

## **VENDOR MEMORANDUM OF AGREEMENT**

This agreement entered into between Generations, (hereinafter referred to as “Agency”) and \_\_\_\_\_, (hereinafter referred to as “Vendor”) shall become effective on July 1, 2018 and remain in effect through June 30, 2021.

The purpose of this Vendor Memorandum of Agreement is to provide understanding and agreement so that vendors can provide product and/or service (here in after referred to as “service”) to eligible individuals who are authorized to receive services through Agency’s In-Home and Community-Based Services Program. The funding for services under this program is provided by the State of Indiana Family and Social Services Administration (hereinafter referred to as “State”) pursuant to Indiana Code 12-8-10 and 12-10-10 and Older Americans Act 42 USC 3001 et.seq.

The following general terms and conditions shall apply to this agreement:

### **AUTHORIZATION**

1. Vendor agrees to provide service for individuals eligible for service only upon receipt of Agency’s Plan of Care and/or Service Authorization. Vendor accepts the terms, conditions, if any, and time frames specified therein.
2. Authorizations will be sent to Vendors five working days or sooner prior to the start day of service unless extenuating circumstances warrant mutual agreement to provide immediate service to a client.

### **BILLING**

3. All payments to be made by Agency shall be made in accordance with specified unit rates as mandated by State (Attachment A). In some instances, such as providers of personal emergency response systems, Vendor may opt to provide services at rates lower than the State mandate. These unit rates are subject to change by the State. Rates will remain in effect and will not be increased during the period specified on Attachment A. Services are reimbursed based on quarter hour increments and are all-inclusive rates. All supporting documents must be kept by Vendor and acceptable to reviews and/or audits for a period of (7) years.
4. Vendor agrees to bill all other sources of reimbursement; i.e. Medicare, Medicaid, and/or private insurance before billing the In-Home Services Program. If the Vendor receives a denial of payment, a copy of the letter will be maintained in the client’s file. Vendor agrees to notify Agency of client’s eligibility for service coverage under other funding sources.
5. Vendor agrees to submit billing to the Agency by the 20<sup>th</sup> calendar day after the close of the calendar month in which service was delivered or denial of another

payer source. Unless special arrangements have been made, Agency is not responsible for payment of late billing from the Vendor. Claims received 60 days or more after the service was provided cannot be reimbursed. Final claims and reports for the fiscal year must be submitted to Agency by July 20<sup>th</sup> of each year or Agency may elect to deny payment.

6. For non-waiver clients, Generations will only reimburse for units up to the amount authorized on a client's "Vendor Authorization." If a vendor finds that there are not enough units authorized to provide the requested hours, the vendor should notify the client's Case Manager PRIOR to submitting the claim so that the units can be adjusted. The Case Manager will make the final decision on payment of units provided over the amount initially authorized; the Case Manager will also be responsible for adjusting a client POC to reflect additional authorized units.
7. Payment will be made by Agency within 30 days of receipt of the Vendor's claim, which meets billing and authorization specifications. Vendor's failure to submit report/billing as required is an indication of non-compliance and may result in the delay of reimbursement, for services provided, until the non-compliance issue is resolved.
8. All payments will be direct deposit. Vendor understands that direct deposit will take effect immediately following the receipt of this authorization by Accounts Payable. Vendor agrees it is their responsibility to notify Agency of any changes to the account. Direct Deposit authorization is to remain in full force until Vincennes University/Agency has received written notification from Vendor of its termination.

### **SERVICE DELIVERY**

9. Vendor agrees that any proposed revisions to the authorized service schedule will be reported to the Case Manager for approval prior to the revision in service. Agency will not reimburse for any service revision unless prior notification has been received and approved in writing by the Case Manager, and the Plan of Care has been revised accordingly.
10. Vendor agrees to provide the services in compliance with Agency's requirements, standards, service descriptions and policies.
11. Vendor agrees that they have staff sufficient to commit to the service(s) and time period(s) as authorized by the Plan of Care and the Case Manager. Vendor agrees to inform Agency of changes in service delivery on a weekly basis.
12. Vendor shall provide backup for their own staff if they are unable to fulfill their assignment for any reason. Backup staff must meet the qualifications specified for the service authorized. Vendor will promptly notify the client and the client's Case Manager if any schedule disruption occurs.

