

ASSET TRANSFER AGREEMENT

Dated as of February ____, 2016

between

MILWAUKEE COUNTY

and

MY CHOICE FAMILY CARE HEALTH PLAN, INC.

THIS ASSET TRANSFER AGREEMENT (“**Agreement**”) is entered into as of February ___, 2016, by and between **MY CHOICE FAMILY CARE HEALTH PLAN, INC.**, a Wisconsin nonstock corporation (“**My Choice**”), and **MILWAUKEE COUNTY**, a Wisconsin body politic (“**Milwaukee County**”).

WHEREAS, Milwaukee County provides benefits and services (its “**Program**”) under the Wisconsin Family Care Program (the “**Family Care Program**”) in Milwaukee County and seven other Wisconsin counties to eligible older and disabled individuals (“**Members**”) through its Department of Family Care pursuant to an Agreement with the Wisconsin Department of Health Services (the “**DHS Provider Agreement**”); and

WHEREAS, as more fully discussed in Milwaukee County Resolution File No. 16-118 (the “**Resolution**”) and Milwaukee County Resolution File No. 16-199 (the “**Final Approving Resolution**”), both attached hereto as **Exhibit A**, all participating care organizations in the Family Care Program will be required to be licensed as health maintenance organizations in order to deliver the Family Care Program beyond 2016; and

WHEREAS, in order to enable the services provided by its Department of Family Care to continue to be available to its enrolled membership, Milwaukee County desires to transfer the Program and, for market value, the Program assets to My Choice as the successor in interest to the Department of Family Care as authorized by the Resolution, and has determined that such transfer achieves the public purposes described in the Resolution; and

WHEREAS, My Choice is duly authorized to do business in the State of Wisconsin, to deliver the Family Care Program under the terms of the DHS Provider Agreement and to obtain licensure as a health maintenance organization;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, Milwaukee County and My Choice agree as follows:

ARTICLE I

TRANSFER OF ASSETS AND ASSUMPTION OF LIABILITIES

SECTION 1.01 Transfer of Assets

In compliance with the terms of Wis. Stat. Chapter 59, and subject to the terms and conditions of this Agreement, Milwaukee County shall, and hereby does, transfer, and My Choice accepts such transfer for the consideration set forth herein, the assets and property (the “**Transferred Assets**”) described as follows:

- (a) The medical records of the Members of the Program, including paper records

and electronic records (together, the “**Member Records**”), including all of Milwaukee County’s right, title, and interest in and to the Member Records, subject to all privacy and confidentiality requirements imposed by state or federal law or regulation;

(b) Subject to any required consents or approvals, as applicable, and to the extent assignable, all contracts and agreements listed on **Schedule 1.01(b)** (the “**Assigned Contracts**”), specifically including the listed DHS Provider Agreement, and other intangible rights of Milwaukee County necessary to operate the Program, in each case to the extent transferable to My Choice;

(c) Tangible personal property, including the furniture, furnishings, and office equipment listed on **Schedule 1.01(c)**, at the values shown;

(d) The computer hardware and software listed on **Schedule 1.01(d)**, at the values shown;

(e) the information technology platform utilized by MCFC for care management purposes;

(f) Except for the name “Milwaukee County” or any variant thereof and all logos and marks associated therewith, and to the extent not already listed, all of the intellectual property of Milwaukee County used in connection with the operations of the Program, including, without limitation, the following: (i) all trademarks, service marks, trade and business names, logos (the “**Marks**”) and all registrations relating thereto, specifically including the Marks listed on Schedule 1.01(f), at the values shown; (ii) all copyrighted works and registrations therefor; (iii) all information technology platforms utilized by the Program, including specifically the information constituting or related to all websites and URLs related to the Program;

(g) Cash amounts or negotiable instruments held in the accounts listed on **Schedule 1.01(g)**, in the amounts shown (including but not limited to balances in deposit and cash accounts, reserve and risk reserve accounts or balances, other funds, accounts receivable and prepaid expenses), minus amounts shown reflecting the retention of certain amounts related to compensation to Milwaukee County for the value of certain of the Transferred Assets or liabilities related to the Program that are being retained by Milwaukee County, all as described on such schedule; and

(h) Any and all of Milwaukee County’s goodwill in, and ongoing concern value of, the Program and the transferred assets.

