



Western Reserve

Area Agency on Aging

WESTERN RESERVE AREA AGENCY ON AGING

SAMPLE PROVIDER AGREEMENT

WITH

Provider

PROGRAM: ALZHEIMER'S RESPITE

CONTRACT PERIOD: February 1, 2022 THROUGH June 30, 2022

CONTRACT AMOUNT: Contract Amount \$ _____

SAMPLE

**PURCHASE OF SERVICE
AGREEMENT**

STATE FISCAL YEAR 2022 ALZHEIMER'S RESPITE FUNDS

THIS PROVIDER AGREEMENT (hereinafter Provider Agreement or Agreement) is entered into by and between the Western Reserve Area Agency on Aging, an Ohio Nonprofit Corporation serving the counties of Cuyahoga, Geauga, Lake, Lorain and Medina, Ohio (Agency), and Provider as the implementing authority (Contractor) for the purpose of providing selected Alzheimer's Respite service(s) (Services) to eligible persons within the foregoing counties (Consumers).

The Agency and Contractor hereby agree as follows:

ARTICLE I: SCOPE OF CONTRACT

- 1.1 Subject to the terms and conditions of the RFP, the Agency enters into this Agreement with the Contractor to develop and implement a comprehensive and coordinated system of Services for eligible Alzheimer's Respite Service consumers and their caregivers. The Agency is ultimately responsible to the Ohio Department of Aging (ODA) for ensuring that all state and federal funds received from ODA are used in a manner that complies with the Ohio Administrative Code (OAC) and the uniform administrative requirements, cost principles and audit requirements for federal awards under 45 C.F.R. Part 75.
- 1.2 The Contractor agrees to provide the Alzheimer's Respite Service(s) as contained on the appended Contract Services page(s), attached to and incorporated into this Agreement, for a five (5) month period commencing February 1, 2022, through and including June 30, 2022 (Term). The Alzheimer's Respite funds have been allocated, by the Agency and/or other authority, by county. The Contractor is prohibited from changing or requesting a modification to change the allocated funds between or amongst counties.
- 1.3 The parties to this Agreement acknowledge that all funds awarded herein shall be used solely for the purpose of providing *Services that assist Ohio family caregivers of people with Alzheimer's disease or related dementia* residing in the geographic regions of the

State of Ohio in which the Western Reserve Area Agency on Aging operates.

- 1.4 The Contractor shall provide such Service(s) according to the procedures described in Alzheimer's Respite Policy 316.00 and the Contractor's program summary(ies) for Alzheimer's Respite funds, as amended and approved by the Agency, and all said program summaries are fully incorporated herein.
- 1.5 The Contractor shall meet the Agency's specific objectives for giving priority to specific consumer groups (including those described in this Article), and shall satisfy the service needs of older persons with the greatest economic and social needs. To the maximum extent feasible, the Contractor shall give particular attention to providing Services to older persons who are low-income, who are low-income minorities, who have limited proficiency in the English language, who reside in rural areas, or who are at risk for institutional placement (frail) in accordance with their need for such services.
- 1.6 The Contractor warrants and covenants that during the Term of this Agreement it will have the capability to and agrees to provide such Service(s) as referred to above in accordance with the ODA taxonomy of services and Agency clarifications to said taxonomy. This includes the requirement to comply with the Ohio Department of Aging revised Alzheimer's Respite Policy 316.00 (effective July 1, 2018), the Criminal Records Check specified in Section 173.38 and 173.381 of the Ohio Revised Code, and Rule 173-9-01 through 173-9-10 of the Ohio Administrative Code.
- 1.7 The Contractor shall comply with applicable Ohio and federal administrative rules. The Ohio Administrative Rules are posted on ODA's website and are part of the Ohio Administrative Code: <https://aging.ohio.gov/Rules>; all such rules are incorporated herein by reference, as part of this Agreement.
- 1.8 If the Service provided is not specified in Rules 173-3-06.1, 173-3-06.4 or 173-3-06.5, the Contractor shall comply with a written specification of the service (e.g., a description of the service and any conditions for providing the service).
- 1.9 The Agency shall not reimburse the Contractor for any Service unless a valid Provider Agreement is in place at the time the Service is provided. No Provider Agreement is valid unless and until the Provider Agreement is signed by authorized representatives from both the Agency and the Contractor.

- 1.10 The Contractor shall designate its primary contact for purposes of this Agreement. Such primary contact shall participate in one or more provider orientation sessions at the Agency as a condition to performance of this Agreement.