13. Vendor agrees to notify the client's Case Manager in writing at least thirty (30) days prior to the unilateral termination of services to a client for any reason. The notification must include reason(s) for termination. Vendor must also maintain a written policy for the termination of a client.
14. It is the policy of the Indiana Division of Aging (DA) that all incidents (reportable unusual occurrences) are addressed in a timely manner that ensures the health and safety of individuals receiving services coordinated and administered by the Division of Aging. According to 460 IAC 1.2-8-2, vendor agrees to implement necessary safeguards to protect the health and safety of individuals receiving services. Vendors with knowledge of an incident that effects, or potentially effects, the individual's health and safety shall submit an incident report through the DDRS/DA incident reporting system at the following website <https://ddrsprovider.fssa.in.gov/IFUR/>.

An initial report regarding an incident, allegation, or suspicion of abuse, neglect, or exploitation or the death of a service participant shall be submitted within twenty-four (24) hours of the incident or having knowledge of the incident.

Any staff suspected, alleged, or involved in incidents of abuse, neglect, or exploitation of an individual will be immediately suspended from duty pending investigation by the provider.

15. If this agreement is terminated for any reason, "Agency" shall only be liable for payment for services properly provided prior to the effective date of termination. "Agency" shall not be liable for any costs incurred by Vendor in reliance upon this agreement subsequent to the effective date of termination.

#### **ADMINISTRATION**

16. Vendor shall be treated for all purposes as an independent contractor. Vendor, its employees and agents shall not be considered for any purposes as an employee of the Agency. Vendor agrees to pay all federal, state and self-employment taxes due on any compensation received by Vendor or paid to Vendor's employees or agents and to hold harmless and indemnify Agency for any of these taxes which Agency may be assessed, including penalties and interest, and including the matching portion of social security taxes. Vendor understands Agency will not be withholding any taxes or paying social security taxes for Vendor, because Vendor is an independent contractor.
17. Vendor will not subcontract any service(s) funded through Agency without a prior written authorization from the Agency. If approval to subcontract is granted, Vendor shall require any subcontractor to comply with the provisions set forth in this agreement. Further, Vendor shall remain responsible to Agency for

performance of any subcontractor and shall monitor the performance of any subcontractor.

18. Vendor shall ensure that quality services are provided to eligible clients. The determination of quality must be based on an established quality assurance system, which includes surveys of both service quality and client satisfaction on an annual basis, at minimum. Vendor shall also have a procedure in place to address client response to satisfaction survey.
19. The parties agree that all information, including but not limited to, client information, received by Vendor and Vendor's staff in administering the terms and provisions of this agreement shall be received and maintained in a confidential manner commensurate with the conditions set forth in this agreement and the requirements of all applicable state or federal laws and regulations. Client files shall be maintained in locked files/storage. Vendor must maintain a policy, which reflects the way in which confidential information will be protected. The Confidentiality Policy must be posted near client files.
20. Vendor shall allow monitoring and evaluating of Vendor's delivery of service(s) and its adherence to this agreement at any time during normal business hours by any individual duly authorized by the Agency, State of Indiana or the United States Government. As a part of the monitoring process, Vendor agrees that the Agency has the authority to audit any files, records, books or any other documents that relate to activities performed under this Agreement.

Vendor agrees that the Agency has the right to make recommendations and findings in connection with any monitoring/review of Vendor's operations and Vendor agrees to comply with any corrective actions specified by Agency, within the time limits established by the Agency.

Following any monitoring/review, Agency will prepare a written report of findings, observations, evaluations, suggestions, and/or specific directions for corrective action by Vendor. In the event that specific corrective action is required, Vendor will have thirty (30) days unless special arrangements have been made by Agency from the receipt of the directions to comply. The Vendor has the right to appeal directives for corrective action. Written appeal must be made within ten (10) days of notice in writing to the Agency Executive Director. The Agency or Vendor may appeal to a designated representative of the State Funding Source for the contracted service that is involved in the dispute. In the case of a dispute, Agency and Vendor will meet at the earliest convenience to resolve the contested issue(s). A failure to comply with Agency's specific directions will be treated as a breach of this agreement.

If a monitoring/review by the Federal Government, State Government, or the Agency determines that adequate service delivery documentation is not in

existence and/or inappropriate claim has been paid to the Vendor by the Agency, Vendor agrees that Agency shall have the right to offset such amount against current or future allowable claims and/or, demand cash repayment.

