

## Suitable Representative Repayment Agreement

This Suitable Representative Contract (“Agreement”) is entered into by and between the Idaho Department of Health and Welfare (hereinafter the “Department”) and \_\_\_\_\_ (hereinafter “Contractor”) for the Contractor’s assistance to the following Client: \_\_\_\_\_.

### RECITALS

Whereas, the Department has entered into a Settlement Agreement in *K.W., et al. v. Armstrong, et al.*, Case No. 3:12-cv-00058-BLW (the “Settlement Agreement”).

Whereas, the Department desires to comply with the Court’s order regarding the Settlement Agreement in Case No. 3:12-cv-00058-BLW.

Whereas, the Court has required the Department reimburse a Targeted Service Coordinator or Service Broker, under the conditions and limitations set forth in the Settlement Agreement, for the representation of a class member during certain reviews of the class member’s Calculated Budget.

Whereas, the Department wishes to engage in this Agreement with the Contractor, pursuant to the Settlement Agreement and as set forth in this Agreement.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained, the parties agree as follows:

1. *Definitions.* As used in this Agreement, the following terms shall have the following meanings:

a. Calculated Budget: the Client’s budget under the DDS Program as calculated by the Department using the budget tool that was the subject of the litigation in *K.W., et al. v. Armstrong, et al.*, Case No. 3:12-cv-00058-BLW.

b. Client: the above identified participant in or applicant to the DDS Program who has undergone the annual eligibility determination or reevaluation process and selected the Contractor to perform Suitable Representative Functions for the Client.

c. DDS Program: the Adult Developmental Disability Services program administered by the Department as part of the Idaho Medicaid program.

d. Trained Suitable Representative: a Suitable Representative who is either a Targeted Service Coordinator or a Support Broker as defined by IDAPA 16.03.10.721.12 and 16.03.13.010.16., and who has taken and successfully completed the suitable representative training provided under the Settlement Agreement.

e. Suitable Representative: any individual chosen by a the Client to assist the Client with Suitable Representative Functions.

f. Suitable Representative Functions: those functions specifically noted in the Settlement Agreement and as limited by the Settlement Agreement and this Agreement, performed by the Contractor for the Client.

2. *Reimbursement Terms*. The Department shall reimburse the Contractor for Suitable Representative Functions under the following limitations.

a. The Department will reimburse:

1. Up to thirty-two (32) units per Calculated Budget appeal in connection with the Client's initial Calculated Budget determination or Calculated Budget determination for purposes of annual redetermination, billable for an assigned initial referral commencing from the Contractor's first contact with the Client. In case of documented attempts by the Contractor to contact the Client that resulted in initial referral closure due to inability to establish or maintain contact with the Client, the Department will pay one (1) unit. Following initial contact, appeal assistance will commence with the first fifteen (15) minute unit of billable activity. Appeal assistance services include, but are not limited to:

- i. Helping the Client submit an Appeal Request Form to begin the process to appeal the Client's Calculated Budget.
- ii. Helping the Client prepare for Informal Review, Extended Informal Review, and Fair Hearings for Calculated Budget appeals.
- iii. Participating in an Informal Review, Extended Informal review, Fair Hearing, or one or more of these reviews or hearings, to advocate for the Client regarding the Client's Calculated Budget.
- iv. Planning an organized case presentation for the Client's Fair Hearing regarding the Client's Calculated Budget, including:
  - (1) Gathering appropriate information and documents,
  - (2) Recruiting and preparing witnesses for hearing,
  - (3) Preparing and introducing exhibits.

