

HOME AND COMMUNITY-BASED WAIVER SERVICES CONTRACT

AITKIN COUNTY

Provider Name: Keith M. Olson and Theresa L. Olson

DBA: Chappy's Golden Shores

Address: 530 Park Avenue

City and Zip: Hill City, MN 55748

Program Area: HCBS

Contract effective for the period beginning April 1, 2013 through December 31, 2013

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The Aitkin County Board of Commissioners, located at 204 1st Street NW, Aitkin, MN 56431 acting through Health and Human Services, hereafter referred to as the "Lead County" and, Keith M. Olson and Theresa L. Olson doing business as Chappy's Golden Shores at 530 Park Avenue, Hill City, MN, 55748, hereafter referred to as the "Provider," enter into this Contract effective for the period beginning April 1, 2013 through December 31, 2013 regardless of the date of the signatures hereunder, unless sooner terminated or unless extended, as provided herein.

WHEREAS, pursuant to the Children and Community Services Act, Minnesota Statutes, Chapter 256.0112, now in force or as hereafter enacted or amended, the Lead County has identified certain populations within the County who are eligible for specific home and community-based waiver services or other services as identified in the attached Attachments A and B; and

WHEREAS, federal and state funds are available for the purchase of Title 19 home and community-based services through the State of Minnesota pursuant to U.S. Code, Title 42, sections 1396 through 1396P, and Minnesota Statutes, Chapters 245B and 256B now in force or as hereafter enacted or amended. Home and community-based waiver services include the Community Alternative Care (CAC) Waiver, the Community Alternatives for Disabled Individuals (CADI) Waiver, the Developmental Disabilities (DD) Waiver, the Brain Injury (BI) Waiver, the Elderly Waiver (EW), and Alternative Care (AC); and

WHEREAS, the Lead County wishes to purchase services from the Provider and the Provider agrees to furnish services to persons in accordance with Minnesota Statutes, Chapters 245A, 245B, 256B and 256.0112; Minnesota Rules, Chapter 9525, and in accordance with the type, amount, frequency and duration stated in each person's Community Support Plan (CSP) under this Contract; and

WHEREAS, the Provider represents that it is duly qualified and willing to perform such services; and has submitted the following identification numbers: Federal Tax ID# 41-1611068; NPI or UMPI number A585718000; and

WHEREAS, the Lead County and the Provider, according to Minnesota Statutes, section 256B.092, subdivision 8a or section 256.0112, subdivision 6, understand that this Contract serves as a Lead County contract for services purchased by other Financially Responsible Agencies;

NOW THEREFORE, in consideration of the mutual understandings and agreements set forth, the Provider and the Lead County agree as follows:

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1. GENERAL PROVISIONS

- A) **Purpose.** The purpose of this Contract is to define the rights and obligations of the parties with respect to home and community-based waiver services.
- B) **Cooperation.** The Lead County and Provider shall cooperate and use their reasonable efforts to ensure the most expeditious implementation of the various provisions of this Contract. The parties agree to, in good faith, undertake resolution of any disputes hereunder in an equitable and timely manner.
- C) **Minimum Standards.** The provisions contained in this Contract establish the necessary and required minimum standards that the parties to this Contract shall follow when contracting for home and community-based waiver services.

2. DEFINITIONS

A) For purposes of this Contract, the following terms are given the following meanings:

- 1) **Addendum:** Additions to the original terms of the contract, which must be reduced to writing and agreed upon by both parties to be valid.
- 2) **Alternative Care:** Provides state funding for home and community-based services necessary as an alternative to institutionalization that promote the optimal health, independence, and safety of adults who are 65 and older who would otherwise require the level of care provided in a nursing facility and would be eligible for medical assistance within 135 days of admission.
- 3) **Amendment:** Change, alteration, or modification to the original terms of the contract, which must be reduced to writing and agreed upon by both parties to be valid.
- 4) **Attachment:** Document(s) that covers any information, whether an addition or change, that is not covered in the original negotiated contract. An attachment may be either an addendum or amendment to the Contract.
- 5) **Community Alternative Care (CAC) Waiver:** Provides funding for home and community-based services necessary as an alternative to institutionalization that promote the optimal health, independence, safety, and integration of children and adults who are chronically ill or medically fragile and meet the waiver eligibility criteria and who would otherwise require the level of care provided in a hospital.
- 6) **Community Alternatives for Disabled Individuals (CADI) Waiver:** Provides funding for home and community-based services necessary as an alternative to institutionalization that promote the optimal health, independence, safety, and integration of children and adults who meet the waiver eligibility criteria and who would otherwise require the level of care provided in a nursing facility.
- 7) **Community Support Plan (CSP), also referred to as Collaborative Care Plan (CCP) and Individual Service Plan (ISP):** The person-centered plan developed by the Financially Responsible Agency within ten (10) working days of the assessment and enrollment of the person into the waiver program; a plan that identifies the assessed needs of the individual and the services and support needed to meet those needs. CSPs must be developed in accordance with Minnesota Statutes, section 256B.49, subdivision 15 and Minnesota Statutes, section 256B.092, subdivision 1b. CSPs may also be referred to as Collaborative Care Plans or Individual Service Plans or ISPs. For Elderly Waiver and Alternative Care, the CSP must be completed within

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- twenty (20) calendar days of the assessment in accordance with Minnesota Statutes section 256B.0913 and 256B.0915.
- 8) **Contract:** Agreement that can include attachments, amendments and addenda incorporated into the agreement by reference between the Lead County and the Provider whereby the parties exchange promises that give a legal duty to the other and the right to seek a remedy for breach of these duties. May also be referred to as the "Home and Community-based Services (HCBS) Waiver Contract" or "Agreement."
 - 9) **Default:** Failure to perform one's own duties under the contract.
 - 10) **Department or DHS:** The Minnesota Department of Human Services.
 - 11) **Developmental Disabilities (DD) Waiver:** Provides funding for home and community-based services necessary as an alternative to institutionalization to promote the optimal health, independence, safety, and integration of children and adults with a developmental disability or a related condition who meet the waiver eligibility criteria and who require the level of care provided in an Intermediate Care Facility for Persons with Developmental Disabilities (ICF/DD). "Developmental disability" is given the meaning in Minnesota Rules, part 9525.0016, subpart 2, and "related condition" is given the meaning in Minnesota Statutes, section 252.27, subdivision 1a.
 - 12) **Elderly Waiver:** Provides funding for home and community-based services for people age 65 and older who are eligible for Medical Assistance and require the level of care provided in a nursing home but choose to reside in the community.
 - 13) **Fee for Service (FFS):** A service delivery system in which providers bill for each service they provide, and receive reimbursement for each covered service based on a predetermined rate.
 - 14) **Fidelity Bond:** Written instrument that reimburses employers, up to the amount of the bond, for losses stemming from dishonest and/or negligent actions of their employees.
 - 15) **Financially Responsible Agency:** The County, Tribe, or Managed Care Organization responsible to manage the costs of the contract services.
 - a. For CAC, CADI, BI and DD waivers, Financially Responsible Agency means County of Financial Responsibility as defined in Minnesota Statutes, section 256G.02, subdivision 4.
 - b. For EW, AC, the Financially Responsible Agency is
 - (i) For FFS, the county of service which is the county where the client lives and is defined in Minnesota Rules, part 9505.0015, subpart 11
 - (ii) For Managed Care, is the Managed Care Organization responsible to manage the costs of the services.
 - 16) **Incident:** Occurrence of a serious injury as defined in Minnesota Statutes, section 245.91, subdivision 6.
 - 17) **Indemnity:** Payment or compensation for damages or losses done; obligation of the provider to reimburse the Department and/or the Financially Responsible Agency for losses that have occurred.
 - 18) **Independent Contractor:** Person or company that provides goods or services to another entity under terms specified in a contract.
 - 19) **Lead County:** The county, tribe, or Managed Care Organization that negotiates and enters into the contract with the Provider, typically the county where the provider is

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located. The Lead Agency has the meaning given it in Minnesota Statutes, section 256B.0911, subdivision 1a.

