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St. Louis, MO 63128
1-855-601-4770 Toll Free
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REFERRAL AGENCY AGREEMENT

This ____ day of _____, **AVCC, LLC** (hereinafter "AVCC") and _____ a corporation/limited liability company (hereinafter, "Referral Agency") agree as follows:

RECITALS

WHEREAS, AVCC, provides care coordination to American Veterans and their spouses;

WHEREAS, Referral Agency and/or its franchisees, arrange for the provision of non-medical home care services to hospitals, insurance companies, case management companies and private duty patients; and

WHEREAS, Referral Agency manages payment services for non-medical home care services on behalf of client and

WHEREAS, Referral Agency and AVCC wish to enter into an Agreement wherein Referral Agency will provide services to clients of AVCC.

WITNESSETH:

For and in consideration of the covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, AVCC, and Referral Agency agree as follows:

1. **AVCC Appoints Referral Agency.** upon the terms and conditions contained herein, to act in an ethical, lawful and professional manner, as it arranges for the provision of health care services to those AVCC clients assigned to Referral Agency.
2. **Rights Retained by AVCC.** AVCC will, at all times, during the term of this Agreement and after, retain the following:
 - A. **Agreements between AVCC and Clients.** All of its rights and obligations under any agreement executed between AVCC and its clients, regardless of whether or not any such client has been assigned to Referral Agency under this Agreement.
 - B. All rights to establish or modify policies and procedures relating to its contractual obligations with its clients
3. **Delivery of Services.** Referral Agency will arrange for the provision of non-medical home care services and assistance with Activities of Daily Living (ADLs) to AVCC clients who are assigned to Referral Agency by AVCC, (here after referred to as "*Services*"), and these *Services* will be rendered by Referral Agency as follows:

- A. **Scope and Manner.** Referral Agency shall arrange for the provision of *Services* for AVCC's clients in accordance with all applicable state and federal licensing rules and regulations applicable to Referral Agency and Referral Agency's staff and/or independent contractors and within the scope of the terms contained in this Agreement.
- B. **Quality Assurance.** Referral Agency shall arrange for the delivery of *Services* in a manner which meets or exceeds current standards for quality of care, and shall ensure such standards are met as is necessary and appropriate through the following:
- i. **Review and/or implement** quality assurance plans;
 - ii. **Review and/or implement policies** and procedures relating to the provision of *Services* as needed to develop and promote efficient and economic scheduling and delivery of *Services*.
- C. **Competent & Qualified Staff.** Referral Agency agrees to employ appropriately qualified, competent, and professional staff who are also appropriately licensed (in accordance with any applicable state or federal licensing requirements) to provide the *Services* under this Agreement.
- i. **Training.** Any of Referral Agency's staff who are providing *Services* under this Agreement will, at all times, have the expertise, training, and education necessary to furnish *Services* in a competent, safe, and professional manner as described in this Section 3 and as further required in this Agreement.
- D. **Assignment of Staff.** Referral Agency agrees to assign a "caregiver" to each AVCC client assigned to Referral Agency as requested by AVCC. Referral Agency will make all reasonable efforts to appropriately match the assigned caregiver to the needs and situation of the client(s) they are assigned to.
- E. **Restrictions on Individuals Providing Services.** Referral Agency contracts with other persons or entities to arrange for the provision of *Services* to AVCC clients. If Referral Agency elects to directly employ staff members to provide *Services*, it will notify AVCC in writing of such change and will await approval from AVCC prior to allowing any directly employed staff members to provide *Services* to any AVCC clients. Additionally, Referral Agency specifically agrees to refrain from hiring or contracting with any family member of an AVCC client.
- F. **Records.** Referral Agency agrees to create and maintain accurate records on each AVCC client, including detailed information on the services provided, to whom it arranges for the provision of services. Such records will be recorded in a manner consistent with industry standards, and as required by any applicable law, statute, regulation, or rule. Upon the request of AVCC, Referral Agency will supply AVCC with copies of such client records during the term of this Agreement and for two (2) years thereafter.

4. **Term and Termination**

- A. **Term.** The term of this Agreement shall be for a period of one (1) year, commencing on the date noted above.
- i. **Renewal.** This Agreement shall renew and be extended automatically for successive one (1) year terms unless terminated earlier in accordance with the terms of this Agreement. The

provisions of each renewal term shall be exactly the same as the original term, unless changed in writing by the parties.

