

## **HOMEMAKER/PERSONAL CARE/NON-HOMEMAKER SERVICES PROVIDER AGREEMENT**

This Agreement is entered into by and between [Click here to enter text.](#) the Aging Services Access Point (ASAP), a Massachusetts non-profit corporation having its principal offices located at [Click here to enter text.](#) and, the Provider, with its principal offices at [Click here to enter text.](#)

*WHEREAS* the ASAP participates in the operation and administration of a program of home care services to consumers under a contract with the Executive Office of Elder Affairs (EOEA) pursuant to M.G.L. c. 19A, §4 *et seq.*, and any regulation promulgated thereto (hereinafter the Home Care Program);

*WHEREAS* the ASAP desires to purchase services for consumers in the Home Care Program from qualified providers under the terms and conditions set forth herein; and

*WHEREAS* the Provider desires to furnish homemaker and personal care services and, at the option of the ASAP, supportive home care aide services or non-homemaker services to consumers in accordance with the legal requirements of the Home Care Program and the terms of this Agreement and to receive payment therefore under the terms and conditions set forth herein;

*NOW, THEREFORE*, in consideration of the mutual promises herein, the parties agree as follows:

By entering into this Agreement, the Provider agrees to deliver homemaker and personal care services and, at the option of the ASAP, supportive home care aide services/or non-homemaker services, to consumers. This Agreement: specifies the conditions under which homemaker, personal care, non-homemaker and supportive home care aide services shall be delivered; describes the method by which the Provider shall be paid by the ASAP for services delivered; and defines the rights and responsibilities of the ASAP and the Provider.

By entering into this Agreement, the Provider acknowledges it is subject to certain federal and state laws, regulations, and policies. The Provider acknowledges that it is responsible for knowing and complying with federal and state laws, regulations and policies that apply to the Provider.

### **1. SCOPE OF SERVICES**

- a. The Provider agrees to perform the services outlined in Attachment A in accordance with the terms and conditions of this Agreement and, by reference, to any minimum requirements, terms, and conditions stipulated in the Notification of Intent to Contract.
- b. The Provider understands and agrees that under this Agreement it is obligated to provide services in the cities, towns, communities, or neighborhoods that appear in Attachment C of this Agreement.
- c. This agreement does not obligate the ASAP to authorize any services or any volume of services.

## **2. PERIOD OF PERFORMANCE**

- a. The Provider understands and agrees that performance of services under this Agreement shall begin on or about [Click here to enter a date.](#) and shall terminate no later than [Click here to enter a date.](#) . The Provider understands and agrees that it will not be paid for any services provided pursuant to this agreement after the date of termination stated in this paragraph.

## **3. PAYMENT**

- a. The ASAP shall make payments to the Provider for all homemaker, personal care, supportive home care aide services, and non-homemaker services properly delivered to consumers and properly billed to the ASAP in accordance with the terms of this Agreement and all applicable federal and state laws, regulations, and policies, as they may be amended from time to time.
- b. The ASAP shall make payments to the Provider in accordance with the unit rates listed in Attachment D.
- c. The Provider shall not bill the ASAP, and the ASAP shall not pay the Provider under this Agreement, for any services other than homemaker, personal care, supportive home care and/or non-homemaker services that are authorized by the ASAP pursuant to this Agreement and delivered in accordance with the terms and conditions of this Agreement and Attachment A.
- d. The Provider shall accept, as payment in full, the rates of payment set forth in Attachment D.
- e. The ASAP is solely responsible for payment to the Provider under this Agreement. The Provider shall not have any claim against or seek payment from any agency of the Commonwealth, including the EOE, but shall look solely to the ASAP for payment with respect to all services performed under this Agreement. Furthermore, the Provider shall not maintain any action at law or in equity against any agency of the Commonwealth, including EOE, to collect any sums that are owed by the ASAP under the Agreement for any reason, even in the event that the ASAP fails to make payment or otherwise breaches the terms and conditions of the Agreement.

## **4. CERTIFICATION OF EMPLOYEE COMPENSATION RATE**

- a. For providers of homemaker and personal care services, the Provider agrees to pay its employees at least the minimum average (hourly) employee compensation required by the EOE.