- 20) **Managed Care Organization (MCO):** An entity that has, or is seeking to qualify for, a comprehensive risk contract that is, and that is: (1) a Federally Qualified HMO that meets the advance directives requirements of 42 CFR 489.100-104; or (2) any public or private entity that meets the advance directives requirements and is determined to also meet the following conditions; a) makes the services it provides to its Medicaid enrollees as accessible (in terms of timeliness, amount, duration, and scope) as those services are to other Medicaid Recipients within the area served by the entity, and b) meets the solvency standards of 42 CFR 438.116.
- 21) **Medicaid Management Information System (MMIS):** Claims payment, information management, and retrieval system administered by the Department in a computer format. In Minnesota, Medicaid services are authorized and billed through MMIS under FFS purchase and delivery or through arrangements with Managed Care Organizations under agreement with DHS.
- 22) **MMIS Service Agreement:** Online entry into MMIS that identifies services, provider, and payment information for a person receiving home care or waiver services in FFS purchase and delivery or in arrangements by Managed Care Organizations under agreement with DHS. The MMIS service agreement, completed by the Financially Responsible Agency, identifies and authorizes specific waiver services to be provided and includes for each service: the type of service unit, the cost of a service unit, and the number of units over a specific duration of time. Payments to approved providers will be made according to Minnesota Statutes and procedures. *Note: The MMIS service agreement is merely an integrated component of this contract. Service agreements are not binding contracts and do not carry the full rights and protections available in a Purchase of Service Contract.*
- 23) **Person:** Individual who meets eligibility requirements specific to federal and state-funded health care programs to participate in such programs; the person determined to be eligible and authorized to receive waiver or Alternative Care services.
- 24) **Provider:** Party from which services are purchased. May also be referred to as Contractor.
- 25) **Purchased Services:** Outcome-based services authorized on an MMIS Service Agreement or authorized by a Managed Care Organization that are provided in response to the eligible person's identified needs as specified in their individual plan, based upon the needs and preferences of the person and the person's personal goals, and which are consistent with the principles of most inclusive environment, self-determination, and other rights of the person.
- 26) **Reimbursement for Overhead Expenses due to Residential Absence:** Full calendar days(s) days when a person is not in the residential setting. Examples of residential absence include days when the person is absent from the residence due to hospitalization, crisis services, home visits, vacation days, and therapeutic leave. Medicaid policy permits payment only for services actually provided to an eligible person, which does not include residential absence. (See the Disability Services Program Manual on Reimbursement for Overhead Expenses due to Residential Absence for more information.)
- 27) **Spendedown:** The amount a Medicaid recipient is responsible to pay toward their Medicaid services on the first day that they are eligible for such services.

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- 28) **State:** The State of Minnesota or an agency thereof, as determined by the context of the specific provision of this Contract to which it relates.
- 29) **Subcontractor:** Individual or a company that signs a contract to perform part or all of the obligations of the Provider's contract.
- 30) **Third-Party Beneficiary:** Individual or entity recognized as having enforceable rights created in them under a contract to which they are not parties as addressed in Minnesota Rules, part 9525.1870, subpart 2.
- 31) **Brain Injury (BI) Waiver:** Provides funding for home and community-based services necessary as an alternative to institutionalization that promote the optimal health, independence, safety and integration of children and adults with an acquired or traumatic brain injury who meet the waiver eligibility criteria and who would otherwise require the level of care provided in a nursing facility or a neurobehavioral hospital.
- 32) **Units of Service:** Defined period of time, including the following: per day, per partial day, per hour, per month, per 30 minutes, per 15 minutes, per occurrence; or a flat rate; or as identified in the Minnesota Health Care Programs Provider Manual (HCBS Waiver Services).
- 33) **Waiver Obligation:** People with income equal to or less than the Special Income Standard (SIS) are eligible for EW without a Medical Assistance spenddown. They must contribute any income over the Maintenance Needs Allowance and other applicable deductions to the cost of services received under EW.

3. PURCHASE OF SERVICE(S)

- A) **Description of Services:** The Provider shall provide services detailed in Attachment(s) A and B, entitled "Purchased Services," which is attached and incorporated into this Contract by reference. All Purchased Services must be specified in the person's community support plan and authorized by the Financially Responsible Agency.
 - 1) All parties to this Contract agree to provide Purchased Services as specified in the person's Community Support Plan and as authorized by the Financially Responsible Agency. Purchased Services must comply with applicable Minnesota Statutes, Minnesota Rules, and federally approved Minnesota waiver plans. The Community Support Plan is incorporated by reference into this Contract.
 - 2) This Contract may serve as a Lead County contract for services purchased by other Financially Responsible Agencies, including Managed Care Organizations and Tribes.
 - 3) This Contract may be accessed as a Lead County Contract under applicable Minnesota law, rules and/or at the Lead County's discretion. If accessed as a Lead County contract, the Provider shall abide by the terms of this Contract. Such Financially Responsible Agencies that access the Lead County contract shall be financially responsible under the terms of this Contract for those persons they authorize for and are subject to statutory or other restrictions in the lead county contract.

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- 4) The Lead County shall monitor the terms of this Contract and shall make available copies of this Contract upon request of Financially Responsible Agencies. Financially Responsible Agencies may complete an addendum or amendment to this contract with the permission of all parties involved.
- 5) Nothing in this Contract shall be construed as requiring the Provider to continue to provide services for any eligible person upon cessation of the contract, or as requiring the Financially Responsible Agency to continue to purchase services for any eligible person upon cessation of the contract.
- 6) Waiver funds may not be used for room and board costs except when provided as part of respite care furnished in certain licensed facilities as identified in the federally approved waiver plan.
- 7) Incident reports will be submitted to the Lead County as well as the Financially Responsible Agency as specified in the person's community support plan as requested by the Financially Responsible Agency. Reports will be in a format approved by the Lead County. License holders must follow Minnesota Statutes, section 245B.05, subdivision 7 when incidents occur.
- 8) The Provider agrees to participate in team meetings related to the person as initiated or as requested by the team or the individual.

4. ELIGIBILITY FOR SERVICES

- A) The parties understand and agree that the Financially Responsible Agency shall have the responsibility of determining the eligibility of the person to receive Purchased Services in accordance with the eligibility criteria established by applicable Minnesota Rules and federally approved state waiver plan requirements, and under MN Statute 256B.0913.
- B) When the Financially Responsible Agency has determined the person is no longer eligible to receive services or that services are no longer needed or appropriate, the Financially Responsible Agency shall notify the person or the person's legal representative in writing of the proposed termination, denial or reduction of services within ten (10) business days prior to the Financially Responsible Agency's proposed date of action. The Financially Responsible Agency shall also notify the Provider within ten (10) business days of the determination.
- C) The Financially Responsible Agency shall also provide information regarding the person's right to appeal the proposed Financially Responsible Agency's action as provided under Minnesota Statutes, section 256.045.