2. Reimbursement for units exceeding the standard thirty-two (32) units will be approved by the Department if it determines that the request for additional units complies with the terms for suitable representation reimbursement in Section V.B.4.c of the Settlement Agreement. The Department may consider, but is not limited to, the following factors in making its determination:

- i. The Department verifies that the services requested are within this Agreement and have been identified with specificity; and
- ii. The requested units involve services reasonably provided considering, but not limited to, the following factors:
  - (1) The novelty and difficulty of the issues involved in the Calculated Budget appeal;
  - (2) The number of witnesses testifying, exhibits presented and length of the fair hearing;
  - (3) Unusual or unique difficulties in preparing for the hearing, including obtaining documents relevant to presentation of the participant's case, securing witnesses with relevant testimony, or communicating effectively with the Client, the Client's guardian, and members of the Client's person centered planning team or circle of supports;

- (4) The services and time that other Suitable Representatives have been compensated for Calculated Budget appeals involving comparable issues, difficulty, or complexity; and
  - (5) The time spent by the Department on the particular Calculated Budget appeal subject to the request.
- iii. The Department may limit its approval to less than all hours requested.
  - iv. If the Department approves less than all hours requested, it will provide the Contractor with the reasons for approving less than all hours requested.
- b. The Department will not pay under subsections a.1 and a.2 for any of the following:
- 1. Missed appointments,
  - 2. Travel in connection with providing services,
  - 3. Attending training,
  - 4. Transporting participants in connection with providing services,
  - 5. Documenting services.
- c. The Department will pay under this Agreement only if the following conditions are satisfied:
- 1. The Contractor has agreed to, and is in compliance with, the terms of this Agreement at the time that payment is requested; and
  - 2. The Contractor has submitted a signed, complete and accurate invoice in the form of Appendix 2 to the Department for services covered under this Agreement; and
  - 3. The Contractor has documented and identified on the invoice, for the Client: the specific services performed, the individual dates of each service, and the amount of time spent on each service; and
  - 4. The Department verifies that the services are within this Agreement and that such services have been documented completely, accurately, and with specific information that identifies the services rendered and the amount of time spent on each activity for that service.
- d. Appeal assistance provided for an appeal not related to the Client's Calculated Budget is not reimbursable as a Suitable Representative Function.
- e. Services provided prior to the effective date are subject to reimbursement hereunder if all requirements of this Agreement are otherwise satisfied and the services for which reimbursement is sought were provided after the Contractor is a Trained Suitable Representative.
- f. Contractor shall only request payment for allowable units upon completion of the first billable fifteen (15) minute unit.
- g. Billing units shall be calculated under the following table :

<b># of Service Minutes Provided</b>	<b>Billing Units</b>
0 to 7	0
8 to 21	1
22 to 36	2
37 to 52	3
53 to 67	4
68 to 82	5
83 to 96	6
97 to 113	7

3. *Payment Rates.* The Department will pay and the Contractor, if a Targeted Service Coordinator, up to **\$386.80** and, if a Service Broker, up to **\$149.76**. Units shall be paid at the following cost per unit for the items set forth below:

<b>Item</b>	<b>Unit</b>	<b>Cost/Unit</b>
Appeal assistance services outlined in this Agreement and performed by a Targeted Service Coordinator who has completed the Suitable Representative training.	15-minute increment	\$12.09
Appeal assistance services outlined in this Agreement and performed by a Support Broker who has completed the Suitable Representative training.	15-minute increment	\$4.68

The Contractor shall keep, maintain, and submit necessary documentation of the Suitable Representative Functions to support billing for services under this Agreement, in accordance with Department’s Developmental Disability (DD) policies and procedures.

4. *Contractor Registration and Documentation.*

a. The Contractor shall register with the Department as a Vendor in order to receive payment for Suitable Representative Functions. Vendor registration information shall be submitted to:

Idaho Department of Health and Welfare  
 Attn: Bureau of Developmental Disability Services  
 PO Box 83720  
 Boise, Idaho 83720-0036

b. The Department will not pay for Suitable Representative Functions provided prior to submission of the following to the Department:

- i. Documentation that the Contractor is a Trained Suitable Representative;
- ii. A completed and signed copy of this Agreement; and
- iii. A completed W-9.