ARTICLE II: GRANT

- 2.1 The Agency agrees to pay the Contractor with Alzheimer's Respite program funds for the Service(s) detailed in the attached Contract Services page(s) and delivered in accordance with Article I up to the amount(s) in Section B, Line 1 on the said Contract Services page(s). The maximum amount of funds to be paid to Contractor under this Provider Agreement is: Contract Amount.
- 2.2 The Contractor may request modification(s) to this Agreement no more than twice between February 1, 2022, and June 30, 2022, unless the Agency initiates one or more additional modifications. Any modification shall be at the sole discretion of the Agency, and request for modification shall be made in writing and reasonably in advance of need for modification or as soon as practicable. The grounds for modifying this Agreement are: emergency, unforeseen changes in consumer needs or in Contractor's ability to meet consumer needs, and changes in funding or funding levels. The process for modifying this Agreement is: Contractor shall in writing set forth the modification requested and the grounds for, and financial impact of (in U.S. Dollars), the modification sought. The Agency shall respond in writing promptly or as soon as practicable.
- 2.3 The Contractor understands that the funds allocated to this contract are subject to increase or decrease or may be eliminated at any time prior to the final payment to the Contractor under this Agreement by the Agency based on its notification of grant awards from the ODA, and that such a change may affect the amount or the scope of the services provided by Contractor under this Agreement. The funding source for this Agreement is State of Ohio Alzheimer's Respite funds provided through the ODA.
- 2.4 Contractor should attempt to pace service delivery at 1/5 of their annual contracted units per month. The Agency will inform a Contractor of reimbursement restrictions, if they become necessary.

ARTICLE III: METHOD OF PAYMENT

- 3.1 Payment for Services rendered under this Agreement shall be made within thirty (30) calendar days after timely receipt by the Agency of an accurate and complete “Alzheimer’s Respite Funds Provider Monthly Request for Payment” form from the Contractor, *if* the reports required in Article IV of this Agreement have also been submitted to the Agency by their due dates. The Agency shall then pay Contractor at the Alzheimer’s Respite unit rate specified in Section B Line 6 of the attached Contract Service page(s) for each eligible Alzheimer’s Respite unit of Service delivered by the Contractor and reported to the Agency.
- 3.2 If any such reports are submitted after their due date, then no payment shall be made until thirty (30) days after these late reports are received by the Agency. If any such reports are deemed by the Agency not to be complete and accurate, then no payment shall be made until thirty (30) days after a report deemed by the Agency to be complete and accurate is received. Reports may be deemed inaccurate, for instance, if the Aging and Disability (A&D) Agency Summary Report is not included with the Request for Payment, or if the units shown on the A&D Agency Summary Report do not match the units on the Request for Payment, as described in Article IV.
- 3.3 Updated unit, client cost-share, program income and other funds spent shall be reported on the Request for Payment no later than July 31, 2022.
- 3.4 If any Reports required in Article IV of this Agreement are received by the Agency after July 31, 2022, the outstanding funds shall not be paid to the Contractor.
- 3.5 If any of the Services under this Agreement, for any of the two (2) quarters of the Term of this Agreement, are not performed by the Contractor, the Agency shall reduce the Contractor's Alzheimer’s Respite award for such Service. Any Contractor not providing at least 50% of the units detailed in the attached Contract Services pages, Section A line 5 on said page by April 30, 2022, shall relinquish unused funds so that those funds may be distributed by the Agency. At the Agency’s discretion, exceptions to the consistent pace of service may be granted.

ARTICLE IV: MONTHLY AND OTHER FINANCIAL AND SAMS REPORTING REQUIREMENTS

- 4.1 Contractor agrees to submit an *Alzheimer's Respite Funds Monthly Request for Payment* form that is accurate and complete as to units of Service, client cost-share, program income and other funds spent on or before the tenth (10th) calendar day of each month from March 2022 through July 2022 for Services performed in the preceding month. If the tenth (10th) calendar day falls on a Saturday, Sunday, or holiday, the report shall be due the following business day.
- 4.2 Unless otherwise directed via Notice of Instruction, Contractor shall accurately report all required information in the Aging and Disability (A&D) System [formerly known as the Social Assistance Management System (SAMS)]. Other ODA or Agency-Approved reporting systems may be used for data collection; however, all data shall be reported to the Agency and ODA through A&D. The Agency will provide the Contractor with a subscription and license to access the A&D System during the Term of this Agreement; all other provisions of the RFP which relate to the use of the A&D System are incorporated herein by reference. Contractor agrees to comply at all times with all requirements for use of the A&D System during the Term, as they may, on occasion, change at the sole discretion of the Agency or the ODA.
- 4.3 Units of Service delivered must be entered into A&D on or before the tenth (10th) calendar day of each month from March 2022 through July 2022, for Services performed in the preceding month. If the tenth (10th) falls on a Saturday, Sunday, or holiday, the data shall be entered into A&D no later than the following business day.
- 4.4 The Contractor shall submit a printed *A&D Agency Summary Report* with its *Request for Payment*. The units on the *Agency Summary Report* must match the monthly *Request for Payment*.
- 4.5 If an error is made on a monthly *Request for Payment*, the error must be corrected within three months using the *Unit Adjustment Form*. The Contractor must provide a written explanation for the correction and request an adjustment on a subsequent *Request for Payment* form. The error must also be corrected in the A&D System. The request is subject to approval by the Agency at its sole discretion.