## **5. INVOICING**

- a. The Provider shall submit all requests for payment on the appropriate invoicing documents.
- b. Within fifteen (15) calendar days following the close of each calendar month, the Provider shall submit invoices and appropriate backup documentation to the ASAP in a form approved by the ASAP, covering homemaker, personal care, supportive home care aide

services and non-homemaker services authorized by the ASAP pursuant to this Agreement and delivered to consumers during the previous month. The Provider shall not bill, nor the ASAP pay, for services that were not delivered to consumers.

- c. Within fifteen (15) business days of receipt of payment from EOEA or within fifteen (15) business days of receipt of a properly completed invoice from the Provider, whichever is later, the ASAP shall issue payment to the Provider.
- d. If a Provider invoice is rejected, the ASAP shall provide the Provider with a written explanation for the rejection within ten (10) business days of receipt from the Provider.
- e. The ASAP shall retain the right to disallow payment of any invoice submitted by a Provider that is not in accordance with the terms of this Agreement.
- f. If the ASAP determines that the Provider received payments not authorized under this Agreement, the Provider shall reimburse the ASAP upon demand or in an alternate manner determined by the ASAP.
- g. Acceptance of the last payment for services upon completion or termination of this Agreement, without any written objections, shall in each instance operate as a release, and discharge the ASAP, its agents, and employees from all claims, liability, responsibility, or other obligations to this Provider relating to the fulfillment of this Agreement.
- h. If a Provider needs to adjust an invoice or correct discrepancies contained within an original monthly billing, the Provider shall submit invoices and appropriate backup documentation to the ASAP on forms approved by the ASAP so that said material is received by the ASAP no more than forty-five (45) business days following the close of the month in which services were delivered. The ASAP, within fifteen (15) business days of receipt of a properly adjusted invoice from the Provider, will issue payment to the Provider or make negative adjustment(s) to subsequent invoice(s) to reconcile any overpayment.

## **6. DETERMINATION OF CONSUMERS ELIGIBILITY**

- a. The ASAP shall have the sole responsibility for determining consumers' eligibility for services under this Agreement.

## **7. AUTHORIZATION OF SERVICES**

- a. The ASAP shall determine the services (homemaker, and/or personal care, and/or supportive home care aide services and/or non-homemaker), the number of units to be furnished, and the duration for the provision of each service to each consumer determined eligible by the ASAP.
- b. The ASAP shall authorize the Provider in writing or through electronic communication (Provider Direct) and documentation in electronic system of record, to furnish services to a consumer. Authorization would include a suspension of services and termination of services.

- c. The Provider using the electronic system of record to view and monitor authorizations is not required to print and keep hard copies of consumers service information, including authorizations that can be viewed in said system.
- d. The ASAP may verbally authorize the Provider to furnish services to a consumer. The ASAP shall submit authorization to the Provider within a reasonable time frame, but no later than two business days after the verbal authorization.
- e. Upon receipt of an authorization, the Provider shall furnish services to a consumer pursuant to the terms specified in the authorization. If, for any reason, the Provider is unable to provide services, the Provider shall immediately notify the ASAP of this situation and indicate specific reasons for the Provider's inability to provide services. The ASAP may, at its discretion, revoke or modify said authorization, and shall notify the Provider of its decision.

## **8. CONFIDENTIALITY**

- a. The Provider acknowledges it is subject to certain federal and state laws, regulations, and policies, including, but not limited to, Massachusetts Executive Order 504 and EOEAs Program Instructions, and Attachment E: Privacy and Confidentiality Guidance (governing the use, safeguarding and access to personal data). The Provider acknowledges that it is responsible for knowing and complying with federal and state laws, regulations and policies that apply to the Provider.
- b. The Provider agrees to take reasonable steps to ensure the physical security of such data under its control, including any additional conditions specified in Attachments to this Agreement.
- c. The Provider agrees that it will inform each of its employees having any involvement with such personal data or other confidential information, of the laws and regulations relating to confidentiality.
- d. The ASAP shall have access at all times to any data maintained pursuant to this Agreement, without the consent of the data subject. The Provider shall allow the ASAP access to any personal data held by the Provider.
- e. The Provider shall use personal data and material derived from such data only as necessary for the performance of this Agreement.
- f. The Provider shall furnish to the ASAP, within thirty (30) calendar days following a request by the ASAP, a written description of the Provider's system for gathering, storing and releasing personal data so that the ASAP may determine compliance with this Agreement.
- g. The Provider shall immediately notify the ASAP, both verbally and in writing, if any personal data in the Provider's possession regarding consumers served under this Agreement is subpoenaed, improperly used, copied or removed by anyone except an authorized representative of the ASAP, EOEAs, or the Commonwealth.