B. Termination.

- i. **Non-renewal.** Either party may terminate renewal of this Agreement by delivering written notice to the other party of its intent not to renew the term of this Agreement. Provided, however, that such notice must be given at least thirty (30) days prior to the end of the term then in effect.
- ii. **For Cause.** Either AVCC or Referral Agency shall have the right to immediately terminate this Agreement, for cause, if Referral Agency fails to comply with any of the terms and conditions of this Agreement.
- iii. **Chance to Cure.** However, if either party breaches the terms of this agreement in a manner which does not endanger the welfare of a client (physical, financial or otherwise) or damage the business interests of the other party, the aggrieved party will give the breaching party notice of such a minor breach and seven (7) business days to cure such a breach.

5. Payment and Related Details. Payment to Referral Agency will be made by AVCC as follows:

- A. **AVCC Originating Client Rate.** In the event that Referral Agency arranges for the provision of *Services* (as defined above) to AVCC clients, Referral Agency will be paid by AVCC for services to each client based upon a regular shift rate of \$ 18.00 per hour regardless of a Referral Agency minimum hour shift rate. Referral Agency will be paid by AVCC for services to each client requesting daily rates based upon a rate of \$ N/A per day.
- B. **Service Authorization.** Referral Agency will receive a signed Client Services Authorization Form indicating the number of authorized regular shift rate service hours allowed per month. *Services* will not be reimbursed without signed authorization prior to such being provided. Any hours for *Services* the Referral Agency provides to a Client in addition to the number of hours specified on the Client Services Authorization Form shall be considered unauthorized hours. Unauthorized hours will not be reimbursed.
- C. **Excess Hours.** Referral Agency may not be able to provide a client with the specified hours authorized in the Client Services Authorization Form for a provided month or set time period resulting in excess hours. Such excess hours may be later provided in a following time period. However, Referral Agency may not use such hours without prior authorization from Company. If Referral Agency wishes to use such hours, Referral Agency must contact Company and request authorization for such. Unauthorized usage of excess hours will not be reimbursed.
- D. **Nursing Assessment.** Referral Agency will only be reimbursed for nursing assessments of a client if the assessments are mandated by state law in the state in which the client is located. If a nursing assessment of a client is mandated by such law, Referral Agency must obtain authorization from AVCC for reimbursement of the assessment before such assessment is completed. Unauthorized assessments will not be reimbursed.
- E. **Invoicing.** Referral Agency shall submit invoices to AVCC on a monthly basis which accurately reflect the time and charges for delivery of *Services* to clients by Referral Agency.

- i. **Submission.** Referral Agency will submit monthly charges or invoices to AVCC as follows:
 - **By Mail:** Sent to the following address: 12300 Old Tesson Rd. Suite 400-C St, Louis, MO 63128; **OR**
 - **By Fax:** Facsimile sent to the following number: 1-855-601-4771
 - **By Email:** Sent to the following email address: billing@avcchomecare.com
- ii. **Anticipated Delay.** AVCC and Referral Agency understand and agree that the payment of any invoice(s) for each client may typically be delayed for approximately thirty (30) days from date of invoice.
- iii. **Mileage.** When it is necessary to provide a client with transportation services or for a caregiver to receive travel mileage, Referral Agency must request preauthorization from AVCC. Upon approval, AVCC will return a signed Authorization of Services to Referral Agency. Any transportation or travel mileage prior to receiving a signed Authorization of Services will be considered unauthorized. Any miles for transportation or travel in addition to the number of miles specified in the Authorization of Services shall be considered unauthorized miles. Unauthorized miles will not be reimbursed. AVCC will only reimburse for mileage at the federal mileage reimbursement rate in place at the time the expense was incurred.

F. **Non-Eligible Clients.** In the event that any client is not approved for a “Non-Service-Connected Disability Pension,” including an “Aid and Attendance Pension” (cumulatively the “*Pension*”) by the Department of Veterans Affairs (the “VA”) or such a *Pension* is terminated, AVCC agrees to notify Referral Agency within ten (10) days of AVCC receiving notification of said denial or termination of benefits by the VA.

G. **Limitations on Payment.** Generally, nothing contained in this Section 5 shall be construed to relieve AVCC of payment for *Services* provided to a client at the request of AVCC. **However, AVCC and Referral Agency agree that AVCC shall not be responsible for payment in the following circumstances:**