- 4.6 Contractor shall ensure that all of its staff and all staff of any Agency-approved subcontractor or subgrantee collect without coercion consumer characteristics required by ACL's National Aging Program Information System (NAPIS) and shall timely enter the information in the consumer's record in the A&D System. Contractor shall strive to have ninety percent (90%) or more of the consumer characteristic fields populated in the A&D System at all times.
- 4.7 The Contractor shall submit a printed *NAPIS Consumer Listing Report* and *NAPIS Consumer Listing Report (With Caregivers/Care Recipients)* with the *Request for Payment* and *Agency Summary Report*.
- 4.8 The Contractor shall complete the required reporting in A&D by the Agency if designated as an A&D user by the Agency. When Contractor provides Services on behalf of multiple AAAs, the Contractor shall report the Services provided on behalf of each AAA, commensurate with the Contractor's contract with that AAA Final A&D report data, which reconciles information for the entire program year, but was not included in the final quarter data, must be submitted to the Agency 60 days following the end of the program year. Approval of extensions and waivers do not alter this final reporting timeframe unless approved by the Agency.
- 4.9 The Contractor shall strive to attain stability in its assignment of funds for Services and shall accurately report all required elements in the A&D System. Contractor shall explain, to the Agency's satisfaction, any significant variances (e.g. beyond 10 percent of the previous year's performance) in the statewide State Program Report attributable to its A&D data. The Contractor shall immediately analyze and amend A&D data when reporting variances or errors are identified. If attributable data causing the variance cannot be explained to Agency's satisfaction, the Contractor shall collaborate with ODA to analyze and remedy the cause of the variance.

ARTICLE V: MATCH, PROGRAM INCOME AND COST-SHARING

- 5.1 The Contractor may, but is not required, to provide cash or in-kind resources equal to a percentage of the funds provided by the Agency for each Service as specified on the Contract Services page(s) attached to this Agreement. This amount is the "match". The

- Contractor covenants, warrants and certifies that the match required for each Service will be a cost reasonably expected to be incurred in the delivery of the Service.
- 5.2 The Contractor is allowed and encouraged to receive voluntary contributions for Services reimbursed with Alzheimer's Respite funds, and to record these as Program Income. The Contractor further agrees as follows:
- A. The terms "charge" and "fee" must not be used when presenting this opportunity to contribute.
 - B. No person may be denied Service under this Agreement because of that person's ability or decision to contribute or not to contribute to the Service.
- 5.3 The Contractor is encouraged, but is not required, to implement a consumer cost-sharing policy for Adult Day Services, Personal Care services, Homemaking services and Respite Reimbursement. If consumer cost-sharing is performed, the procedures must comply with Rule 173-3-07 of the Administrative Code.
- 5.4 Program Income and Cost-Sharing funds shall be used exclusively to pay for the cost of the Service from which they were generated.

ARTICLE VI: MONITORING, RECORD MAINTENANCE, ACCESSIBILITY AND RETENTION

- 6.1 To the extent authorized by law, the Contractor shall allow representatives of the Agency, ODA and the Administration on Aging access to all programmatic, fiscal, and other records related to the Service(s) for planning, review, auditing, and monitoring purposes at any time during the normal working hours of the Contractor with no prior notification necessary, except that prior notice of at least 24 hours shall be given where access is sought to the confidential complaint files of the Contractor.
- 6.2 The Contractor shall keep Consumer information including but not limited to: name, address, telephone number, date of birth, gender, minority status, disability and poverty status, emergency contact person's name and telephone number, and functional abilities of Consumers, relevant to Service(s) delivered.
- 6.3 The Contractor shall document that Service(s) were delivered in accord with the ODA taxonomy of services and Agency clarifications to said taxonomy, as well as the ODA

Conditions of Participation and Service Specifications in the applicable Administrative Rules.