- h. The Provider shall cooperate with the ASAP to enjoin or prevent misuse, regain possession, and otherwise protect the Commonwealth's rights in such personal data and to ensure the data subject's privacy.
- i. All personal data held by the Provider, other than that which must be retained for either tax preparation or audit purposes, shall be delivered to the ASAP within ten (10) business days after completion or termination of this Agreement.

## **9. RECORDKEEPING, INSPECTION OF RECORDS AND AUDITS**

- a. The Provider shall maintain books, records (including personnel policies and records), and other compilations of data in such detail as shall properly substantiate claims for payment under this Agreement.
- b. The Provider shall maintain books and records in accordance with generally accepted accounting principles, including detailed fiscal and programmatic reports on the services provided, and the expenditures made under this Agreement.
- c. The Provider shall keep all funds received from the ASAP pursuant to this Agreement in an identifiable bookkeeping account and shall provide to the ASAP such data as the ASAP reasonably may require to permit it to monitor performance of this Agreement and at a level sufficient to assure appropriate fiscal administration, accountability, and program quality.
- d. All such records and reports shall be kept for a minimum retention period of seven (7) years beginning on the first day after the final payment under this Agreement, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Agreement.
- e. The Provider must maintain and retain any records necessary to disclose the extent, quality and appropriateness of services provided under this Agreement, to substantiate any claims for payment submitted by the Provider to the ASAP, or as otherwise required by the ASAP or applicable law. Such records must, at reasonable times and upon reasonable notice, be made available and provided to the ASAP, the Executive Office of Administration and Finance, the Office of the State Auditor, the Operational Services Division, the Executive Office of Health and Human Services, EOE, and other government agencies as provided in applicable law, or any of their duly authorized representatives or designees. Such access shall include on-site audits, review and copying of records. The ASAP shall make a good faith effort to coordinate multiple requests by the ASAP so as to reduce any hardship or undue burden on the Provider.

## **10. NON-DISCRIMINATION IN SERVICE DELIVERY**

The Provider must furnish services to consumers without regard to race, color, religion, national origin, disability, age, sex, sexual orientation, or status as a recipient of public assistance, and must comply with all applicable law.

## **11. NON-DISCRIMINATION IN EMPLOYMENT**

The Provider must comply with all applicable federal and state law promoting fair employment practices and prohibiting employment discrimination and unfair labor practices. The Provider must not discriminate in employment based on race, color, religion, national origin, disability, age, sex, sexual orientation, or status as a recipient of public assistance, and must comply with all applicable law.

## **12. CONSUMERS AS RESEARCH SUBJECTS**

The Provider agrees to comply with EOEAs policies and procedures regarding researchers who wish to gain access to consumers for participation in research or surveys. The Provider shall comply with the provisions of Attachment F: Consumers Rights Review Committee Requirements (pertaining to consumers as research subjects) (EOEA PI-03-17).

## **13. AFFIRMATIVE ACTION**

- a. The Provider shall develop and adhere to a policy of affirmative action in all aspects of employment under this Agreement. The Provider acknowledges it is subject to certain federal and state laws, regulations, and policies, including Massachusetts Executive Order 526.
- b. The Provider agrees to take affirmative steps to utilize certified small businesses, certified minority and women-owned businesses, and businesses and firms owned or controlled by socially or economically disadvantaged individuals or individuals with disabilities, as sources of supplies and subcontracted services.

## **14. TERMINATION OR SUSPENSION**

This Agreement shall terminate on the date specified above unless terminated prior to that date:

- a. Without cause by either party giving written notice to the other party at least sixty (60) calendar days prior to the effective date of termination.
- b. For cause if the Provider breaches any term or condition of this Agreement or fails to perform or fulfill any obligations required by this Agreement. If the ASAP determines that the Provider has breached this Agreement or has otherwise violated the laws, regulations, or rules that govern the Home Care Program administered by the EOEAs, the ASAP may take any appropriate action under applicable law, including, but not limited to, termination of this Agreement for cause. The ASAP may terminate this Agreement by giving written notice to the Provider at least seven (7) calendar days prior to the effective date of termination. The notice shall state the circumstances of the alleged breach and, at the ASAP's option, may state a reasonable period during which the alleged breach may be resolved. The ASAP reserves the right to terminate this Agreement immediately, upon written notice to Provider, in the event of fraud, criminal indictment of the Provider, or in the event the Provider files for bankruptcy.