21. Vendor must maintain books, records, documents and other evidence and follow generally accepted accounting procedures and practices which sufficiently and properly reflect all costs attributable to each service provided pursuant to this Agreement. Vendor shall establish and maintain service records and such other statistical reports and regulations that are required by the Agency, the State of Indiana and the United States Government. Vendor agrees to maintain these records for a period of seven (7) years from the date of the expiration of this Agreement, or one (1) year from the resolution of any outstanding administrative program or fiscal audit questions, or legal action, whichever is later. All records that relate to activities performed under this agreement may be reviewed at any time by any duly authorized representative of the Agency, the State of Indiana or the United States Government.
22. Vendor must maintain an annual training plan to include, but not limited to, the following topics with all appropriate staff in attendance; CPR, First Aid, aging process/working with the elderly, confidentiality, disaster/emergency procedures, communication techniques, proper food handling, proper transfer (direct staff and transportation providers, and defensive driving (those providing transportation).
23. Vendor agrees to indemnify, defend, and hold harmless the Agency, the State of Indiana and the United States Government from all claims and suits, including court cost, attorney fees and other expenses, caused by acts of commission or omission of Vendor or its employees. Agency agrees to indemnify, defend, and hold harmless Vendor, from all claims and suits, including court cost, attorney fees and other expenses, caused by the acts of commission or omission of Agency or its employees

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect.

24. Vendor shall provide a bond or insurance coverage for all persons who will be handling funds or property as a result of this agreement, or who may carry out the duties specified in this agreement, in an amount equal to one-half (1/2) of the total annual funding provided to the Vendor through Agency or \$125,000, whichever is less, to be effective for a period of this agreement plus three (3) years for purposes of discovery. Vendor's coverage must provide protection against losses, resulting from criminal act and wrongful and negligent performance of the duties specified

herein and must specify the Agency and the State of Indiana as an additional insured.

Vendor shall immediately notify Agency if said bond or insurance is canceled or modified in amount. In the event of cancellation, Agency shall make no further disbursements until certification is provided by a bonding or insurance company that the provisions set forth in this section have been satisfied.

25. Vendor is required to provide and maintain comprehensive liability insurance for personal injury and property damage in the minimum amount of \$500,000. Vendor will provide Agency with certificate of insurance, by which Agency will be notified of any changes and or cancellation by the insurance carrier.
26. If Vendor comes within the definition of “health care provider” as provided by Indiana Code 16-8-2-163, Vendor shall carry in full force and effect professional liability insurance with limits at least equal to the minimum limits provided for the Indiana Medical Malpractice Act and at all times is and remain qualified as a health care provider thereunder.
27. Pursuant to IC § 22-9-1-10, Vendor shall not discriminate against any employee or applicant for employment, to be employed in the performance of this agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, age, color, religion, sex, disability, national origin or ancestry. Vendor understands that the Agency is a recipient of state and federal funds and must comply with set statutes of both entities.
28. Vendor agrees to comply with Title VI of the Civil Rights Act of the 1964 (42 USC § 2000d et seq.) Title VIII of the Civil Rights Act of 1968 942 USC § 3601 et seq.), Title IX of the Education Amendments of 1972 (20 USC § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), the Americans with Disabilities Act of 1990 (Pub L. 101-336, 104 Stat. 327), the Age Discrimination Act of 1975 (42 USC § 6101 et seq.), Executive Order 11246 and 41 CFR Part 60-1 et seq., as applicable and all other non-discrimination regulations of the United States government, as applicable to ensure that no person shall, on the grounds of race, age, color, religion, sex, disability, national origin or ancestry, be excluded from participating in, be denied the benefit of Vendor’s services or otherwise subjected to discrimination under any program or activity for which Vendor receives, directly or indirectly, federal or state financial assistance and Vendor agrees to immediately take measures to effectuate this provision.
29. The parties agree that any publicity released or other public reference, including media releases, informational pamphlets, etc. regarding the services provided

