



## **ONLINE TERMS AND CONDITIONS FOR REFERRAL AGREEMENT**

### **1. APFM Services:**

- a. This Agreement is entered into between A Place for Mom (“APFM”) and the company on the Referral Program Order (“You” or “Customer”). The Effective Date of your Agreement is the date of signing, except for certain Sections, which will be effective January 1, 2020, as noted herein.
- b. APFM provides information to consumers regarding APFM’s customer communities in various ways, including but not limited to: operating our own websites, working with affiliated websites, advertising on television, radio, and in print, collecting reviews, as well as through other marketing products, channels, and services. In conducting such marketing on your behalf, APFM may incorporate your communities’ names and other specific information for distribution to both current and prospective consumers.
- c. Based on a family’s preferences, priorities, needs, and resources, APFM, in its discretion, will determine which communities may offer compatible resources in terms of living environment, care levels, service offerings and cost. APFM provides information about the family and Prospective Resident to the community in the form of a Referral Alert. The information that APFM submits to the communities is for informational purposes only and may only be used in an attempt to find the right fit for the family.
- d. If APFM sends a Referral Alert for a Prospective Resident who later moves into any of your communities, including owned, franchised, or managed communities, whether that community is officially a customer of APFM or not (“Your Community/ies”), you agree to pay the following fees (“Fees”) (see your Referral Program Order Form (“Order Form”) for exact fees):

### **2. Permanent Move-in Fee:**

- a. “Prospective Resident” or “Resident” means the senior or person to be placed in Your Communities and not the contact person or other family member.
- b. A “Move-in” occurs upon the earlier of: (i) the date when you and the Resident (or the Resident’s contact person) agree that the rental, residence, or lease agreement commences or (ii) the date that the Resident physically moves into Your Communities.
- c. You agree to notify us of each Move-in date either (i) prior to the date of Move-in or (ii) within 24 hours after the Move-in. In either event, your notification must include proof of the Resident’s rent charges; projected care charges; unit type; any entry/community fee; and any discount/special rate for the Resident. Within 30 days thereafter, you agree to finalize the projected care charges as actual. In the absence of a timely report from you of rent and actual care charges, APFM will invoice based on its reasonable estimate of the amount of rent and care charges, and you will be responsible for the Permanent Move-in Fee.
- d. Fees are based on normal and recurring rent and care charges, regardless of any discounts offered to the Prospective Resident. By way of non-exclusive illustrative example, if the normal rent and care charges are \$4,000 per month and there is a “first month free” promotion that is applied for the Resident’s fees, the Move-in Fee will be based on the \$4,000 pre-discount rate.
- e. Rent means the cost for a specific apartment(s), room(s), suite(s), including any second-person fees. Care means activities of daily living services, such as the following: medication monitoring/administration; escorts to and from the dining room or activities; incontinence and bathing assistance; overall health monitoring; etc. These services may be defined in levels, service points, or other systems, or may also be included as part of a flat fee. Care also includes any and all services/amenities that were defined prior to Move-in as being provided by the community staff, such as meals, housekeeping, transportation, and other services that are a regular and continuing portion of the residents’ monthly expenses.
- f. Care does not include the following: (i) services provided by a third party other than the community staff (e.g., housekeeping agency, home care agency, private duty aid, transportation service, etc.); (ii) medication costs; (iii) incontinence or other supplies (toiletries, Ensure, or other supplements); meals that are not part of the regular monthly expenses (e.g., non-packaged meals for purchase, family meals, occasional lunch purchases at a retirement community, etc.); (vi) beauty shop charges; (vii) transportation that is not a regular part of the resident’s billing; and (viii) activity fees for special outings.
- g. If you do not notify us of a Move-in (including any Move-in to any of Your Communities or a transition from a Prohibited Customer status to non-Prohibited Customer status) and we discover the Move-in more than 1 month after the Move-in date, then you will be charged an additional 10% Fee as a Non-Reporting Surcharge. This Non-Reporting Surcharge will be assessed as a percent of and in addition to the Permanent Move-in Fee.