- 6.4 Except as otherwise required by federal law, Contractor agrees all expenses charged or allocated to this grant shall be reasonable, allowable and allocable to this award, as those terms are defined by the United States Office of Management and Budget for purposes of the federal grants awarded by the United States Government (See: 45 CFR Part 75). All expenses incurred or allocated by Contractor under this Agreement shall be supported by appropriate worksheets and/or time studies, signed contracts, receipts, purchase orders, requisitions, payroll records, bills or other evidence of liability consistent with Contractor's established procurement procedures. All expenses shall be incurred on or before the last day of the award period. No expense incurred after June 30, 2022, may be charged to the SFY2022 Alzheimer's Respite Funds. Any funds not earned during the award period shall lapse and no cash or grant carryover will be allowed.
- 6.5 The Contractor shall maintain all records relating to costs, work performed, and supporting documentation, in the same manner as required of Recipients by the United States Government (See: 45 CFR Part 75). Files shall be maintained during the award period and for three years from the date of submission of the final Request for Payment. Contractor shall make all records available in a timely manner for unrestricted review or audit by the State of Ohio (including ODA, the Auditor of State of Ohio, Inspector General, or duly authorized law enforcement officials). If an audit is initiated before the expiration of the three-year period, Contractor shall retain all records until the audit is concluded and all issues are resolved (including any final settlement process).
- 6.6 The Office of the State Long Term Care Ombudsman of ODA shall have access to the complaint files of the Contractor. The Agency agrees that all information contained in said records will be treated in accord with any and all applicable legislation guaranteeing privacy.
- 6.7 The Contractor shall have the audit, review and monitoring rights to the extent provided by the Ohio Public Records Act.

ARTICLE VII: ACCOUNTING RECORDS

- 7.1 The Contractor agrees to maintain its accounts and documents so as to readily permit the determination of the status of the cost of services rendered under this Agreement at any time and to have such information readily available for examination by Contractor auditors or Agency representatives.
- 7.2 The Contractor agrees to maintain supporting documents so as to permit the determination of the status of cash, accrual and in-kind transactions which are used as a match for the Contractor's Alzheimer's Respite funds.
- 7.3 If the Contractor receives funds to administer activities not covered under this Agreement, the Contractor agrees to develop and maintain documentation describing the method used to allocate any line-item costs that are shared by the Alzheimer's Respite Service(s) and such non-covered activity, and to have such information readily available for examination by Contractor auditors and/or Agency representatives.
- 7.4 The Contractor agrees to comply with the Code of Federal Regulations (e.g. 45 CFR, Sec 92.25), the OAC, other administrative rules, and Agency policy for the procedures relating to and the accounting for Alzheimer's Respite Program income.

ARTICLE VIII: CONDITIONS OF THE GRANT

- 8.1 If the Contractor is found to be in violation of federal, state and/or local health, fire, safety, zoning and/or sanitation codes, the Contractor must notify the Agency immediately. The Agency may suspend the grant without advance notice, including any payments in whole or in part due under this Agreement, for the Contractor's failure to comply with federal, state and local health, fire, safety, zoning and/or sanitation codes. The Agency will give written notice of the specific reasons for the suspension to the Contractor. The Contractor must provide evidence that the violations have been corrected before the suspension will be lifted.

ARTICLE IX: PROBLEMS IN PROVISION OF SERVICES

- 9.1 The Agency may begin the process to suspend and/or terminate this Agreement or the grant and/or any payments in whole or in part due under this Agreement for any one of

the following causes:

- A. Failure to provide reports required by this Agreement in accordance with due dates established by the Agency;
- B. Failure to permit on-site monitoring and/or review of all pertinent records;
- C. Failure to comply with the accounting records and/or audit requirements of this Agreement;
- D. Failure to provide and/or document the service(s) in accordance with ODA Service Specifications and Ohio Administrative Rules, or as required by this Agreement;
- E. Failure to conform to any of the legal requirements of Articles XVII and XVIII of this Agreement;
- F. Failure to perform fully all of the Contractor's other duties and responsibilities in accordance with this Agreement;
- G. Failure to remedy within a reasonable time any violation for which Contractor's Services are suspended pursuant to Article VIII; and
- H. Any other reason warranted or provided by law.

9.2 The Agency will inform the Contractor in writing of any problems it notes in the provision of the Service(s). If the health, safety or well-being of a Consumer is at immediate risk, the Contractor shall respond to the Agency as soon as possible but not later than forty-eight (48) hours after receiving such notice, informing the Agency of the corrective action it has taken or it will take in regard to each such problem, and if the corrective action has not yet been taken stating when such corrective action will be effective. If the health, safety or well-being of a Consumer is not at immediate risk, the Contractor shall respond in writing to the Agency within ten (10) calendar days after receiving such notice, informing the Agency of the corrective action it will take in regard to each such problem, and stating when such corrective action will be effective.

9.3 If the Contractor does not respond in writing as required by the foregoing provision, or if the Agency does not approve such corrective action and/or the date proposed for its implementation, the Agency shall so inform the Contractor in writing and specify a time by which corrective action acceptable to the Agency shall be proposed and/or

implemented. If such corrective action is not proposed and/or implemented by the Contractor by that time, then the Agency may suspend payments to Contractor, may terminate this Agreement, or both.

- 9.4 If this Agreement has not been terminated pursuant to this or another Article of this Agreement, and if payments are merely suspended under this Article, reimbursement of the funds may resume when the Contractor has taken all required corrective action and the Agency receives and approves a written report documenting the corrective action.