5. PAYMENT RATES FOR PURCHASED SERVICES

- A) **Total Cost of the Contract.** The total amount to be paid pursuant to this Contract shall not exceed the compensation due for the amount of services authorized and actually delivered. The Lead County or any other Financially Responsible Agency does not guarantee to purchase any minimum amount of services under this Contract.

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- B) **Payment Rates.** The Provider shall be paid for authorized and delivered services as agreed to by the parties of this Contract. Rate setting authority originates from this Contract and not from MMIS Service Agreements. Rates as agreed to in this Contract must agree and be accurately reflected in MMIS. Rate schedules attached to this agreement via Attachment(s) C are incorporated into this Contract by reference herein and are deemed part of this Contract.
1. No advance payments will be made under this Contract.
 2. Payment for residential absence is not permitted through the BI, CAC, CADI, DD or EW waivers and AC. The Provider's payment rate in 5.B may, however, include overhead expenses of days when a person is away from a residence. (See the Disability Program Services Manual on Reimbursement for Overhead Expenses due to a Residential Absence for a list of affected waiver services and for acceptable ways to include absences in overhead expenses.)
 3. If the Minnesota Legislature approves a rate increase, requires a rate decrease, or makes any other changes to the reimbursement rates for any service included in this Contract, the new rate shall be in effect under this Contract.
 - a. The Lead County will send the Provider a written confirmation of the new rate. If the Financially Responsible Agency has accessed the Lead County contract and amended the rates, it will send the provider notices.
 - b. The Provider agrees to abide by any conditions imposed upon the use of increased funds that may be established by law or direction from the State of Minnesota, Department of Human Services.
 - c. Any interpretation pertaining to eligibility for a rate change as well as the exact amount of the rate change shall be subject to applicable law, rule, or regulation and shall be consistent with guidelines developed by the State of Minnesota and the Lead County.
 4. The Lead County may allow the Provider to negotiate the rate it will charge for some services, subject to MMIS rate limits. The Provider must provide sixty (60) calendar days written notice to the Lead County, eligible persons, and responsible parties to change rates as required by individual service needs. Existing eligible person's service authorizations continue at the previous rate for the duration of the authorization unless the Lead County agrees otherwise. Rate changes must be approved by the Lead County prior to being implemented.
 - a. The 60-day written notice, as described in 5B (4), will be waived in cases of emergency or extenuating circumstances. In such cases, the Provider must provide the Lead County with reasonable notice in order to change rates. Timeliness of the notice will be determined by the Lead County.

6. METHODS OF BILLING

A) Billing MMIS for Purchased Services

- 1) The Provider shall submit invoices to the State of Minnesota following the policies and procedures established for payment of Minnesota Health Care Program services,

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as set forth in Minnesota Statutes, section 256B.064; Minnesota Rules, chapter 9505, and the Minnesota Health Care Program Provider Manual.

- 2) In the event that services provided to eligible persons may be reimbursed by private health insurance, Long Term Care Insurance, Medical Assistance State Plan services, or Medicare, the Provider shall bill such third parties before billing home and community-based services and the State of Minnesota.
- 3) The Provider agrees to notify the State of Minnesota if full or partial payment is received from any source other than this Contract for any eligible person also paid by the State. In such cases, the Provider shall return to the State any duplicate payment made by the State for such eligible persons.
- 4) The parties understand and agree that the Provider will have sole responsibility for the collection of other fees or revenues, with the exception of Alternative Care fees. Further, the parties agree that the Lead County or other Financially Responsible Agency shall accept no responsibility for the collection or subsidization of bad debts related to other revenue for Purchased Services.
- 5) The Provider shall bill consistent with applicable Minnesota Rules in effect at the time the service was performed.
- 6) The Provider will bill only for services actually delivered and only for days when services were actually delivered. Providers may not bill for days a person is absent from his or her residence.

B) Billing the Financially Responsible Agency for Authorized and Purchased Services

- 1) The Provider shall submit billing invoices within thirty (30) calendar days after Purchased Services have been delivered to eligible persons. Invoices shall be submitted to the Financially Responsible Agency in a format and according to a process communicated by the Financially Responsible Agency.
- 2) The Financially Responsible Agency will make payment within thirty (30) calendar days from the receipt of the invoice. If the invoice is incorrect, defective or otherwise improper, the Financially Responsible Agency will notify the Provider within ten (10) working days of receiving the incorrect invoice. Upon receiving the corrected invoice, the Financially Responsible Agency will make payment within thirty (30) calendar days.
- 3) The Provider shall prepare an invoice for any other Financially Responsible Agency paying for an eligible person in cases where the Lead County under this contract is not the Financially Responsible Agency for an individual.
- 4) In the event that services provided to eligible persons may be reimbursed by private health insurance, Long Term Care Insurance, Title XIX Medical Assistance, or Medicare, the Provider shall bill such third parties before billing home and community-based services and the State of Minnesota.
- 5) The Provider agrees to notify the Financially Responsible Agency if full or partial payment for Purchased Services is received from any other source for any eligible person when those Purchased Services were also paid for by the Financially Responsible Agency. In such cases, the Provider shall return to the Financially Responsible Agency any duplicate payment made by the Financially Responsible Agency for such eligible persons.
- 6) The parties understand and agree that the Provider will have sole responsibility for the collection of other fees or revenues, with the exception of Alternative Care fees. Further, the parties agree that the neither the Lead County nor any other Financially

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Responsible Agency shall have responsibility for the collection or subsidization of bad debts related to other revenue for Purchased Services.

- 7) The Provider will bill consistent with Minnesota Rules, part 9525.0950, subpart 1, or in effect at the time the service was performed.
- 8) The Provider agrees not to include in the charges for services any administrative or program cost assignable to private pay or third-party pay service recipients.
- 9) The Provider will bill only for services actually delivered.

7. DISCONTINUATION/TERMINATION OF SERVICES FOR INDIVIDUALS

- A) **Provider Inability to Provide Services.** The Provider shall, within no more than ten (10) business days of its determination, notify the Financially Responsible Agency of its determination that it is unable to, or will be unable to, provide the required quality or quantity of Purchased Services for an individual person.
 - 1) A transition plan must be developed with the person's case manager/care coordinator. The Financially Responsible Agency will implement the transition plan within the subsequent twenty (20) calendar days of notification of inability to provide services.
- B) **Safety of the Person.** If the Lead County or other Financially Responsible Agency has sufficient reason to believe that the safety or well-being of a person receiving services may be endangered by actions of the Provider, its agent and/or employees, the Lead County or other Financially Responsible Agency may require that the Provider immediately terminate providing services to the person. The Lead County or other Financially Responsible Agency may also remove the person from the care of the Provider. These actions may be taken forthwith and may continue for such a period as is reasonably necessary for the Lead County or other Financially Responsible Agency to determine that the safety and well-being of the person has been assured. If it is determined that the safety and well-being of the person will remain in jeopardy, the Financially Responsible Agency may terminate the MMIS Service Agreement for a specific individual. No payments shall be made for the period during which services are suspended or terminated. In the event of such suspension or termination, the Provider shall be entitled to payment, determined on a pro rata basis, for the work or services satisfactorily performed.
- C) **Notice of Discharge/Termination.** The Provider agrees to give at least a 30-day written notice to the Financially Responsible Agency, the person to be discharged, and the person's responsible party or legal representative whenever the Provider proposes to discharge or terminate service(s) to a person who has received services, unless other legal requirements impose a longer notice period, in which case the longer notice period applies. This notice of action must include the specific grounds for termination and document attempts to address those reasons with the Financially Responsible Agency. The Provider shall not terminate services or discharge a person before giving such notice or before the proposed date unless delay would seriously endanger the health, safety, or well-being of the person or others. This includes the provider terminating service(s) to a person because of non-payment of an EW Waiver Obligation or Medical Assistance Spenddown.

