

# CONTRACT (SAMPLE)

This contract (the “Contract”) is made by and between \_\_\_\_\_,  
a \_\_\_\_\_ [*non-profit corporation, corporation, limited liability company, or  
other entity*] organized under the laws of \_\_\_\_\_, with a principal place of  
business in \_\_\_\_\_ (the “Agency”), and \_\_\_\_\_, an  
individual(s) residing at \_\_\_\_\_ (the “Contractor”), for the delivery of  
Home Support [or other descriptor] Services to \_\_\_\_\_ (the “Consumer”).

## 1. Parties.

- A. **Agency** is a licensed [*certified, registered, or authorized*] provider of services under the \_\_\_\_\_ [*identify HCBS Waiver or other service program*] (the “\_\_\_\_\_ Program”) administered by the State of \_\_\_\_\_ Department of \_\_\_\_\_ (the “Department”). Agency is not an employer of Contractor (*see* Section 5, below).
- B. **Consumer** is an individual,<sup>1</sup> who is eligible for services under the \_\_\_\_\_ Program, including Home Support Services in accordance with the Consumer’s Service Plan [*or other appropriate descriptor: ISP, PCP, etc.*] developed under the \_\_\_\_\_ Program.
- C. **Contractor** is an individual qualified [*certified, registered, or authorized*] to provide Home Support Services to the Consumer in Contractor’s owned or leased home. Contractor is a self-employed independent contractor and its relationship with Agency under this contract is not that of employer and employee for any purpose (*see* Section 5, below).

2. **Contractual intent.** In consideration of the terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows with the intent to be legally bound.

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<sup>1</sup> Some States allow multiple consumers to be served in a provider’s home. If the Contract is intended to govern the services to more than one Consumer, each Consumer must be identified and appropriate adjustments must be made to other terms and conditions in the Contract.

3. **Purpose.** The purpose of this Contract is to set forth the terms and conditions upon which Contractor agrees to provide Home Support Services as described herein in exchange for the payments and quality oversight services provided by Agency as described herein.
  
4. **Conditions to Contract.** The obligations of Agency are subject to the following conditions:
  - A. Continued authorization by the Department for the delivery of Home Support Services to Consumer and the availability of adequate funds from the Department.
  
  - B. *[Other conditions required by the program or otherwise appropriate: background checks, home inspection, proof of insurance, Consumer or Guardian authorization, etc.]*
  
5. **Independent Contractor Status.** In the performance of this Contract, the Provider is in all respects an independent contractor, and is not an employee of the Agency. Contractor is not an agent of the Agency and neither the Contractor nor any of his/her officers, employees, agents or family members, shall have the authority to bind the Agency or the State of \_\_\_\_\_.
  - A. **Self-employed.** Contractor represents that he/she has established his/her own business as a self-employed, approved provider of Home Support Services. Contractor further represents that he/she has chosen to provide Home Support Services under this Contract and to bring Consumer into his/her home based on Contractor's own independent business judgment. Contractor acknowledges he/she is free to contract with another agency to provide services to any eligible person with developmental disabilities and is not obligated to perform work exclusively for or with the Agency. Contractor acknowledges he/she is free to engage in any other business activities, provided that those other business activities do not interfere with the services and obligations required by this Contract. Contractor acknowledges he/she has the opportunity for profit and loss as a result of the services being performed under this Contract. Contractor agrees that he/she shall not represent himself/herself in any manner as an employee of the Agency.
  
  - B. **Self-direction.** Contractor shall have the right to provide Home Support Services and operate his/her business according to Contractor's best judgment in conformance with all applicable laws, policies and regulations and subject to Agency's quality oversight. Based on Contractor's best judgment, subject to such laws, policies, regulations, and Consumer's Service Plan, Contractor shall determine the schedule and manner of day-to-day activities, of the day-

to-day management of the home, and of the performance of the Home Support Services.

- C. **Contractor costs.** Contractor shall receive payments from Agency as provided herein for delivery of the Home Support Services and shall be entitled to receive payments for room and board from Consumer's funds in accordance with the terms set forth in Attachment B. Except for costs and expenses reimbursed by the \_\_\_\_\_ Program, Contractor is responsible for all other costs and expenses of operating the business, including, but not limited to, vehicle and labor costs, including hiring and supervising employees or independent contractors, insurance and all other business-related expenses required to operate as an independent contractor performing Contractor's obligations under this Contract.
- D. **No right to employee benefits.** As an independent contractor, Contractor is not entitled to receive from the Agency any benefits associated with employment including but not limited to, disability benefits, life insurance, workers compensation benefits, retirement benefits, health insurance or unemployment insurance. Contractor agrees that he/she is not entitled to claim, and agrees not to claim any such benefits provided to Agency employees.

*[insert any State-specific language related to workers compensation and unemployment]*

- E. **Responsibility for taxes.** Contractor agrees he/she is solely responsible for reporting and paying all state and federal taxes which are due for any payments made under this Contract.