- under this agreement, will clearly state that all services are provided without regard to race, age, color, religion, sex, disability, national origin, or ancestry.
30. The parties agree that the service provided under this agreement shall be non-sectarian in nature.
  31. Vendor agrees to have a personnel/staff training manual on site. Vendor agrees to comply, and assures that its volunteers and employees will comply, with all applicable licensing standards, accrediting standards and any other standards or criteria which any government entity or Agency requires of Vendor to deliver services pursuant to this agreement. Agency shall not be required to reimburse Vendor for any services performed when Vendor or its employees are not in compliance with applicable licensing, certifying or accrediting standards. Vendor agrees to provide Agency with documentation and/or verification of current license, certification, and/or compliance with applicable standards. If license, certification or accreditation expires or is revoked, Vendor agrees to notify Agency immediately thereof.
  32. Vendor agrees to comply with all statements, assurances, and provisions set forth in any proposal, program narrative, plan, or other document submitted by Vendor for the purpose of obtaining this agreement. Vendor further agrees to comply with all applicable Agency, State and Federal statutes, rules, regulation, administrative procedures, guides, manuals, program rules and regulations. This also includes, but is not limited to, any applicable HIPAA guidelines. (Ref. IAC 4601.2)
  33. Vendor shall not impose, solicit or collect any fees from the recipients of services rendered by Vendor pursuant to this agreement, unless authorized in writing by Agency.
  34. Vendor agrees to provide a system for the timely handling of complaints for recipient of services, which is in compliance with Agency's requirements.
  35. Vendor certifies, by the entering into this agreement, that neither it nor its principal are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this agreement by any state department or agency. The term "principal" for purposes of this agreement, is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or person who has a critical influence on or substantive control over the operations of Vendor.
  36. Vendor shall provide written notice to Agency of any change in Vendor's legal name or legal status including, but not limited to, a sale or dissolution of Vendor's business. Agency reserves the right to terminate this agreement should Vendor's legal status change in any way. Termination pursuant to this paragraph shall be effective from the date of the change in Vendor's legal status.

37. Pursuant to 31 U.S.C. & 1352, and any regulations promulgated thereunder, Vendor hereby assures and certifies that no federally appropriated funds have been paid, or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant loan or cooperative agreement.
38. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this agreement, Vendor shall complete and submit Standard Form- LLL, Disclosure Form to Report Lobbying, "in accordance with its instructions."
39. Vendor agrees to comply with applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. & 701 et. seq.) the State of Indiana, Executive Order 90-5 and all regulation promulgated hereunder. Vendor certifies that is will comply with applicable provisions of the Pro-Children Act of 1994 (20 U.S.C. § 6081 et seq.), which require that smoking not be permitted in any portion of any indoor facility owned, leased, or contracted for by Vendor and which a used routinely or regularly for the provision of health, day care, education, or library services to children under the age of eighteen (18) years if the services are funded by federal programs either directly or through state or local governments by federal grant, contract, loan or loan guarantee. This provision shall not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Vendor must maintain a written Drug-Free Workplace Policy.
40. Per House Enrolled Act 1493 (2017) Vendor agrees to drug testing employees for the illegal use of controlled drugs for certain home health care personnel (Indiana Code 16-27-2.5, a new chapter). After giving a job applicant written notice of the home health agency's drug testing policy, a home health agency shall require a job applicant who is seeking employment with the home health agency for a position that will have direct contact with a patient be tested for the illegal use of a controlled substance.

To demonstrate statutory compliance at the time of survey, the agency must upon request;

- Provide the agency's written drug testing policy that is distributed to all employees; and
- Require each employee to acknowledge receipt of the policy.



- Provide a policy defining which employees are considered affected (which employee classification(s) require drug testing). This may be part of the agency's written drug testing policy.
- Provide documentation showing the employee's name, date of hire, dates and results of any drug test, and the date and type of disciplinary action taken for a positive result.

A Home Health Agency shall randomly drug test at least 50% of the home health agency's employees who:

- Have direct contact with patients; and
- Are not license by a board or commission under IC25; or
- When the home health agency has reasonable suspicion that an employee is engaged in the illegal use of a controlled substance.

41. The vendor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien and has enrolled and is participating in the E-Verify program as defined IC22-5-1.7-3. Vendor agrees to provide documentation to Agency of enrollment and participation in E-Verify program. A vendor who is self-employed and does not employ any employees is not required to participate in the program. Agency may terminate agreement for default if the vendor fails to cure a breach of this provision.

42. If either party has failed to comply with the terms of this agreement, the other party may, upon thirty (30) days written notice to the party in breach, suspend services and/or payment in whole or in part. The notice of suspension shall state the reasons for the suspension, any corrective action required of the other, and the effective date.

Failure of either party to comply fully with the provisions of this agreement may result in immediate termination of this agreement by the other party. Written notice of intent to terminate this agreement must be made to the party in breach stating the reasons for such action and the effective date.

If Agency determines that any breach of this agreement by Vendor endangers the life, health or safety of applicants for or recipients of services under this agreement, Agency may terminate this agreement by orally notifying Vendor of the termination, followed by registered or certified mail of written notification thereof within three (3) business days specifying the reasons for the termination. Termination pursuant to this paragraph shall become effective at the time or the oral notification.

