

FMS/DSW AGREEMENT
BETWEEN THE DIRECT SUPPORT WORKER AND HELPERS, INC.

UPDATED 10/2013

This Financial Management Services and Direct Support Worker Agreement is made and entered into between *HELPERS, INC.*, a Kansas corporation, and _____ Direct Support Worker or ("DSW"). The parties agree as follows:

1. **Nature of Employment:** The recipient of services ("client") is a participant in an HCBS Waiver program administered by the Kansas Department of Aging and Disabilities Services (KDADS) or contracts with *HELPERS, INC.* for privately funded services. The client has selected *HELPERS, INC.* to provide Financial Management Services. They have selected you as their self-directed DSW.
 - a. All positions with *HELPERS, INC.* are considered temporary job assignments.
 - b. The client or responsible party/guardian, as the employer, is responsible for all employment decisions, including hiring, training, scheduling, managing, and termination.
 - c. If a DSW provides services for multiple clients, each client served shall constitute a separate and independent instance of employment.
 - d. In the event that the medical or developmental needs of the client change resulting in changes to the funding received by client and/or the required skills, tasks, scheduled hours or duration of employment of DSW, it is the responsibility of the DSW to become qualified to provide necessary services. If the DSW is unable or unwilling to become qualified or fails to accept such changed requirements, the DSW is deemed to have voluntarily resigned without good cause attributable to the work or *HELPERS, INC.* due to changes in the nature of the services required and the medical and/or developmental needs of the client.
 - e. Any violation of the terms or requirements of this Agreement by the DSW shall constitute grounds for termination for cause.
 - f. *HELPERS, INC.* and the client act as co-employers. *HELPERS, INC.* is the employer of record, however; the client or responsible party/guardian is the common law employer. The client or responsible party/guardian is responsible for hiring, training, scheduling, managing and termination. This means that just as a DSW may terminate his or her employment at any time, without cause, the client may terminate the employment relationship at any time, with or without cause or notice. If it becomes necessary to discipline a DSW because of, but not limited to, unsatisfactory job performance, unexcused lateness/absence, or violation of policies or rules, the client may elect to use progressive steps in the disciplinary process such as verbal discussion and warning to correct the problem, formal written warning, unpaid suspension, and termination. However, such steps are not mandatory and it is in the client's sole discretion whether to use such steps, the order in which to use them, and whether to proceed directly with termination. In addition, the action taken by the client in an individual case should not be assumed to establish a precedent in other circumstances.
 - g. *HELPERS, INC.* and the client or responsible party/guardian do not provide health or medical benefits.
2. **Plan of Care:** The DSW agrees to strictly comply with the client's Plan of Care and any and all other applicable HCBS waiver program requirements.
3. **Policies and Procedures:** The DSW further agrees to strictly comply with any instructions, rules or policies maintained by the client and *HELPERS, INC.* with regard to the DSW's billing and payment for services rendered.

