUNTY of staffing shortfalls, which will negatively impact provision of Service(s) to clients.
- H. Participate in the COUNTY's Human Services Client Information Software System and record all service transactions on COUNTY's Human Services Department's computer software, unless otherwise agreed by the Contract Administrator. Service Activity Reports generated by this Client Information System or manual backup documentation, as agreed to by the Contract Administrator, shall be signed by authorized VENDOR personnel and attached to the Invoice.
- I. Donate ten percent (10%) of the total cost per unit of service provided as a Match Commitment and Contribution to the CCE State Grant.
- J. Submit an original duly authorized invoice, as defined below, and the Service Activity Report, a statement of individual billable service events, as referenced in Section G above, to COUNTY's Contract Administrator, by the due date as indicated on Exhibit D of this Agreement. Failure to adhere to invoice due dates shall have the following consequences:

1. Upon first occurrence, Contract Administrator shall advise VENDOR of failure to meet invoice due date by way of letter to VENDOR;
2. Upon second occurrence, Contract Administrator shall provide VENDOR with written warning that next occurrence will result in suspension of referrals to VENDOR for six (6) months;
3. Third occurrence shall result in written notice that VENDOR will not receive any referrals for six (6) months; and
4. Fourth occurrence shall be considered a performance failure and VENDOR's agreement shall be terminated, with all affected clients transferred to another agency.

Invoices must indicate the summary of claims at the reimbursement rate, and a summary of claims at the match rate so that the match fund contributions are documented on the invoice.

- K. Accept the reimbursement rate listed in Exhibit B as complete compensation for the Services provided.
- L. Shall not bill COUNTY for Services in excess of the authorized level of service as designated on the Client Authorized Care Plan.
- M. Shall not bill, charge, solicit, or accept payment directly from any client referred by COUNTY for the Services provided pursuant to this Agreement.
- N. Submit retroactive billing and adjustment claims no later than thirty (30) calendar days following the Service Invoice due date for the month in which service units were delivered. In no event shall invoices be presented to COUNTY more than sixty (60) days after expiration or termination of this Agreement. Any error identified by either party must be adjusted or voided within thirty (30) days. VENDOR's refusal to adjust or void erroneous claims shall result in termination of this Agreement.
- O. Maintain and implement a Continuous Quality Improvement Plan that includes, but is not limited to, a Cultural Competency Plan acknowledging the various needs of Broward County's diverse population and measuring client/caregiver satisfaction at least annually.
- P. Adhere to the minimum pre-service and in-service training requirements as required by licensure and as stated in Chapter 400, Florida Statutes. VENDOR represents that it is a licensed entity or registered in the State of Florida, and shall continue to be so licensed or registered at all times Services are performed hereunder.

- Q. Adhere to the policies and procedures as outlined in *the Department of Elder Affairs Client Services Manual* and *Home and Community-Based Services Handbook*.
- R. Maintain confidentiality regarding persons served, and abide by the client confidentiality provisions of 45 C.F.R. Parts 160 & 164 (HIPAA Privacy Rule) and Sections 430.207 and 430.608, Florida Statutes.
- S. Cooperate with COUNTY during pre and post disaster phases by accepting Service-related assignments from COUNTY's Case Managers to ensure clients served under this Agreement and other persons served with emergency needs are served in a timely manner. This commitment allows for VENDOR flexibility in reallocating human resources and service delivery schedules during this period to meet emergency and priority client needs as identified by COUNTY's Case Managers.
- T. Maintain approved VENDOR status by renewing applicable licensure or registration, renewing this referral Agreement, and by maintaining all VENDOR qualifications as contained in the *Department of Elder Affairs Manual 12/98 and Home and Community Services Handbook, 1/03*, under which Services are provided.
- U. Attach required documentation regarding VENDOR's qualifications to COUNTY's Community-Based Services for the Elderly Program Application, as requested for approval.

III. Responsibilities of COUNTY:

- A. Approve VENDOR to provide the Services provided pursuant to this Agreement, including, but not limited to, those enrolled as CCE, HCE, ADI, and NDP program clients.
- B. Provide information that explains the applicable program Services and identifies participating vendors to qualified elderly persons.
- C. Make referrals to VENDOR through care plans authorized by COUNTY's Case Managers.
- D. Provide technical assistance to VENDOR.
- E. Reimburse VENDOR, subject to the availability of funds, no more than the rate stipulated in Exhibit B. COUNTY and/or state of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The costs of services paid under any other rate agreement or from any other source are not eligible for reimbursement under this Agreement.