SECTION 1.02 Assumption of Liabilities

a. Assumed Liabilities

My Choice shall, and hereby does, undertake, assume, and agree to perform, and

otherwise pay, satisfy and discharge, the liability and obligations of Milwaukee County and the Program upon only those contracts or agreements included in the Assigned Contracts and all liabilities of the Program to Program beneficiaries.

b. Excluded Liabilities

My Choice shall not assume, nor does My Choice agree to pay, any debts, liabilities or obligations not specifically described in Section 1.02(a) hereof, including any federal, state or local taxes obligations owing by Milwaukee County of any kind or nature or penalties or interest relating thereto. All such liabilities shall be the responsibility of Milwaukee County, and Milwaukee County agrees to indemnify and hold My Choice harmless against any such liabilities, debts, obligations, claims or damages therefrom (including incidental and consequential damages), costs and expenses.

SECTION 1.03 Other Agreements of My Choice

a. Hiring or Contracting for County Employees

Nothing shall prevent My Choice from hiring any current Milwaukee County employee who wishes to leave Milwaukee County service and join My Choice. For services that had been provided by Milwaukee County employees who do not wish to join My Choice, Milwaukee County will use best efforts to arrange to provide those services to My Choice under a contract arrangement at full cost if mutually agreeable to My Choice, Milwaukee County and the employee.

SECTION 1.04 Closing

The closing (the “Closing”) of the transfer of the Transferred Assets shall be accomplished within five (5) days of My Choice providing written notice to Milwaukee County that My Choice has (1) obtained a permit from the Office of the Commissioner of Insurance to operate the Family Care Program; (2) that the DHS Provider Agreement has been assigned to My Choice; and (3) that My Choice is prepared to operate the Family Care Program in compliance with all applicable laws, regulations and the provisions contained in the DHS Provider Agreement.

SECTION 1.05 Escrow and Post-Closing True-Up

At the Closing, the parties shall identify those balances set forth on Schedule 1.01(g), if any, that the parties agree require further calculation. The sum total of those balances, plus an additional ten percent of the amounts retained by Milwaukee County for the use of the Program as set forth on Schedule 1.01(g), shall be deposited in a segregated escrow account (the “Escrow Account”). As soon practicable, but in no event more than 60 days following the Closing Date, Milwaukee County shall prepare, or cause to be prepared, and deliver to My Choice a statement (the “Closing Statement”) consisting of an audited consolidated balance sheet of the amounts in the Escrow Account along with a

good faith calculation of any amounts remaining to be transferred to My Choice or to be paid by My Choice under the terms of this Agreement. Within 30 days of its receipt, My Choice shall review the Closing Statement. On or before the last day of such 30 day period, My Choice shall provide either written notice of its acceptance of the Closing Statement or any objections My Choice has to the Closing Statement. If there are no objections to the Closing Statement, then the parties shall effectuate any remaining required transfer of Assets within 5 days. If My Choice objects to any portion of the Closing Statement, the parties shall meet immediately in good faith to attempt to resolve any objections. Should the parties fail to reach agreement on any such objections then either party may seek resolution of the matter in accordance with Section 4.04 of this Agreement.

SECTION 1.06 Consideration

The cash consideration to Milwaukee County is the compensation provided to Milwaukee County by My Choice for assets transferred by Milwaukee County to My Choice, as shown on Schedule 1.01(g), which will be subtracted from the Transferred Assets. Consideration to Milwaukee County also includes the assumption of liabilities and other obligations undertaken by My Choice pursuant to this Agreement.