- c. Due to an emergency if the ASAP determines that a situation exists which necessitates immediate action to protect property or persons from injury, abuse, or other harm.
- d. The ASAP may suspend this Agreement for up to sixty (60) calendar days by providing written notice to the Provider stating the reasons for the ASAP's action. Such suspension shall be effective upon the Provider's receipt of written notice or another date as specified in the notice. The notice shall be accompanied by instructions from the ASAP specifying required action(s) to be performed by the Provider during the period of suspension, a timetable for meeting those requirements, and a description of allowable activities by the Provider, if any, during the suspension period. Failure by the Provider to meet such requirements or to remedy any stated deficiencies according to the timetable prescribed by the ASAP shall be cause for immediate termination of this Agreement.

#### **15. OBLIGATIONS IN THE EVENT OF COMPLETION, TERMINATION, OR SUSPENSION**

- a. The ASAP shall promptly pay the Provider for all services performed in accordance with the terms of this Agreement, provided the Provider submits completed invoices with supporting documentation covering such services, no later than sixty (60) calendar days after the effective date of termination, but in no event later than August 15th for services performed or goods delivered in the preceding fiscal year (July 1 - June 30).
- b. The Provider shall not be relieved of liability to the ASAP for any costs, injuries, penalties, damages or other charges sustained by the ASAP by virtue of any breach of this Agreement by the Provider. In addition to any other termination rights, the ASAP retains the right to pursue any and all available legal and equitable remedies and may withhold any payments to the Provider until such time as the exact amount of damages to be paid by the Provider is determined by the ASAP.
- c. Upon notice of termination or suspension of this Agreement, the Provider must cooperate with the ASAP by coordinating with and assisting the ASAP to transfer consumers to other appropriate services.

#### **16. ASSIGNMENT AND SUBCONTRACT**

- a. The Provider shall not assign or subcontract any interest in this Agreement without the prior written consent of the ASAP.
- b. None of the services to be provided by the Provider pursuant to this Agreement shall be subcontracted to any other organization, association, individual, partnership or group of individuals without the prior written consent of the ASAP.

#### **17. LIABILITY INSURANCE**

The Provider shall procure and maintain appropriate liability insurance issued by companies authorized to do business in the Commonwealth and certified by the Massachusetts Commissioner of Insurance.

## **18. WAIVER OF DEFAULT**

Waiver by either party of any non-compliance shall not constitute a waiver of any prior or subsequent noncompliance.

## **19. CONFLICT OF INTEREST**

- a. The Provider shall not knowingly employ, compensate or arrange to compensate any employee of the ASAP or of EOEА during the term of this Agreement without the prior written approval of the ASAP or EOEА.
- b. Employees of the Provider are prohibited from accepting gifts or gratuities of more than token value, or cash of any value, from consumers or caregivers.

## **20. ANTI-BOYCOTT COVENANT**

The Provider warrants, represents, and agrees that during the time that this Agreement is in effect, neither it nor any affiliated company, as hereafter defined, shall participate in or cooperate with an international boycott, as defined in sec. 999(b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or shall engage in conduct declared to be unlawful by M.G. L. c. 151E. Any breach in this warranty, representation, and agreement may result in the termination of this Agreement by the ASAP. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Provider or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Provider or which directly or indirectly owns at least 51% of the ownership interests of the Provider.

## **21. AMENDMENT**

The provisions in this Agreement may be modified only as specifically permitted in this Agreement and must be agreed to in writing by both parties. Persons authorized to bind the ASAP and the Provider must sign any amendment to this Agreement.

## **22. NOTICE**

Unless otherwise specified herein, any notice, approval, request or demand hereunder from either party to the other shall be in writing and shall be deemed to have been given when delivered personally, electronically by FAX, or deposited in a United States mailbox in a postage prepaid envelope addressed to the other.

## **23. LICENSES, CERTIFICATIONS, ACCREDITATIONS, PERMITS**

The Provider hereby represents and warrants that: it is qualified and shall at all times remain qualified to perform this Agreement; performance shall be timely and meet or exceed industry standards, including obtaining requisite licenses, registrations, permits and resources for performance; and, in connection therewith, the Provider shall provide access to records to state officials under Massachusetts Executive Order 195 and M.G.L. c. 11, §12. The Provider further warrants and represents that the Provider and all of its principals, subcontractors, or affiliates are and shall at all times remain in good standing and are not currently debarred or



suspended by the federal or state government under any law or regulation including Massachusetts Executive Order 147; M.G.L.c. 29, § 29F and M.G.L. c. 152, § 25C. The Provider shall, upon request of the ASAP, submit to the ASAP proof that it is in good standing and qualified to perform this Agreement.