- F. Make such payment to VENDOR only upon receipt of a duly endorsed invoice. Duly endorsed means that the invoice bears VENDOR's signature or stamp, verifying that the Services at issue have been performed, and also attaches supporting documentation as outlined herein.
- G. Deny reimbursement for any units provided to clients, including those served within the programs funded by this Agreement, that are not in accordance with the authorized plan of care or not supported by a generated Service Activity Report, or other approved back up documentation for services.
- H. Pay VENDOR within thirty (30) days of receipt of VENDOR's properly submitted invoice.

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EXHIBIT B

**COMMUNITY-BASED SERVICES FOR THE ELDERLY PROGRAMS
VENDOR RATES**

SERVICE	UNIT OF SERVICE	TOTAL UNIT COST	MATCH FUNDS	REIMBURSEMENT RATE
Adult Day Care	One Hour	\$ 9.50	\$.95	\$ 8.55
Chore Services	One Hour	\$ 18.54	\$ 1.85	\$ 16.69
Emergency Alert Response System	Daily Phone Line	\$.670	\$.067	\$.603
Homemaker	One Hour	\$ 15.97	\$ 1.60	\$ 14.37
Personal Care	One Hour	\$ 15.97	\$ 1.60	\$ 14.37
Respite Care	One Hour	\$ 15.97	\$ 1.60	\$ 14.37
24-Hour Respite Care	One Day	\$ 240.00	\$ 24.00	\$ 216.00
Specialized Medical Supplies	Per Item	Varies	10% Item Cost	90% Item Cost
Alzheimer's Respite In - Home Care	One Hour	\$ 15.97		
Alzheimer's Disease Initiative - Caregivers Training	Per Person	\$ 82.80		

EXHIBIT C

SAMPLE INVOICE

USE AGENCY LETTERHEAD

AGENCY NAME

AGENCY ADDRESS

FEDERAL ID NUMBER

COMMUNITY-BASED SERVICES FOR THE ELDERLY PROGRAMS (*Use separate invoice for each program and each service within the program.*)

SERVICE: _____

DATES OF SERVICE PERIOD: FROM _____ TO _____

UNIT OF SERVICE RATE:

REIMBURSEMENT

MATCH COMMITMENT

Total Units _____

Total Units _____

Unit Cost (less 10%) X \$ _____

Match Unit Rate X \$ _____

Reimbursement \$ _____

Monthly Match Amount \$ _____

Applied Adjustments \$ _____

Applied Adjustments \$ _____

Reimbursement after
Adjustments \$ _____

Match after
Adjustments \$ _____

I hereby certify and affirm that the services billed herewith have been delivered on behalf of Broward County per the Agreement, and services were rendered in accordance with the authorized Care Plan, that requested **signed** reports from the Human Services Department software system are attached representing billed units, and that sufficient written information is available to document services.

Prepared by: _____

Date: _____

Approved by: _____

Date: _____

EXHIBIT D

**COMMUNITY-BASED SERVICES FOR THE ELDERLY PROGRAMS
INVOICES DUE DATES**

SERVICE MONTH	<u>Service Period</u>		INVOICE DUE DATE
	from	To	
July	07/01/15	07/11/15	7/22/2015
August	07/12/15	08/15/15	8/26/2015
September	08/16/15	09/12/15	9/23/2015
October	09/13/15	10/10/15	10/21/2015
November	10/11/15	11/14/15	11/25/2015
December	11/15/15	12/12/15	12/23/2015
January	12/13/15	01/16/16	1/27/2016
February	01/17/16	02/13/16	2/24/2016
March	02/14/16	03/12/16	3/23/2016
April	03/13/16	04/16/16	4/27/2016
May	04/17/16	05/14/16	5/25/2016
June	05/15/16	06/30/16	7/5/2016

EXHIBIT E

BUSINESS ASSOCIATE AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA, AND NORTHWEST FOCAL POINT SENIOR CENTER DISTRICT

This BUSINESS ASSOCIATE AGREEMENT ("BAA") is entered into by and between Broward County, Florida ("County"), and Northwest Focal Point Senior Center ("Business Associate"), a Florida profit corporation with its principal office located at 6009 NW 10th Street, Margate, FL 33063; in connection with Referral Rate Agreement 16-EVSD-3411-ADC-01 for Community-Based Services for the Elderly (the "Agreement").