- h. You agree to charge a Prospective Resident the same rate as all other consumers who Move-in, including being eligible for all discounts or concessions you offer. You are prohibited from charging or seeking to recover in any other manner any portion of the APFM Fees from any Prospective Resident.
- i. If the Resident was not originally designated as a Respite or Short Stay Resident and stays in Your Community for less than 30 days, then the Move-in Fee is prorated by the number of days for which the community was paid for the Resident's Stay and will not be considered a Respite or Short Stay.
- j. You may choose not to include a care type on your APFM profiles for marketing purposes; however, if a Move-in occurs to an excluded type the Permanent Move-in Fee will be due.

**3. Permanent Move-in (TX/OK only):**

- a. "Prospective Resident" or "Resident" means the senior or person to be placed in Your Communities and not the contact person or other family member.
- b. A "Move-in" occurs upon the earlier of: (i) the date when you and the Resident (or the Resident's contact person) agree that the rental, residence, or lease agreement commences or (ii) the date that the Resident physically moves into Your Communities.
- c. APFM's Permanent Move-in Fee is equal to \$3,500 for licensed communities and \$2,500 for unlicensed communities.
- d. You agree to notify us of each Move-in date either (i) prior to the date of Move-in or (ii) within 24 hours after the Move-in. In either event, your notification must include proof of the Resident's rent charges; projected care charges; unit type; any entry/community fee; and any discount/special rate for the Resident.
- e. If you do not notify us of a Move-in (including any Move-in to any of Your Communities or a transition from a Prohibited Customer status to non-Prohibited Customer status) and we discover the Move-in more than 1 month after the Move-in date, then you will be charged an additional 10% Fee as a Non-Reporting Surcharge. This Non-Reporting Surcharge will be assessed as a percent of, and in addition to, the Permanent Move-in Fee.
- f. You agree to charge a Prospective Resident the same rate as all other consumers who move in, including being eligible for all discounts or concessions you offer. You are prohibited from charging or seeking to recover in any other manner any portion of the APFM Fees from any Prospective Resident.
- g. If the Resident was not originally designated as a Respite or Short Stay Resident and stays in Your Community for less than 30 days, then the Move-in Fee is prorated by the number of days for which the community was paid for the Resident's Stay and will not be considered a Respite or Short Stay.
- h. You may choose not to include a care type on your APFM profiles for marketing purposes; however, if a Move-in occurs to an excluded type the Permanent Move-in Fee will be due.

**4. Respite Or Short Stay:**

- a. A Respite or Short Stay Move-in means a pre-planned, short term stay of less than 60 cumulative days and includes stays with and without an overnight stay.
- b. You agree to notify APFM of each Respite or Short Stay Move-in (i) prior to the date of Move-in or (ii) within 24 hours after the Move-in. You agree to provide the number of days of the anticipated stay, Resident's rent charges and projected care charges (or per diem rate), and Unit Type.
- c. The Respite or Short Stay Fee will be invoiced upon the commencement of services. On or before the 60th day following admission, you agree to provide us with documentation confirming the respite stay, with the actual days stayed, the move out date and the per diem rate. Upon our receipt of that documentation, you will be billed any additional Respite or Short Stay Fee or receive a refund of the Respite or Short Stay Fee, based upon actual number of days of service. If you do not provide the documentation outlined in this Section, we will automatically invoice the Move-in as a Permanent Move-in, and you will be responsible for a Permanent Move-in Fee for a similar unit, less any amount paid as Respite or Short Stay Fee.
- d. If you do not provide Respite or Short Stay Fees in a timely manner after Move-in, APFM will invoice you based on its reasonable estimate of the amount of rent and care charges, and you will be responsible to pay the Respite or Short Stay Fee.
- e. If a Move-in is not reported, and APFM becomes aware of the Move-in more than 1 month after the Move-in date, you agree to pay an additional 10% Fee as a Non-Reporting Surcharge. This Non-Reporting Surcharge will be assessed as a percent of and in addition to the Respite or Short Stay Fee.

**5. Respite or Short Stay (TX/OK only):**

- a. A Respite or Short Stay Move-in means a pre-planned, short term stay of less than 60 cumulative days and includes stays with and without an overnight stay.