ARTICLE X: CONDITIONAL CONTRACTOR STATUS

- 10.1 In accordance with Agency policy on Conditional Contractor Status, (web address), the Agency may designate an Alzheimer's Respite service provider with problematic programs as described in said policy as a *Conditional Contractor* and subject it to a period of probationary status. In the event of said designation, in the sole discretion of the Agency, the terms of the probation shall become and be deemed an addendum to this Agreement.

ARTICLE XI: RECOVERY OF FUNDS

- 11.1 The Contractor shall return any funds received for providing Services if the Agency ascertains that the Contractor was paid for any unit or units of Service it did not provide, or for units provided to ineligible consumers, or for units that it provided that did not comply with the OAC, the Ohio Revised Code, or any other law that regulates the Contractor or the Services provided, and/or did not comply with the requirements set forth in the Agency's Request for Proposal and/or the Contractor's approved Proposal, and/or in the event the Contractor failed to document the provision of any unit or units of Service as required under this Agreement or applicable law.
- 11.2 The Agency may recover its payment made for any such unit or units from the Contractor by withholding funds due to the Contractor under this Agreement or under any other Agreement the Contractor enters into with the Agency, irrespective of whether that Agreement is currently in effect or is in effect at, or at any time after, the termination

of this Agreement. Recovery may also be sought by legal action. The maximum amount of funds to be paid under this Agreement may, in the discretion of the Agency, be reduced by the amount of the funds so recovered.

ARTICLE XII: CONTRACTOR AUDITS

- 12.1 If the Contractor is subject to OMB circular A-133 requirements, the Contractor shall obtain an independent audit by a certified public accountant which encompasses the grant period, and funds under this Agreement, within nine months after the end of the Term of this Agreement and shall provide the Agency with a copy of such audit within ten (10) calendar days after such audit report is received by the Contractor.
- 12.2 If the Contractor is not subject to OMB circular A-133 requirements, but nonetheless obtains an annual agency audit which covers any part of the grant period (and/or funds under this Agreement), the Contractor shall submit a copy of such audit to the Agency within ten (10) calendar days after the audit report(s) is/are received by the Contractor.
- 12.3 The Contractor agrees that such audit will be engaged and performed in accord with all State and Federal regulations governing audits of the funds paid under this Agreement and in accordance with all appropriate accountancy standards.
- 12.4 In the event an audit discloses a discrepancy, the Contractor shall respond in writing to the Agency, within ten (10) calendar days of a written receipt of any audit findings pertaining to the Contractor's Alzheimer's Respite Service(s), with a plan to resolve said findings. If said response is not received by the Agency within the said ten (10) calendar days, the Agency may suspend payments to Contractor until corrective action acceptable to the Agency is implemented or the Agency may take other action.
- 12.5 The Contractor agrees to reimburse the Agency any funds paid under this Agreement which are found in the course of an audit to have been improperly or illegally used.

ARTICLE XIII: CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 13.1 The Contractor shall not use any information, systems, or records made available to Contractor for any purpose other than to fulfill the obligations specified herein. In the performance of any work authorized or funded under this Agreement, the Contractor

specifically agrees to be bound by the same standards of confidentiality that apply to the employees of ODA and the State of Ohio. The terms of this paragraph shall be included in any Agency-approved subcontracts or lower-tiered grant agreements executed by the Contractor for Services under this Agreement. The Contractor specifically agrees to comply with all state and federal confidentiality laws and regulations applicable to the programs under which this Agreement is funded. The Contractor is responsible for obtaining copies of all applicable rules governing confidentiality, and for assuring compliance with the rules by its employees, contractors, or lower-tiered sub-recipients. To the extent the federal requirements apply to this Agreement, the Contractor agrees to current and on-going compliance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, including 45 CFR 164.502 and 164.50, regarding the disclosure of protected health information.

- 13.2 The Contractor shall store consumer records in a designated, locked storage space.
- 13.3 The Contractor shall not use or disclose any information concerning a Consumer for any purpose directly associated with the provision of Services, unless the Contractor has documentation of the Consumer's consent to do so.
- 13.4 The Contractor is prohibited from using or disclosing any information concerning a Consumer for any purpose not directly associated with the provision of Services, even if the Consumer consents to doing so.
- 13.5 Any Contractor who is a mandatory reporter shall immediately notify the appropriate county's Department of Job and Family Services, or the agency the county's Department of Job and Family Services designates to provide adult protective services, once the Contractor has reasonable cause to believe a Consumer is the victim of abuse, neglect, or exploitation.

ARTICLE XIV: CONTRACTOR ROLE IN CASE OF DISASTER

- 14.1 The Contractor is required to cooperate with the Agency and ODA to assess the extent of the disaster impact upon persons aged sixty years and over, and to coordinate the public and private resources in the field of aging in order to assist older disaster victims

whenever the President of the United States declares that the Contractor's service area is a disaster area.