RECITALS

1. Business Associate provides services related to the operation of certain activities/programs that involve the use or disclosure of Protected Health Information ("PHI");

2. The operation of such activities/programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH");

3. HIPAA and HITECH mandate that certain responsibilities of contractors with access to PHI be documented through a written agreement; and

4. The County and Business Associate desire to comply with the requirements of HIPAA and HITECH and acknowledge their respective responsibilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1: Definitions

- 1.1 All terms used in this BAA not otherwise defined herein shall have the meanings stated in the Privacy and Security Rules, 45 CFR Parts 160, 162, 164, and 42 U.S.C. § 17921.
- 1.2 "HIPAA Laws" mean collectively HIPAA, HITECH, 42 CFR Part 2 (if applicable), and the related regulations and amendments.
- 1.3 When the term "PHI" is used in this BAA, it includes the term "Electronic Protected Health Information" or "E PHI."

- 1.4 Penalties as used in Section 3.18 below are defined as civil penalties that may be applied to the Business Associate and its workforce members by the Secretary of Health and Human Services (HHS). The amount of the penalties range depending on the type of violation. In determining penalties, the Secretary may take into account:
- a. the nature and extent of the violation;
 - b. the nature and extent of harm resulting from such violation;
 - c. the degree of culpability of the covered entity or business associate;
 - d. the history of prior compliance with the administrative simplification provision including violations by the covered entity or business associate;
 - e. the financial condition of the covered entity or business associate, and
 - f. such other matters as justice may require.

Section 2: Confidentiality

- 2.1 County and Business Associate shall comply with all federal and state laws governing the privacy and security of PHI.
- 2.2 ☐ If this box is checked, the County and Business Associate are required to comply with 42 CFR Part 2 with respect to patient identifying information concerning alcohol and substance abuse treatment.

Section 3: Obligations and Activities of the Business Associate

Use and Disclosure of PHI

- 3.1 The Business Associate shall not use or disclose PHI other than as permitted or required by this BAA or as required by law. Business Associate may:
- a. Use and disclose PHI only as necessary to perform its obligations under the Agreement, provided that such use or disclosure would not violate HIPAA Laws if done by the County;
 - b. Use the PHI received in its capacity as a Business Associate of the County for its proper management and administration and to fulfill any legal responsibilities of Business Associate;

- c. Disclose PHI in its possession to a third party for the proper management and administration of Business Associate, or to fulfill any legal responsibilities of Business Associate, provided that the disclosure would not violate HIPAA Laws if made by the County, or is required by law, and Business Associate has received from the third party written assurances that (i) the information will be kept confidential and used or further disclosed only for the purposes for which it was disclosed to the third party or as required by law; (ii) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information may have been breached; and (iii) the third party has agreed to implement reasonable and appropriate steps to safeguard the information;
 - d. Use PHI to provide data aggregation activities relating to the operations of the County; and
 - e. De-identify any and all PHI created or received by Business Associate under the Agreement, provided that the de-identification conforms to the requirements of the HIPAA Laws.
- 3.2 Business Associate shall limit its use and disclosure of, and request for PHI when practical or as required by law, to the information making up a Limited Data Set, as defined by HIPAA, and in all other cases subject to the requirements of 45 CFR 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.
- 3.3 Business Associate is prohibited from selling PHI, using PHI for marketing purposes, or attempting to re-identify any PHI information in violation of HIPAA Laws.

Administrative, Physical, and Technical Safeguards

- 3.4 Business Associate shall implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the County. The safeguards shall include written policies, procedures, a security risk assessment, training of Business Associate employees, and sanctions that are in compliance with HIPAA Laws.
- 3.5 Business Associate shall require all of its subcontractors, agents, and other third parties that receive, use, transmit, maintain, store, or have access to PHI to agree, in writing, to the same restrictions and conditions that apply to Business Associate pursuant to this BAA, including implementation of administrative, physical, and technical safeguards.

Access of Information; Amendment of Information; Accounting of Disclosures

- 3.6 Business Associate shall make available to the County all PHI in Designated Record Sets within ten (10) days of the County's request for the County to meet the requirements under 45 CFR § 164.524.
- 3.7 Business Associate shall make any amendments to PHI in a Designated Record Set as directed or agreed to by the County pursuant to 45 CFR § 164.526 in the time and manner reasonably designated by the County.
- 3.8 Business Associate shall timely document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Further, Business Associate shall provide to the County an accounting of all disclosure of PHI during the term of this BAA within ten (10) days of termination of this BAA, or sooner if reasonably requested by the County for purposes of any monitoring/auditing of the County for compliance with HIPAA Laws.
- 3.9 Business Associate shall provide the County, or an individual under procedures approved by the County, information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 CFR § 164.528 and HIPAA Laws.

