

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the “**Agreement**”) is effective on this Date: [REDACTED], between [REDACTED] (the “**Employer**”), an individual, and [REDACTED] (the “**DSW**”), an individual.
Client *Direct Support Worker*

W I T N E S S E T H:

WHEREAS, the Employer is a participant in a Home and Community Based Services waiver program under Medicaid (the “**Program**”) administered by the Kansas Department of Aging and Disability Services (“**KDADS**”) through KanCare and has elected to self-direct his/her services under the Program by employing one or more direct support workers;

WHEREAS, the purpose of a direct support worker under the Program is to provide assistance and support to a Program participant in accordance with the participant’s integrated service plan under the Program (the “**ISP**”);

WHEREAS, the Employer desires to hire the Direct Support Worker to be his/her direct support worker under the Program;

WHEREAS, the Direct Support Worker desires to be employed by the Employer as a direct support worker under the Program; and

WHEREAS, the Employer uses All Saints Home Care As Fiscal (the “**FMS Provider**”) to provide financial management services (“**FMS**”) under the Program to the Employer, including but not limited to (i) processing of time worked by the Direct Support Worker, (ii) billing KanCare on the Employer’s behalf, (iii) distributing pay checks or electronic deposits for services rendered by the Direct Support Worker under the ISP, (iv) withholding, filing and paying appropriate taxes for Direct Support Worker services under the ISP, and (v) information and assistance services to assist the Employer in understanding his/her role and requirements as the employer of the Direct Support Worker and his/her responsibilities under participant-direction.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. Employment. The Employer hereby employs the Direct Support Worker, and the Direct Support Worker hereby accepts employment with the Employer, upon the terms and conditions hereinafter set forth.

Section 2. “At-Will” Employment. The Direct Support Worker is an “at-will” employee of the Employer, which means that the Direct Support Worker’s employment may be terminated by the Employer, with or without notice, and with or without cause, at any time, for any reason not prohibited by law.

Section 3. Duties under this Agreement. The duties of the Direct Support Worker under this Agreement shall be as set forth in the Employer’s ISP (the “**Covered Duties**”). The Direct Support Worker agrees to use his/her best efforts in performing his/her Covered Duties for the Employer and to comply with all Employer directives, both written and oral. The Direct Support Worker understands and agrees that his/her assignment, duties, and responsibilities may be changed at any time by the Employer, subject to the limitations in the ISP.

Section 4. Compensation for Covered Duties.

- (a) The Employer shall pay the Direct Support Worker for performing Covered Duties, in such amount as is agreed upon between the Employer and the Direct Support Worker from time to time. Compensation for Covered Duties shall be made using Medicaid funds exclusively, in accordance with Kansas regulation 30-5-308.
- (b) The Direct Support Worker understands and agrees that although payment for Covered Duties will be made by the FMS Provider, on behalf of and as payroll agent for the Employer, the FMS Provider shall not be liable to the Direct Support Worker for payment of any compensation. The FMS Provider is a third party beneficiary of this Section 4(b).

- (c) If the Direct Support Worker has concerns or questions about his/her compensation, the Direct Support Worker is required to contact the Employer (not the FMS Provider) immediately in order to resolve those concerns or questions.

Section 5. Non-Covered Duties are Outside this Agreement. This Agreement does not prohibit the Employer from employing the Direct Support Worker to perform duties that are not Covered Duties (“**Non-Covered Duties**”). To the extent that the Direct Support Worker performs Non-Covered Duties, the parties agree that the Employer is obligated to pay the Direct Support Worker directly for those Non-Covered Duties, with no involvement by the FMS Provider, in such amount as is agreed upon between the Employer and the Direct Support Worker from time to time, and that the Employer is responsible for paying any overtime wages that are not properly payable under the Program. The parties understand that the Program does not provide funds to pay for any Non-Covered Duties.

Section 6. Work Schedule and Overtime.