ARTICLE XV: INSURANCE

15.1 The Contractor shall secure and maintain at least the following minimum amounts of insurance for the period of this Agreement:

- A. General commercial liability insurance against claims for injury and/or death in the amount of \$1,000,000 aggregate and per occurrence.
- B. If staff of the Contractor or of an approved subcontractor or subrecipient is required to drive while providing the Alzheimer's Respite Service, and/or if transportation is part of the Alzheimer's Respite Service under this Agreement: automobile liability insurance against claims for injury and/or death in the amount of \$1,000,000 aggregate and per occurrence, and property damage insurance in an amount no less than \$50,000 aggregate and per occurrence.
- C. Third party fidelity bond and property damage insurance (including damage or theft or loss involving the property of a consumer) in any one accident or occurrence in an amount not less than \$50,000 for losses in connection with service visits to the consumer's home, and in an amount no less than \$5,000 for all other services.
- D. First party fidelity bond or employee theft coverage on persons handling Alzheimer's Respite funds in the amount of no less than \$10,000 or 10% of the amount set forth in Section 2.1 of this Agreement, whichever is greater.
- E. Full replacement value property insurance on equipment or capital improvements which were/are funded, at least in part, by Agency grant funds or Alzheimer's Respite program income.
- F. The insurance required under this Agreement shall cover the acts and/or omissions of paid employees and volunteers working for the Contractor and for any Agency-approved subcontractors.

ARTICLE XVI: INDEMNIFICATION

16.1 To the extent authorized by law, the Contractor agrees to indemnify and hold the Agency and ODA harmless from any and all claims, demands, damages, suits, judgments, awards, costs and expenses, including but not limited to attorney's fees, arising from, resulting from or attributable to the performance of Services under this Agreement by the Contractor, its employees, its Agency-approved subcontractors, if any, and/or its/their volunteers, excepting only those matters or occurrences caused by the negligence of the Agency.

ARTICLE XVII: LEGAL OBLIGATIONS

17.1 The Contractor shall conform to the requirements of all applicable federal, state and local laws, regulations, federal circulars, and established guidelines incorporated by reference herein, further including, but not limited to:

- A. Older Americans Act of 1965, as amended;
- B. Civil Rights Act of 1964, as amended;
- C. Section 504 of the Rehabilitation Act of 1973, as amended;
- D. Age Discrimination Act of 1975, as amended;
- E. Fair Labor Standards Act of 1938, as amended;
- F. Age Discrimination in Employment Act of 1967, as amended;
- G. State and local health, fire, safety, zoning and sanitation codes;
- H. Federal, State and local financial and payroll reporting requirements;
- I. Federal and State lobbying restrictions and reporting requirements;
- J. The Americans with Disabilities Act of 1990;
- K. ODA and Agency Policies and Procedures; and
- L. Health Insurance Portability and Accountability Act.

17.2 The Contractor agrees that neither the Contractor nor any subcontractor, nor any person acting on behalf of Contractor or any subcontractor shall, in the employment of any person qualified and available to perform the Service/work to which this Agreement relates, discriminate against any such person by reason of race, color, religion, sex,

military status, national origin, disability, age, ancestry, or any other legally protected classification. Contractor further agrees that neither Contractor nor any subcontractor, nor any person acting on behalf of Contractor or any of its subcontractors, shall in any manner discriminate against, intimidate, or retaliate against any employee hired for the performance of Service/work under the Agreement on account of race, color, religion, sex, military status, national origin, disability, age, ancestry, or any other legally protected classification.

- 17.3 The Contractor certifies that it understands Ohio's ethics and conflict of interest laws, and will do nothing inconsistent with them.
- 17.4 If Contractor is approved by the Agency for and enters into a subcontracting relationship for Alzheimer's Respite Services, the Contractor shall require that the language of this Article XVII and of Article XVIII of this Agreement be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. In addition, subcontractors, if any, must be approved in writing by Agency and this Agreement, in total, shall be incorporated into their subcontract by reference.
- 17.5 If Contractor is approved by the Agency for and enters into a subcontracting relationship for Alzheimer's Respite Services, the Contractor remains responsible for ensuring that all provisions of this Agreement are met by the subcontractor.

ARTICLE XVII: AFFIRMATIVE ACTION

- 18.1 For the period of this Agreement, the Contractor agrees to have executed a written Equal Employment Opportunity Affirmative Action Plan in accordance with Title VI and Title VII of the 1964 Civil Rights Act, as amended. The Contractor further agrees that the following posters and notices will be prominently displayed at the Contractor's main office: (A) EEO policy statement (B) EEO posters (C) Job vacancies (D) Training sessions available and (E) Discrimination complaint procedures.