- a. The DSW shall respect the privacy, personal boundaries and belongings of the client.
 - b. DSW shall refrain from sharing, reproducing, or disseminating images including posting images and videos of the client to any social media site, not limited to Facebook, Instagram, Twitter, etc.
 - c. DSW shall only enter the client's residence during scheduled work hours.
 - d. DSW shall communicate with the client and/or responsible party/guardian who shall be responsible for determining DSW's work schedule, including any requests for time off.
 - e. DSW understands that the unique needs and dependent nature of the client requires consistency, punctuality and dependability. Late cancellations, tardiness and/or excessive absences are not acceptable and constitute grounds for termination with cause.
 - f. All clients require constant supervision. DSW shall never leave a client unattended and shall give full attention to client. Non-essential telephone conversation, texting, television viewing, computer use, socializing and all other non-approved activities tending to distract DSW's attention from the client and are prohibited.
 - g. DSW shall comply with all instructions and complete all tasks during scheduled work hours, whether daily or ongoing, given by the client or responsible party/guardian, including but not limited to assistance with school, life skills, and social skills, etc. Any questions DSW may have regarding the nature or scope of such tasks shall first be addressed to the client or the responsible party/guardian, and then to *HELPERS, INC.*. Unjustified failure to comply with normal, reasonable, ethical requests and tasks shall be grounds for termination with cause.
 - h. DSW shall at all times be respectful of the client and other family members. Insubordinate and/or disrespectful behavior shall be grounds for termination with cause.
 - i. DSW shall provide reasonable written notice (customarily two weeks) to client or responsible party/guardian upon voluntarily termination by DSW, including a specific termination date. If DSW abandons employment without proper notice, DSW may not be eligible for another placement.
 - j. If for any reason, DSW's temporary assignment with the client ceases at any time, DSW shall contact *HELPERS, INC.* within one (1) business day for evaluation for potential reassignment. Failure to do so shall be deemed voluntary termination by DSW based upon lack of proper communication. DSW will be re-evaluated and assessed to determine skills, availability, and job requirements, including commuting limitations. *HELPERS, INC.* will attempt to identify any appropriate positions for DSW. DSW must express an interest in any position presented for the re-hiring process to continue. The client or the responsible party/guardian will make all final decisions regarding possible re-hire of DSW. There is no guarantee that DSW will be re-hired.
4. **Payment Policies:** Time is submitted to the State of Kansas and *HELPERS, INC.* through KS Authenticare. Time submitted through KS Authenticare for the 1st through the 15th of a month will be paid on the 5th of the following month. Time submitted through KS Authenticare for the 16th through the end of the month will be paid on the 20th of the following month. All hours submitted must not exceed the approved Plan of Care for the client. Hours submitted that exceed the hours allotted on the client's Plan of Care are not billable to Medicaid and therefore *HELPERS, INC.* cannot pay a DSW for those hours. It is client or responsible party/ guardian's responsibility to pay for any overages in hours and mutually agree upon a solution with the DSW. DSW should always keep records of all time worked for your personal records.
- a. In the event that DSW submits any hours for payment that DSW did not work or was not authorized by the client or the responsible party/guardian(s) for the client, such fraudulent acts shall be immediately reported to the proper authorities. DSW shall be terminated immediately and any amount improperly paid to DSW shall be withheld from any amount due to DSW to reimburse *HELPERS, INC.*.
 - b. *HELPERS, INC.* will withhold all appropriate taxes & generate a W-2 for Helper at the end of the year.
 - c. DSW acknowledges that *HELPERS, INC.* will incur direct expenses, such as background check fees in connection with the DSW's employment.
5. **Legal Compliance:** DSW further agrees to strictly comply with any and all Kansas statutes, regulations or policies relating or pertaining to services provided to HCBS Waiver program clients and for payment for such services.
- a. DSW shall maintain all documentation of services provided as required by applicable federal, state and local laws, rules and regulations.
 - b. Services must be reported accurately through KS Authenticare . False reporting of hours worked, or otherwise, is prohibited and will result in prosecution.

- c. DSW shall provide services consistent with the Quality Enhancement and Quality Assurance Standards of K.A.R. 30-63-22 and 30-63-28 and applicable provisions of the Developmental Disability Reform Act.
 - d. DSW shall maintain confidentiality of the client in full compliance with HIPPA standards.
 - e. DSW shall immediately (within 24 hours) report suspected abuse, neglect, or exploitation of client to KDADS or other appropriate reporting authority. The Kansas Protection Report Center 24 hour hotline is 1-800-922-5330. All calls are taken seriously and confidentially.
6. **Cooperation:** DSW further agrees to cooperate with the client's case manager, *HELPERS, INC.* and KDADS regarding any questions and/or inquiries regarding the client's applicable HCBS waiver and the services provided by DSW.
7. **Term of Agreement:** This Agreement shall remain in effect pending the earlier occurrence of one of the following events: The denial of the client's Medicaid eligibility; the termination/closure of the client's applicable HCBS case; the termination of the DSW as the client's self-directed DSW; or the termination of the client's right to self-direct his or her care.
8. **KDADS:** Though KDADS is not a party to this Agreement, the parties specifically intend that KDADS be a third-party beneficiary and, as a result thereof, further acknowledge and agree that KDADS may, at its option, enforce the terms of this Agreement.
9. **Assignment, Modification, Waiver, Entire Understanding, Forum and Jurisdiction.** The parties shall not assign, subcontract, or delegate any duties or obligations required by this Agreement to any other individual, agency, or organization. This Agreement may only be modified by a written agreement signed by the parties hereto. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. This Agreement supersedes all prior negotiations and agreements between the parties relative to the transaction and services contemplated by this Agreement, which contains the entire understanding of the parties. The terms and provisions of this Agreement shall be construed in accordance with and governed by the laws of the State of Kansas. In the event Judicial Intervention is necessary, the parties agree that venue shall solely be in the District Court for Johnson County, Kansas.


I acknowledge that I have received and reviewed a copy of the Explanation of Services and understand limitation applicable to *HELPERS, INC.* due to state policy and funding regulations. I recognize that as a DSW I have the right to view a copy of the care schedule for those individual(s) to whom I am currently providing services. I understand and agree that any medical information shared regarding the client is strictly confidential and is to be used solely for the care and benefit of the client and shall not be discussed or utilized in any other manner. I acknowledge that I have reviewed this Agreement and understand what is required of me as a DSW.

DSW Signature

Date

and

HELPERS, INC.



Stacy W. Jones, President