- b. You agree to notify APFM of each Respite or Short Stay Move-in (i) prior to the date of Move-in or (ii) within 24 hours after the Move-in. You agree to provide the number of days of the anticipated stay, Resident's rent charges and projected care charges (or per diem rate), and Unit Type.
- c. APFM's Respite or Short Stay Fee is \$350 for a pre-planned, short-term stay of more than five days and less than a total of 60 cumulative days. This fee will be invoiced upon the commencement of services.
- d. On or before the 60th day following admission, you agree to provide us with documentation confirming the respite stay, with the actual days stayed and the move-out date. If you do not provide the documentation outlined in this Section, we will automatically invoice the Move-in as a Permanent Move-in and you will be responsible for a Permanent Move-in Fee for a similar unit, less any amount paid as Respite or Short Stay Fee.
- e. If a Move-in is not reported and APFM becomes aware of the Move-in more than 1 month after the Move-in date, you agree to pay an additional 10% Fee as a Non-Reporting Surcharge. This Non-Reporting Surcharge will be assessed as a percent of and in addition to the Respite or Short Stay Fee.
- f. The Respite or Short Stay Fee for short term stays that do not include an overnight stay, also referred to as Day Care, is \$300 for more than 10 days. This fee will be invoiced upon the commencement of services.

#### 6. Duplicate Referrals:

- a. If you have received the Prospective Resident's name within the Lookback Period and if you choose to reject APFM's referral of the Prospective Resident, then you must provide written notice of rejection within 72 hours of receiving the APFM Referral Alert to avoid incurring the Fee for a subsequent Move-in. You may not reject a referral for any other reason.
- b. The "Lookback Period" means 180 days prior to our referral of the Prospective Resident.
- c. "Prospective Resident's Name" means the legal last name or a substantially similar one (including hyphenated, maiden, etc.) that is reasonably calculated to identify the Prospective Resident. The provided first name may be either legal, shortened, or nickname version, reasonably calculated to identify the Prospective Resident.
- d. APFM reserves the right to request a screenshot of the date and source of your having received the Prospective Resident in the Lookback Period.
- e. If you do not reject the Prospective Resident by following the steps outlined in paragraph 6.a, above, then:
  - i. You will be deemed to have accepted the APFM referral and agree to pay the related Fee upon Move-in and
  - ii. The Prospective Resident is accepted across all of Your Communities, regardless of whether those communities are parties to an APFM Agreement.
- f. If you prefer to use a customer relationship management (CRM) application or other automated tool to automatically reject our referral of Prospective Residents when Your Community has received the same Prospective Resident from another source within the Lookback Period, your systems must connect to the most current version of APFM's bi-directional Partner Web Services.
- g. If you reject a Prospective Resident and subsequently one of Your Communities elects to manually override this Rejection, then you agree to pay APFM the related Fee upon Move-in to that community.
- h. If you reject the Prospective Resident as a duplicate and do not manually override the rejection, you agree to dispose of all information supplied to you about the Prospective Resident, including removing all information in the APFM Referral Alert from your CRM system and all other systems and records, and agree to not take any additional action based on the information provided about the Prospective Resident by APFM. If you do not delete all information provided by APFM about the Prospective Resident and the Resident subsequently moves into any of Your Communities, you agree to pay APFM the related Fee.
- i. If you do not delete and dispose of all information provided by APFM about the Prospective Resident and the Resident subsequently moves-in to any of Your Communities, you will be deemed to have accepted the APFM referral at all of Your Communities, and you agree to pay APFM the related Fee.
- j. If you disagree with a denial of your request to reject the Prospective Resident as a duplicate referral, then you may contact APFM to review the denial.
- k. If you dispute a Fee because you had rejected the Prospective Resident and the rejection was accepted by us, then you may contact APFM (or if applicable, your assigned Account Manager) to review the disputed invoice.

#### 7. Additional Reporting Requirements [effective January 1 ,2020]:

- a. **Referred Resident Report:** during the term of this Agreement, we may request (not more than once annually), and you agree to provide promptly, a report to us that includes a complete list of APFM referrals, reflecting the status of those referred Prospective Residents, including but not limited to Move-in status.