5. *Billing Procedure.*

a. The Contractor shall provide a monthly invoice no later than the fifteenth (15<sup>th</sup>) day of the month immediately following the month in which services were provided. No invoice shall be accepted or paid without receipt of any and all required documentation and reports.

b. The Contractor shall use the invoice format provided by the Department in Appendix 2 of this Agreement for reimbursement authorized under this Agreement. The invoice shall include, but not be limited to:

- 1. Vendor Number, as identified on the letter confirming registration pursuant to section 4 of this Agreement.
- 2. The Contractor's name (individual and/or agency), address, phone number of person who can respond to the Department's questions regarding the invoice, and an email address if available.
- 3. Client name, Client Medicaid ID number, date that the Calculated Budget appeal was submitted to the Department, fair hearing date (if any), the specific services delivered during the billing period, duration of each service, date(s) of service, and total amount billed for the Client.

c. Invoices shall be submitted to:

Idaho Department of Health and Welfare  
Attn: Bureau of Developmental Disability Services  
PO Box 83720  
Boise, Idaho 83720-0036

6. *Termination.* This Agreement shall terminate, unless mutually extended, on July 1, 2019. Each party may terminate this Agreement without cause upon thirty (30) days' written notice to the other party.

7. *Remedies.* Any claim or controversy arising out of or in connection with this Agreement will first be resolved, to the extent possible, via "Meet and Confer," prior to commencement of any legal action. The Meet and Confer will begin when one Party delivers written notice of a dispute to the other including the specific dispute and the basis for its belief that it will prevail in a legal action. After providing notice, the Meet and Confer will be held as an informal meeting held in good faith between appropriate representatives of the Parties. The meeting may be face-to-face or via telephone as agreed by the parties. Unless waived in writing by the Parties, the Parties will Meet and Confer within ten (10) days of receiving notice. Such face-to-face Meet and Confer discussion will occur at a time and location and manner agreed to by the Parties and if both Parties agree that more discussions would be beneficial, the Parties can agree to have more than one (1) in person settlement discussion or a combination of in person, phone meetings and exchange of correspondence. The Meet and Confer shall conclude upon the resolution of the issues between the parties or upon notice by either party that the face-to-face discussion has failed to resolve the claim or controversy.

8. *Assignment.* Neither party may assign its rights or delegate its duties, in whole or in part, without the prior written consent of the other except that Independent Contractor may assign as collateral its right to payment under this Agreement with prior written notice to the Client.

9. *Waiver.* The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

10. *Modification.* No change, modification, or waiver of any term of this Agreement shall be valid unless it is in writing and signed by both the Client and the Independent Contractor.

11. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the Client and the Independent Contractor.

12. *Third Party Beneficiaries.* Unless explicitly stated otherwise elsewhere in this agreement, no person other than the parties themselves may enforce this agreement.

13. *Applicable Law.* This Agreement shall be governed by, construed, and enforced in accordance with, the laws of Idaho without regard to its conflicts of law principles.

14. *Legal Compliance.* Contractor shall comply with all applicable requirements of federal and state statutes, rules, and regulations.

15. *Sovereign Immunity.* Nothing in this Agreement shall be construed as a waiver of the Department's or the State of Idaho's sovereign immunity except for purposes of resolving disputes arising under this agreement between the Department and the Contractor.

16. *Notices.* Any notice given in connection with this Agreement shall be in writing and shall be delivered either by hand to the other party, by certified mail, postage prepaid, return receipt requested, to the addressee provided below or by facsimile transmission to the other party at the facsimile number below. Notice shall be deemed delivered immediately upon personal service or facsimile transmission or forty-eight (48) hours after depositing notice or demand in the United States mail. Either party may change its address by giving written notice of the change to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date of the last signature set forth below.

DEPARTMENT:  
State of Idaho, Department of Health and Welfare

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CONTRACTOR:  
\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_







## APPENDIX 2

### Suitable Representative Invoice – Idaho Adult DD Waiver Calculated Budget Appeals

This invoice is to be filled in as you work with the client on their appeal. Once this work has concluded, the form must be completed, approved by the client and then submitted to the Department within 30 days from the last date assistance was provided. The total hour count must not exceed eight hours without prior approval from the Department.

**Suitable Rep:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_ **Vendor Number:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Participant:** \_\_\_\_\_

**Participant Medicaid ID #:** \_\_\_\_\_ **Appeal Date:** \_\_\_\_\_

Date	Service Provided	Units
<b>Total Unit Count</b>		

Prior to submission to the Department, review the invoice with the Client. You must obtain his or her approval that the service was provided and was satisfactory.

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