Agency will not withhold income taxes from payments to Contractor and will not issue an IRS Form 1099 to Contractor based on Agency's determination that payments to Contractor for Home Support Services are not considered income for tax purposes according to Section 131 of the Internal Revenue Code.<sup>2</sup> Contractor acknowledges it may not rely on this determination and should consult with his/her own tax advisers about Contractor's federal and state income tax obligations.

Contractor represents that as of the date of this Contract, Contractor has paid all taxes due to the Internal Revenue Service and the State of \_\_\_\_\_

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<sup>2</sup> Section 131 exempts "qualified foster care payments" from the gross income of a "foster care provider." Recent IRS guidance (IRS Notice 2014-7) states that Medicaid waiver payments for home and community based services provided in a "family home" setting will qualify for the exemption. If the payments made under this Contract are not Medicaid waiver payments, the Agency should consult a tax adviser to determine whether the payments are exempt.

or is in full compliance with a payment plan approved by the appropriate taxing authority.

- F. **Reliance on Contractor's representations.** Contractor acknowledges that Agency has entered into this Contract and engaged Contractor's services relying on each of Contractor's representations, agreements and acknowledgements contained in this Section 5 relating to Contractor's status as an independent contractor.

6. **Contractor Obligations.**

- A. **Home Support Services.** Contractor shall provide the Home Support Services, as described in Attachment A, for the Consumer in accordance with the Consumer's Service Plan and all applicable laws, regulations and policies.

- B. **Insurance & Other Obligations.** The Contractor shall maintain homeowner's or renter's insurance on the premises where the Consumer is residing with liability coverage covering the Contractor against claims for bodily injury, death and property damage to others of not less than \$\_\_\_\_\_. The Contractor shall maintain automobile liability insurance with minimum limits of \$\_\_\_\_\_ for any vehicle used to transport the Consumer. The Contractor may elect to procure Workers' Compensation coverage for him/herself and must provide Workers' Compensation coverage for any persons (such as respite workers) who are employed by the Contractor in connection with the Contractor's services under this Contract. Proof of insurance shall be provided to the Agency upon commencement of this Contract, annually and upon request.

- C. **Safety.** *[detail obligations to maintain a safe environment, e.g., disclose all information related to pets, others living in the home, vehicles, weapons, smoking; maintain vehicle registrations and perform necessary maintenance and repair; maintain driver licenses; maintain the home in accordance with all safety codes and regulations, etc., or set forth the terms and conditions in Attachment \_\_\_\_]*

- D. **Incident Reports.** *[detail obligations to submit incidents related to abuse, neglect, exploitation, rights violations, accidents, etc. in accordance with applicable regulations and policies or set forth the terms and conditions in Attachment \_\_\_\_]*

- E. **Record Maintenance.** *[detail obligations to maintain records in accordance with applicable laws, regulations, and policies, or set forth the terms and conditions in Attachment \_\_\_\_]*

- F. **Confidentiality.** *[detail obligations to maintain confidentiality and HIPPA compliance in accordance with applicable laws, regulations, and policies, or set forth the terms and conditions in Attachment \_\_\_]*
- G. **Prevention of Fraud and Financial Abuse.** *[detail obligations to take actions to prevent fraud and financial abuse in accordance with applicable laws, regulations, and policies, or set them forth in Attachment \_\_\_]*
- H. **Employees/Contracted Workers.** Contractor agrees that he/she shall be the only person providing the Home Support Services, except for supporting worker(s) and/ or adult members of the Contractor's family who have been approved and trained. *[detail terms and conditions upon which Contractor may employ an employee or contract with other individuals to provide services for Contractor in connection with this Contract, or set forth the terms and conditions in Attachment \_\_.]*
- I. **Non-Discrimination.** The Contractor agrees to comply, to the extent applicable, with the requirements of: Section 504 of the Federal Rehabilitation Act of 1973, as amended, relating to discrimination against people with disabilities; Title 21 V.S.A. Chapter 5, Subchapter 5, relating to fair employment practices; the Age Discrimination Act of 1975; the Civil Rights Act of 1964; the Americans with Disabilities Act of 1990; the Pro-Children Act of 1995 relating to smoking, and agrees further to make compliance with these provisions part of any subcontracts.
- J. **Indemnification.** The Contractor agrees to indemnify and hold harmless the Agency, its officers, directors, employees, attorneys, agents, successors and assigns against any claims, costs, obligations or liabilities whatsoever arising from or otherwise relating to the Contractor's acts, omissions, obligations or performance under this Contract, including, but not limited to: (a) any lawsuit, settlement and/or judgment, (b) any assessment resulting from any administrative proceeding, such as a claim for unemployment benefits or workers' compensation benefits, (c) any attorneys' fees or other costs relating to the defense of any lawsuit and/or administrative proceeding;; and (d) any claims or damages relating to Contractor's unauthorized use or disclosure of Consumer's protected health information.
- K. **Training.** *[detail obligations to participate in training and to maintain qualifications/certification or set forth the terms and conditions in Attachment \_\_\_]*
- L. **Cooperation with Agency.**