- b. **Length of Stay Report:** during the term of this Agreement (not more than once annually) we may request and you agree to provide promptly, data on the average length of stay of residents referred by APFM, including the number of current residents and the number of residents who no longer reside in one of Your Communities. All such data will be aggregated, fully de-identified, and anonymized.
  - c. **Post-Termination Referred Resident Report:** during the 24-month period following any termination of this Agreement, we may request (not more than twice annually) and you agree to provide promptly, a report to us that includes a complete list of APFM referrals, reflecting the status of those referred Prospective Residents, including but not limited to Move-in status.
  - d. The reporting data referenced above in this Section is limited to names, dates, and referral status. None of the reporting you are obligated to provide under this Section extends to personally-identifiable health information.
8. **Life of Lead:** If you participate in either the most current version of APFM's bi-directional Partner Web Services ("PWS") or You've Got Leads! ("eYGL"), then Prospective Residents referred to you will have a 24-month life of lead duration ("Life of Lead Term"). The 24-month period may be extended if, during the final three months of the Life of Lead Term, we substantively re-engage with the Prospective Resident or their contact person and document that re-engagement via a Referral Alert Update, email, or any other form of communication from us. If you terminate the bi-directional functionality of your PWS or eYGL, the Life of Lead Term on any leads referred prior to such termination will extend thereafter indefinitely, unless such bi-directional functionality is restored within 15 calendar days.
9. **Invoice and Additional Payment Terms:** You must pay or dispute in good faith all Fees invoiced by APFM in writing by within 30 days of the invoice date. No acceptance of a partial or past due payment will be a waiver of any right of APFM to require full compliance with the Agreement. Overdue amounts will accrue late charges at the lesser of 1.5% per month or the maximum rate permitted by law. You will pay fees and costs associated with third party collection efforts.
10. **Confidentiality Obligations:** Under this Agreement, APFM may provide you with information regarding Prospective Residents. You will treat this information as confidential and will only use it for: (a) your own internal evaluation of the Prospective Resident and (b) providing senior living or care services to the Potential Resident. You will not disclose, sell, or distribute this information to any third party (including but not limited to any other community not affiliated with you) and will comply with all applicable state and federal laws respecting the protection, use, and disclosure of such information. If you disclose, sell, or distribute this information to any third party, and the Prospective Resident moves into one of that party's communities, you will be responsible for any appropriate Move-in Fee. You will not provide APFM with any individually identifiable health information. This Agreement is APFM's Confidential Information, which may not be disclosed without our prior written consent. This paragraph survives termination of the Agreement.
11. **No Federal or State Healthcare Program Residents:** APFM will not knowingly refer a Prohibited Consumer. A "Prohibited Consumer" is one whose source of payment is, in whole or in part, provided by Medicare, Medicaid, or similar state laws or to be provided by any federal or state funding source that prohibits the arrangement contemplated by this Agreement. You agree that you have an independent responsibility to verify whether a Prospective Resident is a Prohibited Consumer. The parties agree that while one or more of the communities may or may not provide services through a Medicare/Medicaid SNF, no Prohibited Consumer will be referred by APFM or accepted by you for those categories of services. You will not owe or pay APFM any Fee relating to any Prohibited Consumer. Should any Resident become a Prohibited Consumer in the first month of the resident stay, any paid Fee will be refunded.
12. **Representations and Warranties:** You represent and warrants on behalf of yourself and each of Your Communities that: (a) you are appropriately licensed by and in good standing with the state in which you are located; (b) you will notify APFM, in writing, within 3 days of your receipt of any material licensing changes, including, without limitation, any revocations, suspensions, conditions, or other limitations imposed; (c) as set forth in Section 2 of this Agreement, you will charge the Prospective Resident the same rate as all other consumers who move-in, including being eligible for any discounts or concessions you offer; (d) you will not charge or seek to recover any portion Fees payable to APFM from the Prospective Resident; (e) you are prohibited from discussing the APFM Fee with or involving a Prospective Resident unless obligated by law to do so; (f) you will comply with any applicable federal, state, or local laws, regulations, orders, and judgments, including but not limited to the Telephone Consumer Protection Act; and (g) none of the monies you charge or collect are consolidated with other supportive services provided by a federal health care program.
13. **CRM Tools:** In the event you operate a customer relationship management (CRM) application or tool that can be compatible with, or connected to, APFM's Partner Web Services system (or any other APFM system), then you will



comply with the APFM Partner Web Services then-current Terms and Conditions (at <http://partnercentral.aplaceformom.com>), including providing the following information: lead contact information updates; prospective resident information updates; information related to tours by the lead (scheduled and/or completed); lead Move-in status updates; and notification if you have closed the lead.