- i. **No duty of Payment:** for any services provided by Referral Agency after Referral Agency receives a notice from AVCC that services to any client(s) should cease (“Termination of Services” notification).
- ii. **No duty of Payment:** for any charges or amounts that are not originally invoiced by Referral Agency to AVCC within one hundred twenty (120) days from date of service.
- iii. **No duty of Payment:** for any charges, or amounts that are not invoiced by Referral Agency to AVCC within ninety (90) days from date of termination of services by death, removal to long term care facility or termination of services between AVCC and Client and/or Referral Agency.
- iv. **No Duty of Payment:** from the date a client has transferred into a long term care facility, hospital, rehabilitation facility or other such facility unless express and written permission to continue *Services* is provided by AVCC. Upon knowledge of such transfer, Referral Agency has a duty to notify AVCC. A breach of this duty will be considered to endanger the financial welfare of a client.
- v. **No Duty of Payment:** if a change in the client’s state funding (including but not limited to funding for home care services) occurs after the date the client’s application for VA Benefits was sent to the VA unless express and written permission to continue *Services* is provided by AVCC. Upon knowledge of such additional funding, Referral Agency has a duty to notify AVCC. A breach of this duty will be considered to endanger the financial welfare of a client.
- vi. **No Duty of Payment:** if Referral Agency does not provide client assistance with at least two (2) Activities of Daily Living. If Referral Agency fails to provide such assistance to client, all other services provided will be considered unauthorized. Unauthorized services will not be reimbursed.

- vii. **Limitation of Payment:** Company does not reimburse for Holiday Pay or at any other rate other than those specifically agreed upon in writing.

H. **Certain Services Not Covered by Pension.** AVCC and Referral Agency understand and agree that: Certain clients may require and agree to pay for *Services* beyond the hours paid for by the *Pension*. In any event of such non-covered *Services* being requested by AVCC and/or Client those additional hours of non-services provided shall be invoiced and paid as follows:

- i. **Client Contact Originating with AVCC.** If additional hours of such non-covered *Services* are provided to a client whose contact with AVCC was a result of the efforts of AVCC, then Referral Agency agrees to provide the additional hours of service at the rate specified in Section 5A, and at no time will the Referral Agency bill the client for these hours.
- ii. **Client Contact Originating with Referral Agency.** If additional hours of such non-covered *Services* are provided to a client whose contact with AVCC was a result of the efforts of Referral Agency, then Referral Agency agrees to provide the additional hours of service at the rate normally charged by Referral Agency for such services.
- iii. **However,** IF those additional hours of non-covered *Services* are integral to client's qualifications and/or eligibility for benefits under the *Pension*, Referral Agency agrees to provide the services at the rate specified in Section 5A regardless of the origin of the contact with such a client.

6. **No Obligation to Refer.** AVCC and Referral Agency acknowledge and agree that there is no obligation, whatever, on the part of AVCC to refer any clients to Referral Agency. AVCC shall refer to Referral Agency such clients as AVCC determines appropriate in its judgment.

7. **Non-Exclusive Arrangement.** Referral Agency may deliver its services to other companies or agencies similarly situated to AVCC that are serving the same or similar classes of clientele, and to such classes directly, unless otherwise prohibited by the terms of this Agreement.

A. **Restrictions.** In conjunction with and in addition to the restrictions set out in Section 3E above, Referral Agency shall not:

- i. Deliver its services to clients, currently or formerly represented by AVCC, under agreements with other companies or agencies similarly situated to AVCC that are serving the same or similar classes of clientele without having first given written notice to AVCC and receiving AVCC's consent.
- ii. Directly or indirectly solicit (or aid in the solicitation by others) any AVCC client to terminate the client's relationship with AVCC or to change representatives;
- iii. Disclose or make use of any AVCC confidential proprietary business methods or practices or *Protected Information* (as defined in Section 13);

B. **Limitation.** None of the foregoing shall be read or interpreted to restrict or prohibit Referral Agency from any business activity in which it was involved prior to entering into this Agreement.

8. **Insurance.**

A. **Policies.** Referral Agency agrees to maintain, at its own expense the following policies:

- i. **Professional Liability Insurance** with minimum coverage of at least one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) in the aggregate; and