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- D) **Written Procedures.** The Provider agrees to establish and provide to the Lead County and Financially Responsible Agencies written procedures for terminating services to a person. The written procedures shall include provision for notification of the case manager, the person to be discharged, and the person's responsible party or legal representative. The written procedures shall state that the Provider will assist the Financially Responsible Agency to ensure a smooth transition to other services. A written summary of information and transfer of records will be included in the procedures.

8. PROVIDER QUALIFICATIONS AND TRAINING

- A) The Provider agrees to use only qualified personnel to provide any Purchased Services. If licensing or certification is a necessary prerequisite for provision of services, the Provider shall ensure that personnel are properly licensed or certified and meet standards described in the applicable federally-approved state waiver plans.
- B) The Provider agrees to provide or arrange for staff training as required in Minnesota Statutes and Minnesota Rules, in compliance with training requirements under Minnesota waiver plans and as specified in the respective individual plan of each person served under this Contract, or if the Financially Responsible Agency has additional training requirements as per the individual support plan. A copy of the staff-training plan shall be provided to the Lead County and to other persons as requested. Upon Lead County or Financially Responsible Agency's request, the Provider shall provide a copy of records that show that the training plan has been implemented.
- C) The Provider agrees to maintain at all times during the term of this Contract a process whereby its current and prospective employees and volunteers, who will have direct contact with persons served by the program or its services, will consent to a background study under Minnesota Statutes, Chapter 245C. The Provider agrees to ensure that employees and volunteers who have direct contact with persons served by its program or services are supervised or removed from direct contact to access to persons receiving its services as required under Minnesota Statutes, Chapter 245C.13.
- D) All persons 18 years and older under this current contract categorically fall under the definition of Vulnerable Adults as defined in Minnesota Statutes, section 626.5572. Providers must follow all reporting requirements as defined in Minnesota Statutes, section 626.557. Providers must also show that staff training is completed in the areas that must be reported, local common entry point contacts, and follow-up within the Provider agency.
- E) Providers who provide services to persons under the age of 18 must comply with the Maltreatment of Minors reporting requirements as defined in Minnesota Statutes, section 626.556.

9. STANDARDS AND LICENSES

- A) The Provider represents that it is and will remain qualified and licensed to provide the Purchased Services in accordance with the applicable provisions of Minnesota Rules,

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Minnesota Statutes, federally-approved Minnesota state waiver plans, and during the term of this Contract.

- B) The Provider agrees to inform the Lead County or other Financially Responsible Agency who has authorized services under this contract of the following within five (5) business days after occurrence:
- 1) Any changes in licensure status and/or any reported warning to suspend or revoke licensure status.
 - 2) Any allegations and/or investigation by a government agency of fraud or criminal wrongdoing.
 - 3) Any federal exclusion of an individual or entity as described in Section 11 of this Contract or any conviction that could result in a federal exclusion.
- C) The Provider agrees to comply with all federal, state, county and local laws, regulations, ordinances, rules, and certifications as pertaining to the facilities, programs, and staff for which the Provider in the performance of its obligations under the Contract is responsible during the term of this Contract. This will include, but will not be limited to, current health, fire marshal, and program licenses, zoning standards, licensing and certification of staff when required under state or federal authority, insurance coverage, and all other applicable laws, regulations, ordinances, rules, and certifications that are effective, or will become effective, during the period of this Contract.
- D) During the term of this Contract, the Provider agrees to comply with all applicable state licensing standards, all applicable accreditation standards, and any other standards or criteria established by the State to ensure quality service.
- 1) Failure to meet such standards may be cause for termination of this Contract. Notwithstanding any other provision of this Contract, such termination may be effective as of the date of such failure.
 - 2) Loss of any applicable license by the Provider shall be cause for termination of this Contract. Notwithstanding any other provision of this Contract, such termination shall be effective as of the date of such loss.
- E) The Provider agrees to provide the Lead County or other Financially Responsible Agency, upon written request, copies of program review surveys or summaries, which may include reports from the Minnesota Department of Human Services or the Minnesota Department of Health, and/or Medicare surveys or summaries, when complete.
- F) The Provider agrees to comply with the U.S. Department of Health and Human Services' Policy Guidance Document entitled "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons". For Medical Assistance-funded services, interpreter costs shall be billed to Medical Assistance. Interpreter costs for non-Medical Assistance services shall be the financial responsibility of the Provider.
- G) In the event that there is a revision of federal regulations, which make services provided under the terms of this Contract or any portion thereof ineligible for federal financial participation, all parties will review the Contract and renegotiate those items necessary to bring the Contract into compliance with the new federal regulations. Refusal to review

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the Contract within seven (7) calendar days of receipt of a written request to bring the Contract into compliance, or failure to cooperate in good faith, shall be cause for termination of this Contract as of the date when the Contract is out of compliance for purposes of federal financial participation.

- H) In the event that there is a revision of federal, state, or local statutes, rules or other laws, or the federally-approved state waiver language, which make the performance of this Contract or any portion thereof unlawful, all parties will review the Contract and renegotiate those items necessary to bring the Contract into compliance with the law. Refusal to review the Contract within seven (7) calendar days of receipt of a written request to bring the Contract into compliance, or failure to cooperate in good faith, shall be cause for termination of this Contract as of the date when the Contract is out of compliance.

10. RECORD DISCLOSURES

The Provider shall:

- A) Allow personnel of the Lead County or other Financially Responsible Agency accessing the contract, the Minnesota Department of Human Services and/or the Minnesota Department of Health, the Minnesota Medicaid Fraud Control Unit of the Attorney General's Office, the State Auditor's Office, and the U.S. Department of Health and Human Services access to the Provider's facility and records and permit any of the foregoing agencies or entities to copy the Provider's program and fiscal records at reasonable hours to exercise their responsibility to monitor Purchased Services.
- B) Maintain all records pertaining to this Contract at **Chappy's Golden Shores, 530 Park Avenue, Hill City, MN 55748** for six (6) years for audit purposes in accordance with Minnesota Statutes, section 16C.05, subdivision 5. All books, records, documents and accounting procedures and practices of the Provider that are relevant to this Contract are subject to examination by the Lead County or the Financially Responsible Agency accessing the contract, the Department, the U.S. Department of Health and Human Services, and either the Legislative Auditor or State Auditor, as appropriate, for a minimum of six (6) years. The Provider shall promptly notify the Lead County in writing of any changes in the location where its records related to this Contract are stored or maintained.
- C) Comply with policies of the Minnesota Department of Human Services regarding social services recording and monitoring procedures, and maintenance of health service records for services rendered to persons.

11. AUDIT, REPORTS AND EVALUATIONS

- A) The Lead County shall establish procedures and timelines to monitor and evaluate the Provider's performance under this Contract. Lead County procedures for monitoring and evaluating may include, but are not limited to, on-site visits to the Provider's facility; review of personnel files; review of the Provider's financial, statistical and program

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records; review of reports and data supplied by the Provider at the Lead County's request; and expense budgets.