ARTICLE XIX: OFFSHORE SERVICES: Banning the Expenditure of Public Funds for Offshore Services

- 19.1 Contractor affirms that it has read and understands Executive Order 2019-12D as provided in Attachment B and shall abide by those requirements in performance of this Agreement. Contractor shall perform no Services required under this Agreement outside the United States and shall immediately notify ODA of any change or shift in the location(s) of Services performed by Contractor or its sub-recipients under this Agreement. No Service shall be changed or shifted to a location(s) outside the United States.
- 19.2 By signing this Agreement, Contractor certifies that it is, and shall remain, in compliance with Executive Order 2019-12D and shall not assign or subcontract the Services/work under this Agreement to any entity outside the United States.
- 19.3 Notwithstanding any other provision of this Agreement, this Agreement shall not become effective unless and until the Contractor has completed and signed this addendum, and submitted it to the Agency.

ARTICLE XX: TERMINATION, SANCTION, DAMAGES

- 20.1 If Contractor or any of its lower tiered sub-grantees or subcontractors performs Services under the Agreement outside of the United States, the performance of such Services shall be treated as a material breach of the Agreement. The Agency is not obligated to pay and shall not pay for such Services. If the Contractor or any of its lower tiered sub-grantees or subcontractors perform any such Services, the Contractor shall immediately return to the Agency all grant funds disbursed as payment or reimbursement for those Services or on the basis of the cost of such Services having been counted as match or cost share specifically required as a condition for disbursement of grant funds.
- 20.2 The Agency may, at any time after Contractor's breach, terminate the Agreement, upon written notice to Contractor. The Agency may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement. To the extent that actual and direct damages are

uncertain or difficult to ascertain, the Agency may recover a payment of liquidated damages in the amount of twenty-five percent (25%) of the maximum amount of funds to be paid to Contractor under this Agreement (not to exceed the amount of grant funds disbursed prior to any termination of this Agreement).

- 20.3 The Agency, in its sole discretion, may provide written notice to the Contractor of a breach and permit Contractor to cure the breach. Such cure period shall not exceed 21 calendar days. Notwithstanding the Agency permitting a period of time to cure the breach or Contractor's cure of the breach, the Agency does not waive any of the contract rights and/or remedies provided the Agency under this Agreement, including, but not limited to (i) the recovery of grant funds paid for Services provided by the Contractor or its lower tiered sub-grantees or subcontractors (including those Services performed outside of the United States), (ii) costs associated with corrective action, (iii) liquidated damages, or, (iv) the Agency's direct expenses in enforcing this Agreement, including the Agency's reasonable attorneys' fees and litigation expenses.

ARTICLE XXI: ASSIGNMENT / DELEGATION

- 21.1 Contractor shall not assign any of its rights, nor delegate any of its duties or responsibilities under this Agreement without prior written consent of the Agency. Any assignment or delegation made without written Agency consent may be deemed void by the Agency.

ARTICLE XXII: DRUG-FREE WORKPLACE:

- 22.1 The Contractor agrees to comply with all applicable federal, state, and local laws regarding smoke-free and drug-free work places, and shall make a good faith effort to ensure that none of its employees, subcontractors, or lower-tiered grant recipients purchase, transfer, use, or possess illegal drugs, or abuse alcohol or prescription drugs in any way, when they are engaged in providing the Services to be performed under this Agreement, or while on public property.

- 22.2 Public Law 103-227, Part C – Environmental Tobacco Smoke, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, or by Federal grant, contract, loan or loan guarantee. The law does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.
- 22.3 By signing and submitting this document, the Contractor certifies that it will comply with the requirements of the foregoing Act. The Contractor further agrees that it will require the language of this certification to be included in any subcontracts or sub-awards, which sub-grantee(s) shall certify accordingly.

ARTICLE XXIII: MISCELLANEOUS PROVISIONS

- 23.1 **Governing Law:** This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance, irrespective of any Ohio choice of law principle or concept which would specify application of substantive law other than Ohio substantive law. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the Cuyahoga County Court of Common Pleas or the United States District Court for the Northern District of Ohio located in Cleveland, Ohio, and the Contractor hereby irrevocably consents to such personal jurisdiction and venue.
- 23.2 **Entire Agreement:** This Agreement and its incorporated exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussion, agreements and understandings, either oral

or written, between the parties with respect to the subject matter hereof. No other terms and conditions will be considered a part of this Agreement unless expressly agreed upon in writing and signed by both parties or unless otherwise required by law.

23.3 Severability: Whenever possible, each provision of this Agreement shall be interpreted in such matter as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

23.4 Debarment: By signing this Agreement, Contractor certifies to ODA and the Agency that, to the best of the Contractor's knowledge and belief, Contractor and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- B. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerate in subparagraph (B) of this certification; and
- D. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause of default.