Mitigation

- 3.10 Business Associate shall mitigate, to the extent possible and at its own expense, any harmful effect that is known to Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this BAA or applicable law.
- 3.11 Business Associate shall take appropriate disciplinary action against any members of its workforce who use or disclose PHI in any manner not authorized by this BAA or applicable law.

Reporting of Breaches and Mitigation of Breach

- 3.12 Business Associate shall notify the County's HIPAA Privacy Official at (954) 357-6500 of any impermissible access, acquisition, use or disclosure of any unsecured PHI within twenty-four (24) hours of Business Associate becoming aware of such access, acquisition, use or disclosure. Unsecured PHI shall refer to such PHI that is not secured through use of a technology or methodology specified by the Secretary of HHS that renders such PHI unusable,

unreadable, or indecipherable to unauthorized individuals. A breach of unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to Business Associate, including any employee, officer, contractor, subcontractor, or other agent of Business Associate.

- 3.13 Business Associate shall submit a written report of a breach to the County within ten (10) business days after initial notification, and shall document the following:
- a. The identification of each individual whose PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used, or disclosed during the breach;
 - b. A brief description of what occurred, including the date of the breach and the date of the discovery of the breach, if known;
 - c. A description of the types of PHI that are involved in the breach (such as full name, social security number, date of birth, home address, account number, diagnosis, etc.);
 - d. A description of what is being done to investigate the breach, to mitigate harm to individuals, and the reasonable and appropriate safeguards being taken to protect against future breaches;
 - e. Any steps the County or the individual impacted by the breach should take to protect himself or herself from potential harm resulting from the breach;
 - f. Contact procedures for the Business Associate to enable individuals to ask questions or learn additional information, which may include, in the discretion of the County, a toll-free telephone number, e-mail address, website, or postal address, depending upon the available contact information that the Business Associate has for the affected individuals; and
 - g. Any other reasonable information requested by the County.
- 3.14 In the event of a breach, Business Associate shall, in consultation with and at the direction of the County, assist the County in conducting a risk assessment of the breach and mitigate, to the extent practicable, any harmful effect of such breach known to Business Associate.
- 3.15 The County, in its sole discretion, will determine whether the County or Business Associate shall be responsible to provide notification to individuals whose

unsecured PHI has been disclosed, as well as to the Secretary of HHS and the media.

- a. Notification will be by first-class mail, or by electronic mail, if the individual has specified notice in the manner as a preference.
 - b. Information may be posted on the County and Business Associate's website where the Business Associate experienced, or is reasonably believed to have experienced, an impermissible use or disclosure of unsecured PHI that compromised the security or privacy of more than ten (10) individuals when no other current information is available to inform such individuals.
 - c. Notice shall be provided to prominent media outlets with information on an incident where the Business Associate experienced an impermissible use and disclosure of unsecured PHI that compromised the security or privacy of more than five hundred (500) individuals within the same state or jurisdiction during the incident.
 - d. The County may report, at least annually, any impermissible use and disclosure of unsecured PHI by the Business Associate to the Secretary of HHS as required by HIPAA Laws.
- 3.16 Business Associate agrees to pay the costs for notification to the County, individuals, and their representatives of any security or privacy breach that should be reported by Business Associate to the County. Business Associate also agrees to pay the costs for mitigating damages, including, but not limited to, the expenses for credit monitoring, if the County determines that the breach warrants such measures.
- 3.17 Business Associate agrees to have established procedures to investigate a breach, mitigate losses, and protect against any future breaches, and to provide such procedures and any specific findings of the investigation to the County in the time and manner reasonably requested by the County.
- 3.18 Business Associate is liable to the County for any civil penalties imposed on the County under the HIPAA laws in the event of a violation of the HIPAA Laws as a result of any practice, behavior, or conduct of Business Associate.

Available Books and Records

- 3.19 Business Associate shall make its internal practices and books, related to the Agreement and the BAA, including all policies and procedures required by HIPAA Laws, available to the County Contract Grants Administrator within five (5) business days of the Agreement.