Agency may terminate this agreement immediately upon receipt of written notice to Vendor if the Secretary of the Family and Social Services Administration determines that immediate termination is necessary to protect state and/or federal funds and property.

Vendor agrees that Agency may terminate this agreement immediately if Vendor ceases doing business, if Vendor files a petition in the United States Bankruptcy Court under the Bankruptcy Reform Act of 1978, and any amendments thereto (11 USC § 101 et. seq.), or if a petition for involuntary bankruptcy is filed against Vendor. Agency will notify Vendor of the termination, in writing, by registered or certified mail.

If the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this agreement, the agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support this agreement shall be final and conclusive.

The parties acknowledge and agree that this agreement may be terminated immediately by either party should the other party attempt to assign, transfer, convey or encumber this agreement in any way. Any notice of termination pursuant to this paragraph shall be provided in writing to the other party, by registered or certified mail.

The parties acknowledge and agree that this agreement may be terminated for any reason given a 30-day written notice.

Upon expiration or termination of this agreement, Agency may require that all documents including, but not limited to, client files, data, studies and reports prepared by Vendor pursuant to this agreement be submitted to Agency. Agency may require the transfer of records or property to its own offices or a designated successor.

Agency shall provide a full and detailed accounting of any records taken from Vendor and shall make any records available to Vendor as necessary for subsequent audit.

Vendor's agreement to provide a particular service will include services such as Respite, or relief for primary caregiver. Respite service will be at the reimbursed rate for the staff level providing the service, but must be billed as Respite in accordance with the Agency's Plan of Care.

43. As required by law, Vendor agrees to report any suspected endangered adult to Adult Protective Services and further agrees to report any suspected endangered child to Children's Protective Services. Vendor agrees to notify Case Management of any suspected abuse.
44. Vendor agrees that all paid and volunteer staff shall receive orientation and applicable training prior to service delivery. The written orientation plan should include training on universal precautions, confidentiality, allowable and non-

allowable activities, Agency policies and procedures, as well as, skill testing and supervised training.

45. Any staff transporting client(s) must have a valid driver's license and auto insurance.
46. Vendor must be incorporated and/or maintain a registration with the Indiana Department of State Revenue.
47. If required by applicable provisions of Uniform Administrative Requirements, 2 CFR 200.501 the State of Indiana or Agency, Vendor shall arrange and pay for an annual financial and compliance audit for funds provided by Agency, to be conducted by an independent public or certified public accountant, in accordance with audit guidelines specified by Agency, the State of Indiana or the United States Government, which audit will, among other things, test the fairness of the charges by Vendor for services rendered.
48. Vendor that operates more than one company, same and/or similar service, is responsible for coordinating between those companies.
49. Transportation providers, (defined as one that provides transportation as the authorized service under contract (attachment A) using CHOICE funds) shall carry insurance coverage in the minimum amount of \$500,000.
50. Vendor agrees that all employees who will have direct contact with Agency clients will have his/her criminal background checked. A conviction of the following crimes will disqualify the employee from direct contact with Agency clients: a sex crime, exploitation of an endangered adult, abuse or neglect of a child, failure to report battery, neglect, or exploitation of an endangered adult, theft, murder, voluntary manslaughter, involuntary manslaughter, and/or battery.

## **MODIFICATION**

51. Notwithstanding any other provision of this agreement, the parties acknowledge that this contract is subject to modification by mutual agreement to the parties. Such modifications, if any, shall be set forth in writing and shall become a part of this agreement. Such modifications shall also be subjected to review upon any subsequent renewal of this agreement; however, nothing in this agreement shall be construed as a commitment to execute future agreements with Vendor or to extend this agreement in any way.

## **SEVERABILITY**

52. The invalidity of any section, subsection, clause, or provision of this agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of the agreement.

**SIGNATURE PAGE**

**NON-COLLUSION and ACCEPTANCE**

The undersigned, attests, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the Vendor, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, entered into or offered to enter into any combination, collusion or agreement to receive, pay or set units of service rates, and that he/she has not received or paid, any sum of money or other consideration for the execution of the agreement other than that which appears in this agreement.

The undersigned attests that he/she is duly authorized to enter into this agreement by Vendor.

**Vendor Acceptance**

By: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Typed Name Title

**Agency Acceptance**

\_\_\_\_\_  
Laura A. Holscher, Assistant Vice President Date  
Generations/Vincennes University