23.5 Lobbying: The Contractor is subject to the restrictions on lobbying set forth in 45 CFR Part 93. (See 45 CFR 75.214). By signing this Agreement, the Contractor certifies, to the best of its knowledge and belief that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal amendment or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned, on behalf of the Contractor, shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. Contractor shall require that the language of this Article 23.5 be included in the award documents for all lower tiered subcontracts and that all lower tiered subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance will be placed by the Agency when this Agreement is entered into by the Contractor and the Agency. This certification is a prerequisite for making or entering into this Agreement, and is imposed by United States Code §1352, Title 31. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE XXIV: FOCAL POINTS

24.1 Focal points are posted on the WRAAA website at www.areaagingsolutions.org.

ARTICLE XXV: PUBLICITY

25.1 The Contractor agrees that all public notices and publicity regarding this program shall state that: "This program is made possible by a grant from the Ohio Department of Aging through the Western Reserve Area Agency on Aging."

ARTICLE XXVI: AMENDMENT

26.1 This Agreement may be amended, provided that any such amendment is in writing and signed by both parties. It is agreed, however, that any amendment to the laws, rules or policies cited or referenced herein will result in a correlative modification of this Agreement, without the necessity for executing a written amendment.

ARTICLE XXVII: TERMINATION BY CONTRACTOR

27.1 If the Contractor decides that it no longer wishes to provide services under this Agreement, the Contractor must provide immediate written notice to the Agency. The Contractor may not unilaterally terminate this Agreement, under any circumstances, without the written consent of the Agency.

ARTICLE XXVIII: TERMINATION BY AGENCY

28.1 The Agency may terminate this Agreement without obligation if ODA determines, through the appeals process or through monitoring, that this Agreement was entered into inappropriately, or if funding is decreased or eliminated at any time.

ARTICLE XXIX: APPEALS

29.1 The Contractor has the right to appeal adverse action by Agency in accordance with the following process and Rule 173-3-09 of the Administrative Code. The Contractor may appeal an adverse action decision made by Agency as follows:

1. An appealing Contractor must submit a letter, signed by the official authorized to sign the appeal, to the Chief Executive Officer of Agency

with a copy sent to the President of the Board of Trustees of Agency, within two (2) working days of receipt of written notice of an adverse action taken by Agency. The ground for appeal must be specified in the appeal letter.

2. If the Appeals Committee does not approve the appeal request because it is not within the above-established criteria, written notice of such non-approval shall promptly or as soon as practicable be sent to the Contractor but no later than within five (5) working days. If the Appeals Committee approves the appeal request and determines that the appeal is within the above-established criteria, a meeting of the Appeals Committee will be scheduled within five (5) working days, with an appearance by the appealing Contractor, to review the adverse decision and recommend final action by the Board of Trustees. An appealing Contractor will be notified of the date and time of the meeting. The Appeals Committee will render a final recommendation, in writing, within five (5) working days after the meeting, which shall become the final decision of the Agency unless appealed to the Board of Trustees.
3. An appealing Contractor may by letter appeal the Appeals Committee's notice that the appeal did not meet the above-established criteria or the final recommendation of the Appeals Committee to the Board of Trustees, with a copy to the Chief Executive Officer of the Agency, within two (2) working days of receipt of written notice that the appeal did not meet the above-established criteria or of the final recommendation of the Appeals Committee. The ground for appeal must be specified in the appeal letter.
4. The Board of Trustees, or in its absence the Executive Committee, will review the appeal from the determination of the Appeals Committee at its next meeting, adopt a final course of action and notify the appealing Contractor of its final decision in writing within five (5) working days. The decision of the Board, or its Executive Committee, shall be the final decision of the Agency, which may be appealed by the Contractor to ODA.

5. An appealing Contractor may request a hearing by the ODA. ODA shall only honor a request for an appeal hearing before ODA if the Contractor has fully complied with the written process for appealing an adverse action by the Agency and Agency has rendered its final decision on the appeal.

To request a hearing before ODA, the Contractor shall submit a written request to ODA's director via certified mail no later than fifteen (15) business days after the date that Agency renders its final decision.

ODA shall hold a hearing and render its final decision on the appeal no later than thirty (30) business days after the date of the hearing. The appeal process will comply with Rule 173-3-09 and/or other applicable law.

ARTICLE XXX: NOTICES

30.1 Notices under this Agreement shall be in writing and may be delivered in person, by certified mail (return receipt requested), by overnight mail (proof of delivery required), or by facsimile (to the Contractor, only).

IN WITNESS WHEREOF, the duly authorized representatives of the Agency and the Contractor have executed this Agreement on the dates written below their signatures.

WESTERN RESERVE AREA AGENCY ON AGING

E. Douglas Beach, Ph.D., Chief Executive Officer

DATE

Contractor:

Contractor/DULY AUTHORIZED SIGNATORY

TYPED or PRINTED NAME & TITLE OF SIGNATORY

DATE

SAMPLE