SECTION 1.07 Further Cooperation

From time to time after the Closing, Milwaukee County at My Choice's request and without further consideration, and without creating further obligation or liability on the part of Milwaukee County but for purposes of clarification or convenience only, agrees to execute and deliver or to cause to be executed and delivered such other instruments of transfer as My Choice may reasonably request to transfer to My Choice more effectively the right, title and interest in or to the Transferred Assets and to take or cause to be taken such further or other action as may reasonably be necessary or appropriate in order to effectuate the transactions contemplated by this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.01 Representations and Warranties of Milwaukee County

Milwaukee County represents and warrants to, and agrees with, My Choice as follows:

a. *Organization*

Milwaukee County is a body politic duly organized, validly existing and in good standing under the laws of the State of Wisconsin.

b. *Binding Obligation*

Milwaukee County has all requisite corporate power and authority to enter into and

perform its obligations under this Agreement and to carry out the transactions contemplated hereby. Through approval of File No. 16-118 and File No. 16-___ by the County Board and the County Executive, the County of Milwaukee County has duly authorized the execution and delivery of this Agreement and the other transactions contemplated hereby and, no other corporate proceedings on the part of Milwaukee County are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by Milwaukee County and constitutes a valid and binding obligation of Milwaukee County enforceable in accordance with its terms. The execution, delivery and performance by Milwaukee County of this Agreement does not and will not conflict with, or result in any violation of or default under, any provision of the charter and organic documents of Milwaukee County or ordinance, rule, regulation, judgment, order, decree, agreement, instrument or license applicable to Milwaukee County or to any of its respective properties or assets. No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, is required by or with respect to Milwaukee County in connection with its execution, delivery or performance of this Agreement.

c. *Transferred Assets*

Except for assets disposed of in the ordinary course of business the Transferred Assets consist of all assets which have been used by Milwaukee County in the Program since December 31, 2015.

d. *Title to Personal Property*

Milwaukee County has good and marketable title to all of the personal property included in the Transferred Assets, in each case free and clear of all mortgages, liens, security interests, pledges, charges or encumbrances of any nature whatsoever.

e. *Litigation*

There are no lawsuits, claims, proceedings or investigations pending or, to the best knowledge of Milwaukee County, threatened by or against or affecting Milwaukee County or any of its properties, assets, operations or business which could adversely way affect the transactions contemplated by this Agreement or My Choice's right to utilize the Transferred Assets.

f. *Employee Benefit Plans*

There are no plans of Milwaukee County in effect for pension, profit sharing, deferred compensation, severance pay, bonuses, stock options, stock purchases, or any other form of retirement or deferred benefit, or for any health, accident or other welfare plan, as to which My Choice will become liable as a result of the transactions contemplated hereby except to the extent funds are being withheld from the transfer of deposits and accounts to My Choice as disclosed and in the amounts shown on Schedule 1.01(g).

SECTION 2.02 Representations and Warranties of My Choice

My Choice represents and warrants to, and agrees with, Milwaukee County as follows:

a. Organization

My Choice is a nonstock corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin. Copies of its Articles of Incorporation and Bylaws are attached as **Schedule 2.02**

b. Binding Obligation

My Choice has all requisite corporate power and authority to enter into and perform its obligations under this Agreement. All corporate acts and other proceedings required to be taken by My Choice to authorize the execution, delivery and performance by My Choice of this Agreement and the transactions contemplated hereby, have been duly and properly taken. This Agreement has been duly executed and delivered by My Choice and constitutes the legal, valid and binding obligation of My Choice, enforceable against My Choice in accordance with its terms. The execution, delivery and performance by My Choice of this Agreement does not and will not conflict with, or result in any violation of, any provision of the Articles of Incorporation or Bylaws of My Choice, or any provision of any law, ordinance, rule, regulation, judgment, order, decree, agreement, instrument or license applicable to My Choice or to its property or assets. No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, is required by or with respect to My Choice in connection with its execution, delivery or performance of this Agreement.

ARTICLE III INDEMNIFICATION

SECTION 3.01 My Choice Claims

Except as hereinafter set forth, to the extent allowed by law, Milwaukee County shall indemnify and hold harmless My Choice and its successors and assigns and its and their respective officers, directors, shareholders, employees and agents, against, and in respect of, any and all damages, but not consequential damages or punitive damages and not legal, accounting or other expenses, which may arise out of any misrepresentation or other breach or violation of this Agreement by Milwaukee County.