- B) The Provider shall provide the Lead County with reports as the Lead County may from time to time reasonably require, including but not limited to, the following: *[Please check the applicable box(es) below and have both parties mark their initials next to those that apply.]*
- 1) **Audit:** While no independent audit is required, if the Provider has had an independent audit or audit review done, the Provider will make available to the Lead County, within thirty (30) calendar days of the Lead County's written request, a copy of any completed independent audit and auditor's management letter or completed audit review.
 - 2) **Physician Orders** that include orders for the types of services provided, as required in the Disability Services Program Manual (DSPM) and the Minnesota Health Care Programs (MHCP) Provider Manual, as applicable.
 - 3) A written **Program and Statistical Report** in a form approved or provided by the Lead County within thirty (30) calendar days of the end of each quarter.
 - 4) **Revenue and Expense Report** (also known as an Income Statement or Profit and Loss Statement) to be submitted Quarterly or Monthly or Annually or Upon contract renewal, within thirty (30) calendar days after the end of each period, unless otherwise indicated by the Lead County.
 - 5) **Balance Sheet** to be submitted Quarterly or Monthly or Annually or Upon contract renewal, within thirty (30) calendar days after the end of each period, unless otherwise indicated by the Lead County.
 - 6) **Expense Budget** Site-specific Program-specific, to be submitted Quarterly or Monthly or Annually or Upon contract renewal, within thirty (30) calendar days after the end of each period, unless otherwise indicated by the Lead County.
 - 7) Other: Business records only upon special request
- C) If the collection of fees is delegated to the Provider, the Provider agrees to provide the Lead County or other Financially Responsible Agency with information about the fees collected and the fee source.
- D) The Provider shall, upon reasonable notice, meet with Lead County personnel to assist the Lead County in evaluating Purchased Services outcomes.
- E) The Provider shall develop procedures for monitoring and evaluating the achievement of goals and objectives identified in the community support plan and shall submit progress reports at least annually for each person or as identified in the community support plan. The Provider agrees to develop reports that will contain sufficient specificity to enable the Lead County or Financially Responsible Agency to monitor and evaluate the person's achievement of goals and objectives stated in the person's community support plan.
- F) If applicable, the Provider shall provide quarterly incident reports for persons under public guardianship to the Financially Responsible Agency case manager, the person, and the person's legal representative.

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- G) The Provider shall provide the Lead County or other Financially Responsible Agency authorizing services under this contract, with such information regarding the qualifications of its staff, including professionals, volunteers, and others, as requested by the Lead County or other Financially Responsible Agency, to verify that the present and subsequent services are being rendered by competent, trained, qualified, and properly licensed or certified personnel as described in the Disability Services Program Manual (DSPM) and the Minnesota Health Care Programs (MHCP) Provider Manual, as applicable.
- H) The Provider shall ensure that neither it nor any of its owners, managers, or employees or its subcontractors; nor the owners, managers, or employees of the subcontractors assigned to provide services pursuant to this Contract have been debarred or excluded from Medicaid or any other federally-funded health care program under the provisions of the Social Security Act, 42 USC 1320a-7. If the Provider learns of any such debarment or exclusion, the Provider shall immediately notify the Lead County and Financially Responsible Agency authorizing services under this contract in writing and immediately take steps to stop the debarred or excluded individual from performing further services under this Contract

12. SAFEGUARD OF INFORMATION

- A) The Provider agrees to comply with the terms of Minnesota Statutes, Chapter 13, the Minnesota Government Data Practices Act, and all other applicable Minnesota laws, in handling all data related to this Contract. In addition, the Provider agrees to comply with all applicable federal privacy laws.
- B) The business director/owner Keith M. Olson or his/her successor Theresa L. Olson shall be the designated authority in charge of all data collected, used, or disseminated by the Provider in connection with the performance of this Contract in compliance with the Minnesota Government Data Practices Act, Chapter 13.
- C) The Financially Responsible Agency shall ensure that a joint Release of Information document is completed prior to providing private information to the Provider in accordance with Minnesota Rules, Parts 1205.0100 to 1205.2000.
- D) The Lead County and other Financially Responsible Agencies are covered entities under the Health Insurance Portability and Accountability Act (HIPAA). To the extent that the Provider performs a function or activity involving the use of "protected health information" (Code of Federal Regulations, Title 45, section 164.501), on behalf of the Lead County and other Financially Responsible Agencies, including, but not limited to, providing health care services; health care claims processing or administration; data analysis, processing or administration; utilization review; quality assurance; billing; benefit management; practice management; repricing; or otherwise provided by 45 CFR, section 160.103, the Provider shall comply with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR, parts 160-164), (collectively referred to as "HIPAA"), and all applicable requirements.

HOME AND COMMUNITY-BASED WAIVER SERVICES CONTRACT

INSERT DESIGNEE'S NAME

Keith M. Olson

- E) The Provider agrees to defend, indemnify, and hold harmless the Lead County and other Financially Responsible Agencies authorizing services under this contract, its agents, officers, and employees from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act or HIPAA, including any legal fees or disbursements paid or incurred to enforce the provision of this article of the Contract.

13. EQUAL EMPLOYMENT OPPORTUNITY, CIVIL RIGHTS AND NON-DISCRIMINATION

- A) The Provider agrees to comply with the Civil Rights Act of 1964, Title VII (42 USC 2000e); including Executive Order No. 11246, and Title VI (42 USC 2000d); and the Rehabilitation Act of 1973 as amended by Section 504; Minnesota Statutes, section 363A.02; and all applicable federal and state laws, rules, regulations and orders prohibiting discrimination in employment, facilities and services. The Provider shall not discriminate in employment, facilities, and in the rendering of Purchased Services hereunder on the basis of race, color, religion, age, gender, sexual orientation, disability, marital status, public assistance status, creed, or national origin.
- B) To the extent applicable, the Provider certifies that it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes, section 363A.36. This section applies only if the Contract is for more than \$100,000 and the Provider has employed 40 or more employees within the State of Minnesota on a single working day during the previous 12 months.
- C) It is the Financially Responsible Agency accessing services under this contract or Lead County's policy that all Providers desiring to do business with the Financially Responsible Agency or Lead County adhere to the principles of Equal Employment Opportunity and Affirmative Action. This requires not only that Providers do not unlawfully discriminate in any condition of employment on the basis of race, color, gender, sexual orientation, religion, national origin, age or disability, but that they also take affirmative action to ensure positive progress in Equal Opportunity Employment.

14. FAIR HEARING AND GRIEVANCE PROCEDURES

- A) The Financially Responsible Agency is responsible to refer a person's request for a fair hearing and grievance procedure to the Department in conformance with Minnesota Statutes, section 256.045 and in conjunction with the Fair Hearing and Grievance Procedures established by the administrative rules of the Department.
- B) The Financially Responsible Agency will advise applicants and eligible persons of their rights to a fair hearing in the appeal process, including, but not limited to, their right to appeal a denial or exclusion from the program or failure to recognize an eligible person's choice of service and of his or her rights to a fair hearing in these respects.