- 3.20 Business Associate shall make its internal practices, books, and records, including all policies and procedures required by HIPAA Laws and PHI, relating to the use and disclosure of PHI received from the County or created or received on behalf of the County available to the County or to the Secretary of HHS or its designee within five (5) business days of request for the purposes of determining the Business Associate's compliance with HIPAA Laws.

Section 4: Obligations of the County

- 4.1 The County shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect the Business Associate's use of PHI.
- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use of PHI.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of PHI to which the County has agreed in accordance with 45 CFR § 164.522, to the extent that such changes may affect Business Associate's use of PHI.
- 4.4 The County shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Laws if done by the County.

Section 5: Term and Termination

Term

- 5.1 The term of this BAA shall be effective upon execution by all Parties, and shall terminate upon the latter of termination or expiration of the Agreement, or the return or destruction of all PHI within the possession or control of the Business Associate as a result of the Agreement.

Termination

- 5.2 Upon the County's knowledge of a material breach of this BAA by Business Associate, the County shall either:
- a. Provide an opportunity for Business Associate to cure the breach or terminate this BAA and the Agreement if the Business Associate does not cure the breach within the time specified by the County;

- b. Immediately terminate this BAA and the Agreement if Business Associate has breached a material term of this BAA and a cure is not possible; or
- c. If neither termination nor cure is feasible, the County's HIPAA Privacy Official shall report the violation to the Secretary of HHS.

Effect of Termination

- 5.3 Upon completion or termination of the Agreement, Business Associate agrees, at County's option, to return to the County or destroy all PHI gathered, created, received or processed pursuant to the Agreement. No PHI related to the Agreement will be retained by Business Associate, or a contractor, subcontractor, or other agent of Business Associate, unless retention is required by law and specifically permitted in writing by the County.
- 5.4 In the event that returning or destroying PHI is infeasible, Business Associate shall provide to the County a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Under that circumstance, Business Associate shall extend the protections of this BAA to the PHI retained and limit further uses and disclosures of such PHI to those purposes that make return or destruction infeasible, for so long as Business Associate maintains the PHI, in which case Business Associate's obligations under this Section shall survive termination of this BAA.

Section 6: Miscellaneous

- 6.1 Amendment. The County and Business Associate shall take such action as is necessary to amend this BAA for the County to comply with the requirements of HIPAA Laws or other applicable law.
- 6.2 Interpretation. Any ambiguity in this BAA shall be resolved to permit the County to comply with HIPAA Laws.

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BUSINESS ASSOCIATE AGREEMENT TO EXISTING AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA, AND BUSINESS ASSOCIATE, ENUMERATING THE RESPONSIBILITIES OF EACH REGARDING COMPLIANCE WITH HIPAA LAWS.

WHEREAS, the parties have made and executed this Business Associate Agreement between BROWARD COUNTY and BUSINESS ASSOCIATE, on the respective dates under each signature: BROWARD COUNTY through its County Administrator, authorized to execute same, and BUSINESS ASSOCIATE signing by and through its _____, duly authorized to execute same.

COUNTY

BROWARD COUNTY, through its
County Administrator

By _____

____ day of _____, 2015.

Approved as to form by

Office of the County Attorney
Broward County, Florida
Joni Armstrong Coffey,
County Attorney
Governmental Center, Suite #423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____

Karen S. Gordon
Assistant County Attorney

BUSINESS ASSOCIATE

NORTHWEST FOCAL POINT SENIOR
CENTER DISTRICT

By: _____

Print

Title: _____

____ day of _____, 2015.

STATE OF _____)
COUNTY OF _____) SS

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____, of the

_____, who is personally known to me or who has produced _____ as identification.

Print Name:
Notary Public, State of
Commission No.

Commission Expires:

EXHIBIT F

INSURANCE REQUIREMENT

Commercial General Liability Insurance

Combined single limit for bodily injury and property damage:

\$500,000.00 (Five Hundred Thousand Dollars) minimum limits per occurrence

\$1,000,000.00 (One Million Dollars) minimum limits per aggregate

Business Automobile Liability Insurance

Combined single limit for bodily injury and property damage:

\$500,000.00 (Five Hundred Thousand Dollars) minimum limits per occurrence

Workers' Compensation Insurance

In compliance with state statutes and all federal laws

Operations in Florida comply with Chapter 440 FSS as amended

Employer's Liability Insurance

\$100,000.00 (One Hundred Thousand Dollars) minimum limits each accident