- a. **Communication.** Contractor shall maintain regular communication with Agency regarding Consumer's physical and mental condition. Contractor must immediately notify Contractor whenever Consumer is out of the care or supervision of Contractor, including but not limited to: visits to family, temporary host home care, Contractor vacations, illnesses, incarceration, or other situations that cause Consumer to be cared for by anyone other than Contractor. Contractor must submit all incident reports to Agency, within \_\_ hours of an incident and must immediately contact Agency's on-call system in the event of a serious incident as defined by the Department.
- b. **Access.** Contractor shall provide to personnel from Agency and regulatory agencies full access to Contractor's home and Contractor's records, at reasonable times with or without advance notice, for the purpose of monitoring the quality of the living environment and the services provided by Contractor. *[annual or other regular inspections and reporting]*
- c. **[other].**

M. **Respite.** *[detail the roles and responsibilities of Contractor related to the procurement of respite providers or set forth the terms and conditions in Attachment \_\_].*

7. **Agency Obligations.**

- A. **Payment for Home Support Services.** In consideration of the Home Support Services provided by Contractor and Contractor's performance of its other Contract obligations, Agency agrees to pay Contractor an annual sum \_\_\_\_\_. Payments of \_\_\_\_\_ will be made on the following schedule \_\_\_\_\_.
- B. **Respite.** *[detail Agency's roles and responsibilities for providing respite, or funds for respite or set forth the terms and conditions in Attachment \_\_]*
- B. **Quality Oversight and Assistance.** Agency shall provide administrative and support services to monitor the quality and effectiveness of the Home Support Services provided to Consumer and to provide assistance as needed to Contractor. Such administrative and support services shall include the following:

*[describe scope of Agency's services, e.g., background checks, site inspections, maintain program approval, trainings, emergency assistance, billing, etc.]*

**8. Contract Term and Termination.**

- A. Contract Term.** The term of the contract shall be one (1) year commencing on \_\_\_\_\_ (“Commencement Date”) and terminating on \_\_\_\_\_ (“Termination Date”), unless sooner terminated in accordance with the terms provided in this Contract. This Contract may be renewed upon agreement of the parties if the Contractor has met all conditions and obligations of this Contract. In the event the parties continue their relationship after the Termination Date, the provisions of this Contract shall govern until such time as a revised Contract has been signed by both parties.
- B. Termination without cause.** Except as otherwise provided in this Contract, either party may terminate this Contract without cause upon \_\_\_\_\_ days written notice to the other party. The Contractor is responsible for producing all required documentation and personal property of the Consumer within \_\_\_\_\_ business days of the termination or as otherwise negotiated with the Agency. The parties may agree in writing to waive, shorten or lengthen notice period to the extent permitted under applicable law and regulation.
- C. Termination with cause or upon the occurrence of a specified condition.** The Agency shall have the right to terminate this Contract with or without advance notice upon the occurrence of any of the following circumstances:
- a.** The Consumer chooses to leave or dies.
  - b.** Contractor or another member of the household has been charged with a criminal offense.
  - c.** Contractor has breached an obligation under the Contract or failed to satisfy required conditions of the Contract.
  - d.** The Consumer is incarcerated in a correctional facility or transferred to a nursing home, group home, or other living arrangement.
  - e.** After the thirty-first (31<sup>st</sup>) consecutive day of hospitalization of the Consumer by providing five (5) business days written notice to the Contractor.
  - f.** The Agency determines, in its sole discretion, that the Consumer is in a dangerous, unsafe, or unhealthy situation; or if abuse or neglect is suspected; or if, in the sole discretion of the Agency, the best interests of the Consumer require that the Consumer placement with the Contractor terminate.





parties to this Contract, and all of the terms, covenants and conditions of this Contract shall be for the sole and exclusive benefit of the parties to this Contract, their successors and when agreed to, their assigns.

- 14. **References to Contractor.** The “Contractor” is the individual or individuals listed at the beginning of this Contract for Services. The Contractor is referred to in the singular throughout this Contract as a matter of convenience. If there is more than one Contractor listed at the beginning of this Contract, each Contractor must execute this Contract and this Contract shall be binding upon each such Contractor.
- 15. **Attachments incorporated.** All terms and conditions set out in Attachments [*list attachments*] are hereby incorporated into the Contract and shall be considered as part of the Contract.
- 16. **Dispute Resolution.** [*insert preferred dispute resolution terms*].

WE THE UNDERSIGNED PARTIES ACKNOWLEDGE THAT WE HAVE READ AND UNDERSTOOD THE TERMS OF THIS CONTRACT.

(Include Signature and Date)

**Contractor:**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

**Agency:**

\_\_\_\_\_  
By its \_\_\_\_\_

\_\_\_\_\_  
Date

**ATTACHMENT A**  
**Scope of Home Support Services**

*[describe services and supports in detail, e.g., implement Consumer's Service Plan; provide a supportive, safe, healthy living environment; provide healthy meals,; personal care supplies and support; transportation; facilitate medical care; fund management; provide private space for storage of personal property; phone;*

**ATTACHMENT B**  
Room and Board

**ATTACHMENT C**