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15. BONDING, INDEMNITY, INSURANCE AND AUDIT CLAUSE

- A) **Bonding:** The Provider will be required to maintain at all times, during the term of this Contract, a fidelity bond or insurance coverage for employee dishonesty with a minimum amount of \$50,000 covering the activity of each person authorized to receive or distribute monies under the term of this Contract. A copy of the Provider's bond or insurance certificate shall be delivered to the Lead County at the beginning of this Contract term and on an annual basis thereafter.
- B) **Indemnity:** The Provider agrees that it will at all times defend, indemnify, and hold harmless, the Department of Human Services and the Lead County or Financially Responsible Agency against any and all liability, loss, damages, costs and expenses which the Department, Financially Responsible Agency, or Lead County may hereafter sustain, incur, or be required to pay:
- 1) By reason of any applicant or eligible person suffering bodily or personal injury, death, or property loss or damage either while participating in or receiving the care and services to be furnished under this Contract, or while on premises owned, leased, or operated by the Provider, or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for by the Provider or any officer, agent, or employee thereof; or
 - 2) By reason of any applicant or eligible person causing injury to, or damage to, the property of another person, during any time when the Provider or any officer, agent, or employee thereof has undertaken or is furnishing the care and services called for under this Contract; or
 - 3) By reason of any negligent act or omission or intentional act of the Provider, its agents, officers, or employees which causes bodily injury, death, personal injury, property loss, or damage to another during the performance of Purchased Services under this Contract.
- C) **Insurance:** The Provider further agrees, in order to protect itself as well as the Department, the Lead County, and other Financially Responsible Agencies under the indemnity contract provision set forth above, it will at all times during the term of the Contract, and beyond such term when so required, have and keep in force a general liability insurance policy. Adult family foster care providers and child family foster care providers who are covered by the DHS-purchased liability policy for these providers are exempt from this insurance requirement as long as the DHS-purchased insurance is in force.
- D) The Provider will make a good-faith effort to purchase occurrence-based liability insurance. If the Provider cannot afford or find an occurrence-based liability policy, the Provider may substitute a claims-made liability policy at the same coverage levels required in Paragraph 15.E and with extended reporting-period coverage for at least one full year following the end of the term of the claims-made policy.

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- E) This liability insurance policy will meet the limits as shown below or be equal to the tort liability limits under Minnesota Statutes, section 3.736, subdivision 4, whichever is greater:
1. Effective July 1, 2009: Five Hundred Thousand Dollars (\$500,000) for bodily injury or property damage to any one person and One Million Five Hundred Thousand Dollars (\$1,500,000) for total injuries or damages arising from any one occurrence.
- F) The Department of Human Services, Lead County, and Financially Responsible Agency must all be listed as additional insured, and the Lead County shall be sent a current certificate of insurance on an annual basis. The certificate must show that the Lead County will receive thirty (30) calendar days' prior written notice in the event of cancellation, nonrenewal, or material change in the described policy.
- G) If the Provider is unable to obtain the required insurance coverage, or if the coverage is cancelled during the term of this Agreement, the Provider must notify the Lead County contract manager (or the contract manager's designee) by telephone or e-mail the same business day as the Provider receives notice of cancellation or inability to obtain coverage. The Provider shall also provide written notice to the Lead County contract manager within five (5) business days. The Provider shall make immediate good faith efforts to obtain or replace the coverage in the open market. If such efforts are unsuccessful, the Provider shall apply to the Minnesota Joint Underwriting Association for the insurance coverage. Failure to maintain required insurance coverage shall be considered an event of default pursuant to this Agreement.
- H) The Provider must also maintain worker's compensation insurance per Minnesota statutory requirements. If applicable, the Provider must also maintain professional liability insurance with a minimum aggregate amount of \$1,000,000.

16. CONDITIONS OF THE PARTIES' OBLIGATIONS

- A) The Provider agrees to inform the Lead County within ten (10) business days of changes in its address, ownership, organizational structure, board of director membership, and/or chief operating officers.
- B) The Provider will also inform the Financially Responsible Agency within ten (10) business days of any reductions in staffing levels or in staff qualifications that affect the person's health and safety, result in loss of needed expertise to meet the person's care requirements, or result in overpayment for Purchased Services; or such instances where the Provider is no longer able to deliver the agreed services prior to the effective date or during the term of this Contract.
- C) It is understood and agreed that in the event funding to the Financially Responsible Agency from state and federal sources is not obtained and continued at a level sufficient to allow for the purchase of the indicated quantity of Purchased Service for an individual, the obligations of each party hereunder shall be terminated.

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- D) Before the end date of the Contract period, as specified in the recitals to this Contract, the Lead County may evaluate the contract performance of the Provider and determine whether such performance merits renewal of this Contract. No automatic renewals are permitted. Any agreement to renew this Contract shall be in writing and must be signed by authorized representatives of the parties.
- E) The Financially Responsible Agency will reimburse the Provider only for services specified in this Contract that have been authorized and delivered.
- F) If the Financially Responsible Agency or Lead County determines that funds are not being administered in accordance with the approved service plan and budget or that services are not being properly provided according to the terms of this Contract, the Lead County may terminate this Contract for cause after notice has been provided to the Provider or the Provider's designated representative, according to Section 21 of this Contract.

17. SUBCONTRACTING

- A) The Provider shall not enter into subcontracts for performance of any of the services contemplated under this Contract nor assign any interest in the Contract without the prior written approval of the Lead County and subject to such provisions as the Lead County may, in its sole discretion, deem necessary.
- B) All subcontracts must contain provisions that make all Subcontractors subject to all of the requirements of this Contract.
- C) The Provider must ensure that any and all subcontracts to provide services under this Contract contain the same language appearing in under Section 26 below, "Department of Human Services as Third-Party Beneficiary."
- D) Notwithstanding the Lead County's approval of any subcontract, the Provider agrees that it will be responsible for ensuring that the performance of any Subcontractor is in compliance with the subcontract, this Contract, and Minnesota Rules, part 9525.1870, subpart 3.

18. INDEPENDENT CONTRACTOR

- A) Nothing contained in this Contract is intended or should be construed as creating the relationship of copartners or joint ventures with the Lead County or other Financially Responsible Agency or the Department. The Provider is to be and shall remain an independent contractor with respect to all services performed under this Contract.
- B) The Provider represents that it has, or will secure at its own expense, all personnel required in performing services under this Contract.
 - 1) Any and all personnel of the Provider or other individuals, while engaged in the performance of any work or services required by the Provider under this Contract shall have no contractual relationship with the Lead County or other Financially Responsible Agency and shall not be considered employees of the Lead County or other Financially Responsible Agency.
 - 2) All claims that may or might arise under the Minnesota Unemployment Insurance Law in Minnesota Statutes, Chapter 268 or the Workers' Compensation Act in

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Minnesota Statutes, Chapter 176 on behalf of said personnel arising out of employment or alleged employment, including without limitation, claims of discrimination against the Provider, its officers, agents, contractors, or employees, shall in no way be the responsibility of the Lead County or other Financially Responsible Agency.

- 3) The Provider shall defend, indemnify, and hold the Lead County and other Financially Responsible Agencies, their officers, agents, and employees harmless from any and all such claims irrespective of any determination of any pertinent tribunal, agency, board, commission, or court.
- 4) Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the Lead County or other Financially Responsible Agency, including without limitation tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment insurance, disability, severance pay, and Public Employees' Retirement Association.

19. DISCLOSURE

- A) The Provider agrees to make such disclosures of ownership and control information to the Lead County as is required by 42 CFR, sections 455.100 to 455.106.

20. DEFAULT

- A) **Unforeseeable Acts or Events (Force Majeure):** Neither party shall be liable to the other party for any loss or damage resulting from a delay nor failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.
- B) **Changes in Policy or Staff:** The Lead County reserves the right to terminate this Contract on ten (10) business days' written notice if the following changes are proposed or have been implemented:
 - 1) Reductions in staffing levels that affect the health or safety of the person or that result in loss of needed expertise, or
 - 2) Such instances where the Provider, in the Lead County's sole discretion, is no longer able to deliver the services agreed to prior to the effective date or during the term of this Contract.
- C) **Default by Provider:** Unless cured or excused under paragraph 20 (A) or Lead County or other Financially Responsible Agency default, each of the following shall constitute default on the part of the Provider:
 - 1) A written admission by the Provider that it is bankrupt; the filing by the Provider of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Provider unless dismissed within ninety (90) calendar days. The Notice of Default and cure provisions of this Contract do not apply to this paragraph.