- 14. Non-Exclusive License to Use Trademarks and Intellectual Property:** You have the right to and grant APFM a non-exclusive license during the Term of this Agreement to incorporate the your name, logo, trademark, photographs and images (whether created by APFM and its agents, or by you and your agents) and other Customer information into APFM's marketing products and services and warrant that none of this intellectual property violates or infringes upon the rights of others.
- 15. Treatment of Residents:** You are solely responsible for evaluating, accepting (or declining, as appropriate), and caring for all residents, in conformance with any laws or regulations applicable to you generally and to your services in particular.
- 16. Non-Reliance and No-Recommendation Policy; No Agency; Not a Broker:** APFM is a referral and information source. You will not rely on information provided by APFM, and you have the sole and absolute responsibility to independently verify any information about the Prospective Resident. APFM does not recommend or endorse any community customer. APFM does not: (a) place Prospective Residents in your community; (b) perform any medical assessment of the Prospective Residents; or (c) participate in the Prospective Residents and your decision regarding final selection or admittance. APFM is not a representative of or agent for either the Customer or the Prospective Resident. You and the Prospective Resident have the responsibility of determining whether the Prospective Resident will be an appropriate resident. APFM does not broker, lease, or sublease apartments directly and are not a party to any transaction between landlords and renters. APFM does not do the following: (a) guarantee any apartment or any transaction between a renter and landlord; (b) collect or process payment or execute any lease or sublease documentation on behalf of renters or landlords; or (c) broker, lease, or sublease or offer to broker, lease or sublease, or own any apartments.
- 17. Indemnification:** You will defend, indemnify, and hold APFM and its affiliates, successors, officers, directors, shareholders, personal representatives, agents, and employees harmless from and against any claims, demands, losses, penalties, liabilities, damages, suits, judgments, costs, and expenses (including, without limitation, reasonable attorney, expert, and consultant fees, disbursements and the costs of any legal action) (collectively, "Claims") arising out of, in connection to, or resulting from, directly or indirectly, your negligent, willful, wrongful, or illegal acts or omissions, including, without limitation, any breach of this Agreement.
- 18. Limitation of Liability:** In no event will APFM be directly or indirectly liable for aggregate liability for any claim relating to or arising from this Agreement in excess of the following: (a) in causes of action in any way relating to a particular consumer or particular group of consumers, the Move-in Fees paid under this Agreement for that particular consumer or applicable group of consumers, to APFM by you, not to exceed total Move-in Fees paid by you to APFM in the 6-month period immediately preceding the event giving rise to such claim; and (b) in all other causes of action not relating to a particular consumer or particular group of consumers, the lesser of: (i) any Move-in Fees paid under this Agreement to APFM by you in the 6-month period immediately preceding the event giving rise to such claim; or (ii) \$5,000. To the maximum extent permitted by applicable law, in no event will APFM be liable for any indirect, punitive, exemplary, special, incidental, consequential, or other damages (including but not limited to damages for loss of profits or business interruption, for personal injury, for failure to meet any duty including of good faith or reasonable care, for negligence, and for any other pecuniary or other loss) arising out of or in any way related to this Agreement, APFM's acts or omissions, even in the event of fault, tort, misrepresentation, strict liability, breach of contract, or breach of warranty and even if APFM has been advised of the possibility of such damages. Some jurisdictions do not allow the limitation of consequential or indirect damages, so the above limitation may not apply.
- 19. Call Recording and Auto-dialing:** Phone calls with APFM may be recorded for continuous quality improvement. By providing your phone number, you agree for that number to be called using equipment that is capable of auto-dialing.
- 20. Disclaimer of Warranty:** There are no warranties, express or implied, including any implied warranty arising out of course of performance, course of dealing or usage of trade. APFM does not warrant that the program will meet your requirements, that you will receive any minimum number of Prospective Residents, or that performance of the program will be uninterrupted or, if needed, corrected.
- 21. Governing Law, Forum Selection and Waiver or Right to Jury Trial:** This Agreement will be construed under the