- (a) The Direct Support worker’s work schedule shall be set by the Employer (not the FMS Provider). The Direct Support Worker understands that he/she is expected to adhere to the work schedule and to provide the Employer with advance notice of any absence or requests for schedule changes.
- (b) The Direct Support Worker understands and agrees not to work more than forty hours in any workweek for the Employer without advance approval from the Employer. The Direct Support Worker’s workweek shall be the 7-day period starting at 12:01 A.M. on Sunday and ending at midnight on the following Saturday.

Section 7. Time Records. The Direct Support Worker shall report all time worked on Covered Duties using the AuthentiCare® KS IVR system and shall *not* report any time worked on Non-Covered Duties using the AuthentiCare® KS IVR system. Time worked on Non-Covered Duties (if any) shall be reported to the Employer, in the manner directed by the Employer (not by the FMS Provider).

Section 8. Supervision, Cooperation, and Compliance with ISP, the Program, Instructions, Policies, Rules, Regulations, and Laws.

- (a) The Direct Support worker shall be directly supervised and managed by the Employer or the Employer’s “Designated Representative” (if any) set forth in the ISP.
- (b) The Direct Support worker agrees to adhere to all rules, policies, and regulations of the Employer.
- (c) The Direct Support worker and the Employer agree to strictly comply with the ISP, the Customer Service Worksheet (if any), and any and all other Program requirements.
- (d) The Direct Support worker and the Employer agree to strictly comply with any instructions, rules, or policies maintained by the FMS Provider with regard to the billing and payment for Covered Duties services rendered by the Direct Support worker.
- (e) The Direct Support worker and Employer agree to strictly comply with any and all Kansas statutes, regulations, or policies (including, but not limited to, the KDADS’s Field Services Manual, as amended) relating or pertaining to Covered Duties services to the Employer and for payment for such services.
- (f) The Direct Support worker agrees to cooperate fully with the FMS Provider and with KDADS, the Employer’s case manager, case management agency (if any) from whom the Employer receives case management services under the Program, and the Case Management Entity (if any) from whom the Employer receives case management services under the Program (the “CME”), regarding any questions and/or inquiries about the Employer’s case and services provided by the Direct Support worker under the Program.

Section 9. FMS Provider is Not the Common Law Employer for Purposes of Patient Protection and Affordable Care Act. The parties hereby understand and agree that *the FMS Provider is not the “common law employer” of the Direct Support worker for purposes of the Patient Protection and Affordable Care Act (“PPACA”) or under any*

other law and that the FMS Provider has no legal obligation to offer health care coverage to any Direct Support worker. The parties further agree and understand that, under the legal standards established by the Internal Revenue Service, the “common law employer” for purposes of PPACA compliance is the Employer. The parties agree never to argue or raise as a defense in any legal proceeding that the FMS Provider is the “common law employer” of the Direct Support worker for purposes of PPACA or for any other purpose. The FMS Provider is a third-party beneficiary of Section 9 of this Agreement.

Section 10. FMS Provider is Not the “Employer” for Purposes of the Fair Labor Standards Act. The parties hereby understand and agree that *the FMS Provider is not the “employer” of the Direct Support worker for purposes of the Fair Labor Standards Act or under any other law that uses the “economic reality test” to determine employer/employee status.* The parties agree never to argue or raise as a defense in any legal proceeding that the FMS Provider is the “employer” of the Direct Support worker for purposes of the Fair Labor Standards Act or for any other purpose. The FMS Provider is a third-party beneficiary of Section 10 of this Agreement.

Section 11. Changes in Information. The Direct Support worker agrees to notify the Employer of any change in the Direct Support worker’s name, address, telephone number, e-mail address, emergency contact information, and/or Form W-4 and Form K-4 elections.

Section 12. Safety. The Direct Support worker is expected to follow generally accepted safety procedures while performing Covered Duties and must promptly report all safety concerns to the Employer.

- (a) If an accident results in injury to the Employer and the Employer has a Designated Representative, the Direct Support worker must report the accident to the Designated Representative as soon as possible.
- (b) If a work-related accident results in injury to the Direct Support worker, the Direct Support worker must report such accident to the Employer as soon as possible, but no later than 24 hours after such injury.