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- 2) The making of any arrangement with or for the benefit of the Provider's creditors involving an assignment to a trustee, receiver, or similar fiduciary. The Notice of Default and cure provisions do not apply to this paragraph.
 - 3) Making material misrepresentations either in the documents attached to this Contract or in any other material provision or condition relied upon in the making of this Contract.
 - 4) The Provider disregards laws, ordinances, rules, regulations or orders of any public authority.
 - 5) Failure to perform any other material provision of this Contract.
- D) **Default by Lead County or Other Financially Responsible Agency:** Unless cured or excused by the provision in paragraph 20(A) on Provider default, each of the following shall constitute default on the part of the Lead County or other Financially Responsible Agency:
- 1) Making material misrepresentation either in the attached attachments and documents or in any material provision or condition relied upon in making of this Contract.
 - 2) Failure to perform any other material provision of this Contract.
- E) **Written Notice of Default:** Unless a different procedure and/or effective date is provided within the specific article or paragraph of this Contract under which the default, failure, or breach occurs, no event shall constitute a default giving rise to the right to terminate unless and until written Notice of Default is given to the defaulting party, specifying the particular event, series of events, or failure constituting the default and cure period.
- F) **Cure Period:** If the party in default fails to cure the specified circumstances as described by the Notice of Default within ten (10) business days, or such additional times as may be specified under the terms of this Contract, then the whole or any part of this Contract may be terminated by the non-defaulting party by giving written Notice of Termination to the defaulting party as provided in Section 21 of this Contract.

21. TERMINATION OF CONTRACT

- A) **With or Without Cause:** This Contract may be terminated without cause by either party upon thirty (30) calendar days written notice to the other party. Either party may terminate this Contract for cause by giving ten (10) business days written notice of its intent to terminate to the other party unless the other party cures the default within the 10-day period. Notwithstanding the foregoing, termination based on noncompliance with Section 16, Conditions of the Parties' Obligations, shall occur on the date provided in the written Notice of Termination.
- B) **Termination by Lead County - Lack of Funding:** Notwithstanding any provision of this Contract to the contrary, the Lead County may **immediately terminate** this Contract if it does not obtain funding from the Minnesota Legislature, Minnesota agencies, or other funding sources, or if its funding cannot be continued at a level sufficient to allow payment of the amounts due under this Contract. The Lead County or other Financially Responsible Agency is not obligated to pay for any services performed by Provider after written Notice of Termination for lack of funding is sent to the Provider. The Lead

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County or other Financially Responsible Agency will not be assessed any penalty or damages if the Contract is terminated due to lack of funding.

- C) **Written Notice of Termination:** Notice of Termination shall be made by certified mail or personal delivery to the authorized agent of the party. Notice is deemed effective upon deposit of written notice in the United States Mail, postage pre-paid and addressed to the party authorized to receive notice, as provided in Section 28 of this Contract.
- D) **Duties of Provider Upon Termination:** Upon receipt of a Notice of Termination, and except as otherwise provided, the Provider shall:
- 1) Discontinue performance of this Contract on the date and to the extent specified in the Notice of Termination.
 - 2) Immediately notify all persons who are receiving services pursuant to this Contract.
 - 3) Cancel all orders and subcontracts to the extent that they relate to the performances canceled by the Notice of Termination.
 - 4) Complete performance of such terms as shall not have been canceled by the Notice of Termination.
 - 5) Submit a final invoice for services provided prior to termination, within thirty (30) calendar days of the date of termination.
 - 6) Retain the records of the person for at least five years following the termination of services (Minnesota Statutes, section 245B.07, subdivision 3 and Minnesota Rules, part 9505.2190.)
 - 7) Transfer the person's records to the new Provider of services and work cooperatively with the new Provider until a smooth transition is made.
- E) **Duties of Lead County or Other Financially Responsible Agency Upon Termination:** Upon receipt of a Notice of Termination, and except as otherwise provided, the Lead County or other Financially Responsible Agency:
- 1) Shall not be liable for any services provided after the date of the Notice of Termination, except as stated above or as authorized by the Lead County or other Financially Responsible Agency in writing.
 - 2) Shall, within thirty (30) calendar days of receipt of a final invoice, make final payment for any services satisfactorily provided up through the date of termination in accordance with the terms of this Contract.
- F) **Effect of Termination:** Termination of this Contract shall not discharge any liability, responsibility or right of any party that arises from the performance of or failure to perform the terms of this Contract adequately prior to the effective date of termination.

22. CONTRACT RIGHTS & REMEDIES

- A) **Cumulative Rights:** All remedies available to either party under the terms of this Contract or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- B) **Waiver:** Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be construed to be a

HOME AND COMMUNITY-BASED WAIVER SERVICES CONTRACT

modification of the terms of this Contract unless stated to be such in writing and signed by authorized representatives of the Lead County and the Provider.

C) Damages

- 1) **Duty to Mitigate:** Both parties shall use their best efforts to mitigate any damages that might be suffered by reason of any event giving rise to a remedy hereunder.
- 2) **Breach:** Notwithstanding any other provision of this Contract to the contrary, upon breach of this Contract by the Provider, the Lead County or other Financially Responsible Agency may withhold final payment due the Provider until such time as the exact amount of damages due is determined.

23. CONTRACT ADDITIONS OR MODIFICATIONS

A) **Addendum:** Any addition(s) made to the terms of this Contract must be in writing and will not be effective until it has been either (1) executed or approved by the same parties, or their successors in office, who executed and approved the original Contract, or (2) executed and approved by persons designated by the parties to this contract.

- 1) Any additional provisions that limit or restrict a person's choice or access to services shall be considered invalid.

B) **Amendments:** Any amendment(s) or change(s) made to the terms of this Contract must be in writing and will not be effective until it has been either (1) executed or approved by the same parties, or their successors in office, who executed and approved the original Contract, or (2) executed and approved by persons designated by the parties to this contract.

C) **Assigned Designees:** The designees allowed to execute and approve addendums and/or amendments are identified as:

Thomas Burke, Director
Lead County Designee

and Keith M. Olson
Provider Designee

D) **Contract Complete:** This Contract contains all negotiations and agreements between the Lead County and the Provider. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

24. SEVERABILITY

A) The provisions of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Contract with respect to either party.

25. EXTENSION CLAUSE

A) The parties further understand and agree that this Contract shall be automatically extended for an additional period up to ninety (90) calendar days from the end date of this Contract in the event that a new contract between the parties is desired but not entered

HOME AND COMMUNITY-BASED WAIVER SERVICES CONTRACT

into prior to the expiration date contained in this Contract. The purpose of this extension is to ensure the existence of an uninterrupted contract in the event that a new contract is desired but is unable to be signed by the parties prior to the expiration date of this Contract. In the event that this Contract is extended pursuant to this clause, any change in fees contained in the subsequent contract may be made retroactive to the expiration date of this Contract, by mutual agreement of the parties.