laws of the State of Washington, without reference to its conflicts of laws or provisions. Venue and jurisdiction for any action, proceeding, or dispute between us will be exclusively in the state court located in King County, Washington or the United States District Court, Western District of Washington. Both parties waive any available affirmative defenses to venue and jurisdiction in Seattle, Washington. Both parties waive their rights to a jury trial of any claim or cause of action.

- 22. Notice:** All notices must be in writing and will be deemed to have been duly given when received, if personally delivered; the day after it is sent, if sent for next day delivery by overnight delivery service; upon receipt, if sent by certified or registered mail, return receipt requested; and upon transmission, if sent by electronic mail. APFM may provide you with notices via email to your contact specified in your Order Form.
- 23. Miscellaneous:**
- a. All terms that by their nature are intended to survive termination will so survive.
  - b. There are no third party beneficiaries to this Agreement.
  - c. The relationship of the parties is one of independent contractors and nothing in this Agreement is intended to or will create any form of partnership, joint venture, agency, or employment relationship between them. Neither party has any authority of any kind to bind the other party. Each party is solely responsible for the acts and omissions of its employees and agents.
  - d. No delay or failure to exercise any right under this Agreement constitutes a waiver of such right and no waiver of any provision of this Agreement constitutes a waiver of any prior, concurrent, or subsequent provision.
  - e. In any proceedings between the parties arising out of this agreement where APFM prevails, we will be entitled to recover from you, in addition to any other relief awarded, all expenses that we incur, including attorneys' fees and expenses.
- 24. Term, Modification, and Non-exclusivity of This Agreement:** This Agreement continues on a monthly basis unless terminated by either of us for any reason or no reason by giving the other party 30 days' written notice. After any termination, the terms of this Agreement will still apply to any previously-referred Prospective Residents, and Fees will be due for all resulting Move-ins, whenever residency begins, even if residency begins after the Agreement is terminated. We may amend the terms and conditions of this Agreement, including your Order Form, at any time upon 30 days' notice to you. This Agreement is not exclusive, and nothing prevents either of us from contracting with others to perform the same or similar services.
- 25. Incorporation by Reference/Authorization:** This Agreement, including your Order Form (the terms of which are incorporated), sets forth the entire understanding and agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements. The parties signing the Order Form represent that they have the authority to enter into this Agreement. Management companies represent that they sign on behalf of the owner of the community and that they have the authority to sign on behalf of the owner of the community.
- 26. Assignment:** This Agreement will be binding upon and inure to the benefit of the parties' successors and assigns. In the event of a sale or transfer of any community listed on this Agreement, you agree that: (a) in the event of a sale, this Agreement will be transferred to the buyer as part of the sale transaction and you will notify APFM in writing of such sale and new owner; or (b) in the event of a transfer, you will assign or transfer this Agreement and you will notify APFM in writing of such assignment. If you fail to comply with either (a) or (b) above, you will remain financially responsible for any referral fees related to any Move-ins resulting from previously-referred APFM leads to the community after the sale or assignment. Selling includes, but is not limited to, a sale of substantially all of the community's assets or stock. Transferring includes, but is not limited to, a change in management company or structure.
- 27. Subsequent Move (Oregon):** Oregon law provides that a Resident may either use the same referral provider it used for the first Move-in, or it may use another referral provider. If a Resident uses a different referral provider for the subsequent Move-in, the Resident may designate that referral provider as the one responsible for the subsequent Move-in. In that case, you are not obligated to pay the first referral provider (even if it originally referred the Resident) assuming that the first referral provider was paid a fee. In any event, the Resident may elect to work with the first referral provider on the subsequent Move-in as well; in that case, the first referral provider will be entitled to receive payment from you for the subsequent Move-in.