Section 13. Driving. The Direct Support worker is prohibited from providing transportation services to the Employer unless the duties specified in the Employer’s ISP include providing transportation services. If the Direct Support worker’s duties under the ISP include providing transportation services, the Direct Support worker (a) must have a current, valid driver’s license and must have automobile insurance in the minimum amount required by the State of Kansas or in such greater amount as the Employer otherwise requires and (b) must notify the Employer immediately if the status of the Direct Support worker’s driver’s license or automobile insurance changes.

Section 14. Medicaid Fraud. The parties agree and understand that if either of them submits false or inaccurate information to the FMS Provider or through the AuthentiCare® KS IVR system regarding the work times or duties performed by the Direct Support worker under the Program, it will be considered Medicaid fraud and exploitation of benefits, which the FMS Provider is required to report to the State of Kansas.

Section 15. Consent to Release of Confidential Information. The Direct Support worker consents and authorizes the FMS Provider and the Employer to release and exchange information related to the services provided by the Direct Support worker to the following agencies and individuals: the Employer’s case manager; the Employer’s case management agency or CME (as applicable), including, but not limited to, a Managed Care Organization (“MCO”) that is a CME; the Employer’s Community Developmental Disability Organization (“CDDO”); KDADS; the Division of Health Care Finance of the Kansas Department of Health and Environment; HP Enterprises/KS Medicaid Fiscal Agent; the KDADS’s Quality Assurance Department; AuthentiCare® KS; and any other governmental agency as required by law and Kansas FMS requirements.

Section 16. Termination of the Agreement. This Agreement shall remain in effect while the Direct Support worker is employed by the Employer. The Direct Support worker understands and agrees that his/her employment, and this Agreement, will terminate upon the earliest occurrence of one of the following events:

- (a) Denial of the Employer’s Medicaid and/or KanCare eligibility;
- (b) Termination/closure of the Employer’s applicable HCBS case;
- (c) Termination of the Employer’s right to self-direct his/her care; or

(d) A decision of either party to terminate the employment relationship.

Section 17. Third Party Beneficiary. Though KDADS and the CME (if any) are not parties to this Agreement, the parties specifically intend that KDADS and the CME (if any) each be a third-party beneficiary and, as a result thereof, further acknowledge and agree that KDADS and/or the CME (if any) may, at their option, enforce the terms of this Agreement.

Section 18. Assignment. The parties shall not assign, subcontract, or delegate any duties or obligations required by this Agreement to any other individual, agency, or organization. Subject to that limitation, this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, personal representatives, successors, and assigns.

Section 19. Amendment. This Agreement may only be modified by a written agreement signed by the parties hereto. No failure by either party to insist upon the strict performance of this Agreement on one or more occasions shall constitute a waiver of any right or remedy hereunder.

Section 20. Severability. 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.

Section 21. Entire Agreement. This Agreement has been entered into in good faith by the parties. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior and contemporaneous negotiations, understandings, and agreements with regard to the subject matter hereof, whether oral or written. In entering into this Agreement, none of the parties have made or relied upon any representation or provision not set forth herein.

Section 22. State Law. The terms and provisions of this Agreement shall be construed in accordance with and governed by the laws of the State of Kansas. The titles of the Sections, Subsections, Paragraphs, and Subparagraphs in this Agreement have been inserted for convenient reference only and shall not affect the construction of this Agreement.

Section 23. Venue. For any action to enforce this Agreement by KDADS or CME (if any), venue shall solely be in the District Court of Shawnee County, Kansas. For all other actions to enforce this Agreement, venue shall solely be in the District Court of Sedgwick County, Kansas.

Section 24. Compliance with Program. It is the intent of the parties that this Agreement be interpreted to comply with the Program requirements.

Section 25. Signatures. This Agreement (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the parties hereto as if they were originals.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

DIRECT SUPPORT WORKER

EMPLOYER/CUSTOMER

Signature

Signature

Print name

Print name

If Employer does not sign, the relationship of the person signing to the Employer