26. DEPARTMENT OF HUMAN SERVICES AS THIRD-PARTY BENEFICIARY

- A) The Provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as a third-party beneficiary, is an affected party under this contract. The Provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to take any appropriate administrative action or sue the Provider for any appropriate relief in law or equity, including but not limited to, rescission, damages, or specific performance, of all or any part of the contract between the Lead County board and the Provider. The Provider specifically acknowledges that the Lead County board and the Minnesota Department of Human Services are entitled to and may recover from the Provider reasonable attorney's fees, costs, and disbursements associated with any action taken under this paragraph that is successfully maintained. This provision shall not be construed to limit the rights of any party to the contract or any other third-party beneficiary, nor shall it be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity. Minnesota Rules, part 9525.1870, subpart 2.

27. MERGER

- A) **Entire Contract:** It is understood and agreed that the entire contract of the parties is contained herein and that this Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof, as well as any previous contracts presently in effect between the Provider and any Lead County relating to the subject matter hereof.

28. NOTICE

- A) **Notice Given Under this Contract:** All notices given by either party to the other party under this Contract shall be delivered to the following representative of the other party, or his/her successor:
- 1) To the Lead County: Notices shall be addressed to AITKIN COUNTY HEALTH AND HUMAN SERVICES, 204 1ST STREET NW, AITKIN, 56431.
 - 2) To the Provider: Notices shall be addressed to **Keith M. and Theresa L. Olson, Chappy's Golden Shores, 530 Park Avenue, Hill City, MN 55748**
 - 3) Each party shall promptly notify the other party in writing of any changes in its designation of the person and location listed in this Section.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

HOME AND COMMUNITY-BASED WAIVER SERVICES CONTRACT

IN WITNESS WHEREOF, Aitkin County and the Provider have executed this Contract as of the day and year first written above:

The Provider, having signed this contract, and the Aitkin County Board of Commissioners having duly approved this Contract on _____, and pursuant to such approval and the proper County officials having signed this Contract, the parties hereto agree to be bound by the provisions herein set forth. Minnesota Statutes 256.0112.

COUNTY OF AITKIN
STATE OF MINNESOTA

Chappy's Golden Shores

Aitkin
County Board of Commissioners

BY: _____
Director

BY: _____
Chairperson of the County Board

Signer's name printed or typed

DATED: _____

DATED: _____

ATTESTED TO:

BY: _____
Director of Aitkin County Health and Human Services

DATED: _____

APPROVED AS TO LEGALITY AND
FORM:

BY: _____
Aitkin County Attorney

DATED: _____

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ATTACHMENTS

- A) The following list of documents herein referred to as "Attachments." There may be amendments that address changes or addenda that address additions to the terms of this Contract. All properly executed attachments are incorporated by reference and are deemed a part of this Contract:

<u>Attachment Number</u>	<u>Title of Document to be Attached</u>	<u>Number of Pages</u>
1)	Attachment A: "Purchased Services" for Disability Waivers	1
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HOME AND COMMUNITY-BASED WAIVER SERVICES CONTRACT

Attachment A

Purchased Services

Home and community-based services administered under the following waivers: Community Alternative Care (CAC), Community Alternatives for Disabled Individuals (CADI), Development Disabilities or Related Conditions (DD), and Brain Injury (BI).

The following are services that the Provider agrees to provide for eligible persons under contract. Descriptions for such services can be found in the Disability Services Program Manual (DSPM). *[Please check and have both parties mark their initials next to those that apply.]*

- | | |
|--|--|
| <input type="checkbox"/> 24-Hour Emergency Assistance | <input type="checkbox"/> In-Home Family Support Services |
| <input type="checkbox"/> Adult Companion Services | <input type="checkbox"/> Independent Living Skills Services |
| <input type="checkbox"/> Adult Day Care Services | <input type="checkbox"/> Independent Living Skills-- TBI Therapies |
| <input type="checkbox"/> Adult Day Care Services Bath | <input type="checkbox"/> Live-in Personal Caregiver Expenses |
| <input checked="" type="checkbox"/> Assisted Living | <input type="checkbox"/> Modifications and Adaptations |
| <input checked="" type="checkbox"/> Assisted Living Plus | <input type="checkbox"/> Night Supervision Services |
| <input type="checkbox"/> Assistive Technology | <input type="checkbox"/> Personal Support Services |
| <input type="checkbox"/> Behavioral Programming | <input type="checkbox"/> Prevocational Services |
| <input type="checkbox"/> Chore Services | <input type="checkbox"/> Residential Care Services |
| <input type="checkbox"/> Consumer Directed Community Supports (CDCS) | <input type="checkbox"/> Respite Care |
| <input type="checkbox"/> Consumer Training and Education | <input type="checkbox"/> Specialist Services |
| <input type="checkbox"/> Crisis Respite | <input type="checkbox"/> Specialized Supplies and Equipment |
| <input type="checkbox"/> Day Training and Habilitation (DT&H) | <input type="checkbox"/> Structured Day Program |
| <input type="checkbox"/> Extended Home Care Services | <input type="checkbox"/> Supportive Employment Services |
| <input type="checkbox"/> Family Training, Education and Counseling | <input type="checkbox"/> Supportive Living Services for Adults |
| <input checked="" type="checkbox"/> Foster Care - Adult | <input type="checkbox"/> Supportive Living Services for Children |
| <input type="checkbox"/> Home Delivered Meals | <input type="checkbox"/> Transitional Services |
| <input type="checkbox"/> Homemaker Services | <input type="checkbox"/> Transportation |
| <input type="checkbox"/> Housing Access Coordination | |

[If there are other services to be provided that are not listed above, check and describe the services below.]

Other:

Other:

Other:

Attachment B

HOME AND COMMUNITY-BASED WAIVER SERVICES CONTRACT

Purchased Services

Home and community-based services administered under the Elderly Waiver (EW) and Alternative Care (AC) program.

The following are services that the Provider agrees to provide for eligible persons under contract. Descriptions for such services can be found in the Minnesota Health Care Programs (MHCP) Provider Manual, Chapter 26A. *[Please check and have both parties mark their initials next to those that apply.]*

- | | |
|--|---|
| <input checked="" type="checkbox"/> 24-Hour Customized Living | <input type="checkbox"/> Home Health Aide Services |
| <input type="checkbox"/> Adult Day Services | <input type="checkbox"/> Home Health Services |
| <input type="checkbox"/> Adult Day Services Bath | <input type="checkbox"/> Homemaker Services |
| <input type="checkbox"/> Adult Companion Services | <input type="checkbox"/> Nutrition Services (AC Program Only) |
| <input checked="" type="checkbox"/> Adult Foster Care | <input type="checkbox"/> Personal Care Assistance Services |
| <input type="checkbox"/> Chore Services | <input type="checkbox"/> Professional Nursing Services |
| <input type="checkbox"/> Consumer Directed Community Supports (CDCS) | <input type="checkbox"/> Residential Care Services |
| <input checked="" type="checkbox"/> Customized Living | <input type="checkbox"/> Respite Care |
| <input type="checkbox"/> Environmental Accessibility Adaptations | <input type="checkbox"/> Specialized Supplies and Equipment |
| <input type="checkbox"/> Family Adult Day Services (FADS) | <input type="checkbox"/> Transitional Services |
| <input type="checkbox"/> Family and Caregiver Training and Education | <input type="checkbox"/> Transportation |
| <input type="checkbox"/> Home Delivered Meals | |

[If there are other services to be provided that are not listed above, check and describe the services below.]

Other:

Other:

Other:

Other:

HOME AND COMMUNITY-BASED WAIVER SERVICES CONTRACT

Attachment C

RATE SCHEDULES

Assisted Living Rates:

See Customized Living Workbook on the DHS website: www.dhs.state.mn.us. Under advanced search type "customized living".

Adult Foster Care Rates:

Adult Foster Care rates are individually negotiated.