#### **24. INTEGRATION**

All Attachments to this Agreement are deemed to be part of this Agreement. This Agreement constitutes the full and complete agreement between the parties with respect to the subject matter herein and supersedes any and all previous written agreements, negotiations, and verbal agreements between the parties relating to the subject matter contained herein.

#### **25. PROCUREMENT STANDARDS**

To the extent that the Provider is procuring goods and services and personal services to satisfy the terms of this Agreement, it shall do so using good business practices [see AICPA Statement on Auditing Standards No. 5 (SAS55)].

#### **26. CRIMINAL OFFENDER RECORD INFORMATION (CORI) CHECKS**

The Provider agrees to conduct CORI checks for all employees. CORI checks must be completed in compliance with M.G. L. c. 6 §172 and § 172C, and 101 CMR 15.00 et seq.

#### **27. MINIMUM PUBLIC HEALTH, LICENSING, REGISTRY AND PATIENT ABUSE REPORTING COMPLIANCE**

The Provider, its employees, agents, subcontractors and assignees shall comply with the provisions of M.G.L. c. 211, §§ 72F - 72L1/2 and 105 CMR 155.00 *et Seq.* regarding the licensing, registration, and reporting requirements affecting providers.

#### **28. INDEMNIFICATION**

- a. The Provider and the ASAP, their employees, subcontractors, and any other of their agents in the performance of this Agreement are acting in an independent capacity and not as officers or employees of EOE or the Commonwealth of Massachusetts.
- b. The Provider shall indemnify and hold harmless the ASAP, EOE, and the Commonwealth from and against any and all liability, loss, damage, costs, or expenses which the ASAP, EOE, or the Commonwealth may sustain, incur, or be required to pay for any claims or suits, arising out of or in connection with the Provider's breach of its obligations under the Agreement, or any negligent action or inaction or willful misconduct of the Provider, or any person employed by the Provider, or any of its subcontractors, provided that the Provider is notified of any claims within a reasonable time from when the ASAP or EOE becomes aware of the claim and the Provider is afforded an opportunity to participate in the defense of such claims.

**29. REMEDIES FOR BREACH**

The Provider is responsible for any direct, consequential, incidental, or other damages the ASAP suffers as a result of the Provider's breach of its obligations hereunder, or damages arising out of or in connection with the Provider's performance of the Agreement.

**30. COMPLIANCE WITH LAW**

The Provider agrees to comply with, and is subject to, all state and federal statutes, regulations, and rules applicable to its performance under this Agreement, including, but not limited to such statutes, regulations, and rules governing the Home Care Program. All references to statutes, regulations, and rules refer to such statutes, regulations, and rules as they may be amended from time to time. In addition, the Provider must comply with all applicable Program Instructions issued by EOE that are applicable to the Home Care Program, whether now existing or adopted during the term of this Agreement.

**31. NON – COMPETE**

The Provider may not require any current or prospective direct care worker to agree to a non-compete clause as a condition of employment. As used in this paragraph, a non-compete clause is any contractual provision that attempts to preclude the employment of or impose restrictions on the employment of a direct care worker by another Home Care Program provider.

***IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.***

\_\_\_\_\_  
ASAP

\_\_\_\_\_  
Authorized Signature & Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Provider

\_\_\_\_\_  
Provider's Authorized Signature & Date

\_\_\_\_\_  
Title

**ATTACHMENT A**  
**ASAP: Insert Service Description(s)**

**ATTACHMENT B**  
**RESERVED**

**ATTACHMENT C  
Coversheet**

**ASAP: Geographic Area(s) to be served by Provider**

**ATTACHMENT D  
Coversheet**

**ASAP: Insert Rate Page**

**ATTACHMENT E**  
**Coversheet**

**ASAP: Insert "Privacy & Confidentiality" Regulations**  
***EOEA-PI-97-55***

**ATTACHMENT F**  
**Coversheet**

**ASAP: Insert “Consumers Rights Review Committee” Requirements  
Pertaining to “Consumers as Research Subjects”**  
*EOEA-PI-03-17*