- i. **General Liability Insurance** coverage of a minimum of at least one million dollars (\$1,000,000.00); and
 - ii. **Workers' Compensation** coverage for its employees as required by law.
 - B. **Notice & Copies.** Referral Agency agrees to notify AVCC of any cancellation of any of the above policies at least thirty (30) days prior to its cancellation or termination. Referral Agency further agrees to provide AVCC copies of such insurance policies and designation upon request.
 - C. **Lapse of Coverage.** In the event that any insurance coverage required under this paragraph is terminated for any reason, other than when simultaneously replaced with coverage that is at least equivalent, Referral Agency agrees to obtain within five (5) days additional or tail insurance coverage in the amounts set forth herein.
- 9. **Compliance with Laws.** AVCC and Referral Agency each agree to comply with all applicable laws and regulations during the term of this Agreement. Further, each agrees to obtain and/or maintain all licenses, permits, certificates and accreditations pertaining to Services provided under this Agreement as required by state, federal, or local laws, rules and/or regulations.
 - A. **No Discrimination.** AVCC and Referral Agency each agree to not discriminate against persons as prohibited by state or federal laws; including without limitation the following: age, sex, race, creed, color, national origin, religion, disability, diagnosis, sexual preference, or any other legally protected status.
 - B. **No Payment for Referrals.** AVCC and Referral Agency understand and agree that nothing in this Agreement is intended to or shall ever be construed as any transaction or agreement to compensate any form of referral for services or items as is prohibited by 42 USC § 1320A-7B or similar state or federal laws.
 - C. **Subsequent Laws.** In the event that there is any change in any existing statute, regulation or rule (including the application or interpretation thereof), or if legislation occurs which may otherwise make this Agreement illegal or unenforceable, the parties agree to use their best reasonable efforts to agree upon modifications to this Agreement which will make it legal and enforceable. If, after such efforts no modification is agreed to then either party may terminate this Agreement upon sixty (60) days written notice to the other party.
- 10. **Cooperation in Reviews/Audits.** AVCC and Referral Agency agree to cooperate with each other in any internal peer reviews, external audit systems, and related procedures as may be established, required, or requested from time to time.
- 11. **Medical Necessity.** AVCC recognizes that Referral Agency may have utilization control programs designed to supervise services so as to eliminate the provision of services which are not medically necessary or appropriate and thereby contain costs. With regard to same, Referral Agency shall provide to AVCC a copy of all such utilization programs, including all updates within two (2) business days of Referral Agency receiving a request for the same from AVCC.
- 12. **Relationship of Parties.** AVCC and Referral Agency expressly agree that both parties understand the following:
 - A. **AVCC & Clients.** During the term of this Agreement, AVCC shall act as a care coordinator and manager with respect to the Referral Agency and not as an employee or agent of the Referral Agency.

B. Independent Entities. Nothing contained in this Agreement shall be construed to create a joint venture, partnership, association or other similar affiliation or relationship, and each party shall remain an independent entity operating within a contractual relationship as set forth in this Agreement.

13. Non-Disclosure and Confidentiality. AVCC and Referral Agency each acknowledge and agree that the trade secrets, confidential information, ideas, research methods, improvements, copyrighted materials, client and employee lists owned or developed by each and the goodwill associated with each of them, are and shall remain the sole and exclusive property of the party which owns or has developed such materials to the extent that the same are not in the public domain or generally known in the industry (hereafter these will be referred to as "*Protected Information*").

A. Harm by Unauthorized Use. AVCC and Referral Agency acknowledge and agree that unauthorized disclosure to, or use by, any person or entity of such *Protected Information* would be detrimental, inequitable and damage the party whose *Protected Information* was so disclosed or used without authorization.

B. Restrictions and Limitations. Therefore, AVCC and Referral Agency agree that during the term of this Agreement and for a period of five (5) years following the termination of the Agreement, neither party nor its agents, employees, or representatives will directly or indirectly disclose or permit disclosure, transfer or use of any such *Protected Information*, by or to any other party, person or entity, in any manner which would directly or indirectly have any material adverse effect upon the business activities, reputation or market value of the other party, unless such disclosure, use, or transfer is or was expressly authorized in writing by the party whose *Protected Information* is at issue.

Violation of this covenant by either party to this Agreement shall entitle the aggrieved party to appropriate legal or equitable relief, or both, in a Court of competent jurisdiction.

14. Non-Competition. Referral Agency explicitly agrees NOT to Participate in ownership of any business within one hundred (100) miles of any AVCC client which competes with AVCC services, during the term of this Agreement and for a period of two (2) years following termination of this Agreement. However, none of the foregoing shall be read or interpreted to restrict or prohibit Referral Agency from any business activity in which it was involved prior to entering into this Agreement.

15. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be issued as follows:

A. Hand Delivery. Notices that are hand delivered shall be deemed to have been given and received when delivered to recipient or, if the recipient is unavailable or unwilling to accept delivery, then upon first non-holiday weekday delivery between 9:00 a.m. and 5:00 p.m.

B. Mail Delivery. Notices which are mailed to the receiving party shall be mailed by first class mail with registered or certified, return receipt requested, postage prepaid. Such notice shall be deemed to have been duly given and received three (3) calendar days after being deposited with the United States mail.

C. Overnight Carrier. Notices which are sent via overnight carrier (e.g. FedEx, UPS, USPS Express, etc.) shall be sent with signature confirmation required. Such notice shall be deemed to have been duly given

and received when delivered or, if the recipient is unavailable or unwilling to accept delivery, then upon first non-holiday weekday delivery between 9:00 a.m. and 5:00 p.m.