SECTION 3.02 Milwaukee County Claims

Except as hereinafter set forth, My Choice shall indemnify and hold harmless Milwaukee County and its successors and assigns and its and their respective officers, directors, shareholders, employees and agents, against, and in respect of, any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting and other expenses, which may arise out of any misrepresentation or

other breach or violation of this Agreement by My Choice.

SECTION 3.03 Notice of Claim

Upon obtaining knowledge thereof, the party to be indemnified (the “Indemnified Party”) shall promptly notify the party which is required to provide indemnification (the “Indemnifying Party”) in writing of any damage, claim, loss, liability or expense which the Indemnified Party has determined has given rise or could give rise to a claim under this Article III (such written notice being hereinafter referred to as a “Notice of Claim”). A Notice of Claim shall contain a brief description of the nature and estimated amount of any such claim giving rise to a right of indemnification. This section does not waive statutory notice provisions to which Milwaukee County is entitled.

SECTION 3.04 Defense of Third Party Claims

With respect to any claim or demand set forth in a Notice of Claim relating to a third party claim, the Indemnifying Party may defend, in good faith and at its expense, any such claim or demand, and the Indemnified Party, at its expense, shall have the right to participate in the defense of any such third party claim. So long as the Indemnifying Party is defending in good faith any such third party claim, the Indemnified Party shall not settle or compromise such third party claim. If the Indemnifying Party does not so elect to defend any such third party claim, the Indemnified Party shall have no obligation to do so.

ARTICLE IV GENERAL PROVISIONS

SECTION 4.01 Survival of Representations, Warranties and Agreements

All representations, warranties and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing until the expiration of three years from the Closing, and, thereafter, to the extent a claim is made prior to such expiration with respect to any breach of such representation, warranty or agreement, until such claim is finally determined or settled.

SECTION 4.02 Amendment and Integration

This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. This Agreement supersedes and replaces all prior agreements and understandings of the parties, oral or written, concerning the subject hereof, and constitutes the complete statement of the obligations and rights of the parties with respect thereto.

SECTION 4.03 Counterparts

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more

counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

SECTION 4.04 Governing Law

This Agreement shall be governed in all respects, including validity, interpretation and effect, by the internal laws of the State of Wisconsin. Any dispute shall be tried in a court in Milwaukee County, Wisconsin

IN WITNESS WHEREOF, My Choice and Milwaukee County have executed this Agreement as of the date first written above.

My Choice Family Care, Inc.

By _____

Milwaukee County

By _____

County Executive

By _____

Comptroller

By _____

Corporation Counsel

Exhibit A

**Milwaukee County Resolution, File No. 16-118, and
Milwaukee County Resolution, File No. 16-___**

See Attached.

Schedule 1.01(b)

Assigned Contracts

All Provider Contracts as set forth at
<http://mychoicefamilycare.com/provider-directories/>

All Professional Service Contracts
(Wisconsin Physician's Services; Andrea and Orendorff; The Medical College of
Wisconsin; Superior Support Resources; Sellers Dorsey)

Schedule 1.01(c)

Furniture, Furnishings, and Office Equipment

[Attached]

Schedule 1.01(d)

Computer Hardware and Software

[Attached]

Schedule 1.01(g)

Schedule of Transferred Deposits, Accounts

As of _____, 2016

<u>Description</u>	<u>Balance</u>
<u>Deposit and cash account balances</u>	\$ _____
<u>Reserve and risk reserve account balances</u>	\$ _____
<u>Other funds, namely _____</u>	\$ _____
<u>Accounts receivable</u>	
<u>Prepaid expenses</u>	
<u>Total cash or instruments due for transfer to My Choice to be finalized from year-end audit</u>	

Amounts retained by Milwaukee County for the use of the Program:

<u>Description</u>	<u>Balance</u>
Appraised value of tangible personal property as listed on Schedule 1.01(c)	\$ <u>38,010.00</u>
Appraised value of computer hardware and software, as listed on Schedule 1.01(d)	\$ <u>195,770.00</u>
Appraised value of the information technology platform utilized by MCFC for care as listed on Schedule 1.01(e)	\$ <u>1,024,824.00¹</u>
Appraised value of any intellectual property listed in Section 1.01(f)	\$ <u>0</u>
Payment equal to the actuarially determined unfunded pension obligation (legacy costs) for current and retired Program employees, as established by Buck Consulting	\$ <u>2,029,190.00²</u>
Payment equal to the accumulated sick leave payout of current Program employees, as established by Milwaukee County Retirement Plan Services and the Comptroller	\$ <u>192,501.38³</u>
Healthcare premium obligations for now-retired Program employees for which the county will be liable and My Choice employees for which the county will be liable, as established by Willis of Wisconsin Inc.	\$ <u>2,113,528.00⁴</u>
Total (cash consideration to Milwaukee County)	\$ <u>5,593,823.38⁵</u>

Balance transferred to My Choice (cash consideration minus amounts held) to be finalized from year-end audit

¹Appraised value of Information System is to be determined as follows: Two independent valuations will be performed by valuation firms with Intellectual Property Valuation experience. One firm will be hired by My Choice and a second firm will be hired by the Comptroller on behalf of Milwaukee County to be paid for by My Choice out of non-county funds. Upon completion, if the higher valuation is within 110% of the lower valuation the amount to be paid by My Choice will be the average of the two valuations. If the higher valuation is greater than 110% of the lower valuation, the two valuation firms will select a third valuation firm paid out of Program funds to set a fair market value between the two original valuations.

At this time one valuation is completed. Thus, to ensure integrity in the valuation process and approach, a placeholder amount of \$1,024, 824 has been included as the minimum amount Milwaukee County will receive from My Choice. The placeholder amount is equal to the remaining balance of My Choice Family Care cross charges for 2016. My Choice attests that the actual payment paid to Milwaukee County for the Information System will be no less than this amount, thereby insuring that regardless of the amount of the valuation, Milwaukee County will have no unfavorable budget variance in 2016. Any valuation higher than this amount will increase the total funds received by Milwaukee County.

² The \$2,029,190 represents the unfunded pension liability for My Choice as of 1/1/15. The amount on the Actuarial report is \$1,129,190 that covers the period up to 1/1/2015. Buck Actuary is presently performing its actuarial analysis of the pension liability that will include the additional year (period 1/1/15 to 12/31/15) for all of Milwaukee County to be used for the 2015 CAFR. It is estimated the additional year will increase the unfunded pension liability for My Choice Family Care an additional \$100,000. In addition, there is an estimated \$800,000 in unfunded pension liability that is presently being funded by Milwaukee County pension bonds (POB). Therefore, the total unfunded pension liability for My Choice Family Care is \$2,029,190 (\$1,129,190 + \$100,000 + \$800,000). Upon completion of the 2015 actuarial analysis by Buck Actuary, the unfunded liability for My Choice Family Care will be adjusted and settled through the post-closing and true up period with funds being retained in a separate escrow account.

³The balance represents potential sick pay-out amounts for those Milwaukee County employees of My Choice Family Care. The balance represents an upper limit as Milwaukee County benefit rules only allow payout of this benefit when a Milwaukee County employee retires. Should a Milwaukee County employee with this benefit quit, any balance owed to the employee would not be paid to the employee and would be retained by the Milwaukee County General Fund. There are eleven (11) employees with this benefit. As of the date of this transfer, one employee has since retired and will receive the benefit and another employee has accepted a position to work for another department in Milwaukee County government.

⁴The \$2,113,528 represents the OPEB, non-pension benefit (i.e., health care benefit) for employees of My Choice Family Care as determined by the actuary firm of Willis Towers Watson used by Milwaukee County.

⁵This amount represents the minimum amount to be received by Milwaukee County and the final number will be trued-up through the post-close period and from the funds retained in the escrow account.

Schedule 2.02

Articles of Incorporation and Bylaws of My Choice

See Attached.