D. Addresses. All notices shall be given to the addresses specified below:

If to AVCC, LLC:

attn: Jeanne Asher, RN, BSN
12300 Old Tesson Rd, Suite 400C
St. Louis, MO 63128

If to PROVIDER:

attn:

16. Disputes Arising from Agreement.

A. Indemnification. Referral Agency agrees to save and forever hold AVCC harmless from and against any and all liability or damage of any nature (including reasonable attorney's fees and expenses) resulting from Referral Agency's breach of its obligations or any act or omission which causes damage to AVCC arising from and related to the terms, obligations, and duties contained in this Agreement.

B. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the alleged breach thereof, shall be settled by binding arbitration in the County of St. Louis, State of Missouri, in accordance with the rules then obtaining of the American Arbitration Association. Any award rendered therein shall be final and binding upon all of the parties hereto and judgment upon the award rendered may be entered in any court having jurisdiction thereof. At least one of the arbitrators must be "qualified" as provided in Missouri Statutes, Section 44.104 and 44.106, or any successor section(s). Nothing contained in this Paragraph shall prohibit or impair a party from seeking injunctive relief in a court of competent jurisdiction and a party seeking injunctive relief shall not be required to first proceed to arbitration.

C. Prevailing Party. The prevailing party in any legal, equitable or arbitration claim, suit, or similar legal action to enforce or interpret the terms of this Agreement shall be entitled to receive reasonable attorney fees and costs related to such an action.

17. Choice of Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Missouri, and, subject to Section 18 below, venue for any action hereon shall lie in St. Louis County, Missouri. All rights of the parties hereunder shall be cumulative with all rights which the parties hereto may have a law or in equity.

18. Waiver. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions, whether or not singular, nor shall any waiver constitute a continuing waiver. In any event no waiver shall be binding unless it is in writing signed by the party making the waiver.

A. Subsequent Matters. The waiver or inaction by either party hereto of a breach of any condition, representation or warranty of this Agreement by the other party shall not be construed as a waiver of any subsequent breach by such party, nor shall it constitute a waiver of that party's rights, actual or inherent. The failure of any party hereto in any instance to insist upon a strict performance of the terms of this Agreement or to exercise any option herein shall not be construed as waiver or a relinquishment in the future of such term or option, but that the same shall continue in full force and effect.

19. **Merger.** This Agreement, as originally submitted to you for execution by AVCC, LLC, and not including any addendums, alterations, additions, or subtractions made by Referral Agency prior to execution, constitutes the entire agreement between parties pertaining to the subject matter contained in it, and the terms herein supersede any and all prior agreements, representations and understandings, oral or written, between the parties.
- A. This agreement may be contingent upon both parties executing in writing a separate contemporaneous addendum to this agreement. Such contingency shall apply when and only when a separate written addendum is submitted for execution by AVCC, LLC to Referral Agency contemporaneously with this agreement. If such contingency applies, this agreement and each addendum must each be signed for the other to be binding.
20. **Amendment.** No supplement, modification or amendment of this Agreement shall be binding unless it is in writing and signed by both of the parties.
21. **Binding Effect.** This Agreement shall be binding on and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successor and assigns. Further, this Agreement shall be binding upon the officers, directors, employees, franchisees and any and all related entities or companies of Referral Agency, and any entity or company in which Referral Agency or its officers or directors have or may subsequently have an interest in.
22. **Severability.** If any provision or portion of this Agreement is declared invalid or by any court of competent jurisdiction, then such provision or determination shall not affect any other provisions or portions of this Agreement. Those remaining provisions and/or portions shall remain in full force and effect.
23. **Construction.** It is the intention of the parties that if any provision or portion of this Agreement is capable of two (2) constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
24. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall be collectively comprise one agreement. Facsimile or electronic copies of this Agreement and the signatures hereon shall be considered for all purposes as originals.
25. **Survival.** Sections 3 F; 13B; and 14 will continue in full force and effect after any termination of this Agreement accordance with the terms and specifications of each such Section, and Section 16 will continue in full force and effect in conjunction with those same Sections. Further, AVCC's obligations of payment under Section 5 for *Services* delivered by Referral Agency prior to the termination of this Agreement will continue until such time as payment is made or any dispute thereto is resolved, and Section 16 will continue in full force and effect in conjunction with the same.

IN WITNESS WHEREOF,

the parties have executed this Agreement as of the date first above written.

PROVIDER:

AVCC, LLC

By:

(Signature)

(Printed Name)

(Title)

(Date)

By:

(Signature)

(Printed Name)

(Title)

(Date)