

**CONTRACTUAL AGREEMENT
BETWEEN THE
COUNTY OF CUYAHOGA, OHIO
AND
XCEL HEALTHCARE PROVIDERS, INC.
for
Homemaker Services**

This contract made and entered into this _____ day of _____ 2012, by and between the County of Cuyahoga, Ohio (the "County"), on behalf of the Cuyahoga County Department of Senior & Adult Services ("DSAS"), 1701 East 12th Street, Lower Level, Cleveland, OH 44114 (herein after referred to as "DSAS") and Xcel Healthcare Providers, Inc. a corporation, with principal offices located at 4415 Euclid Avenue, Cleveland, Ohio 44103 (herein after referred to as "Provider") for the purchase of Homemaker Services.

RECITAL

WHEREAS DSAS is charged with the responsibility of administering the Cuyahoga County's OPTIONS Program, and requires specialized services from the Provider to assist DSAS in providing an array of social services to senior residents of Cuyahoga County, and;

WHEREAS the Provider is qualified and willing to provide such services as will be needed by DSAS, and;

WHEREAS the Provider has demonstrated through a request for proposals that it possesses the necessary expertise, knowledge, resources and initiative to successfully assist DSAS in accomplishing the aforementioned objectives.

THEREFORE, in consideration of these tenets, DSAS and the Provider do hereby acknowledge their mutual desire to enter into a contractual contract. This contract expressly requires that the Provider make available to DSAS, the services as articulated above, which are subject to the terms and conditions outlined in the body of this contract. Also all attachments and exhibits are deemed to be a part of this contract and the contents therein are hereby considered legally binding.

The aforementioned parties mutually agree upon the following:

ARTICLE I - SCOPE OF SERVICES:

The Provider shall provide the services listed below and in the Conditions of Participation. Please refer to these specifications for a detailed synopsis of what is expected. Such service(s) shall be inclusive of, but not limited to the following:

Homemaker Services (HMK)

Purpose: Homemaker (HMK) services are designed to enable a client to achieve and maintain a clean, safe and healthy environment. HMK service is intended for the client and specifically excludes services for all other household members. The client shall be present when the aide is providing services in the client's home.

Homemaking service includes but is not limited to:

Routine meal-related tasks: planning a meal, preparing a meal and planning a grocery purchase;

Routine household tasks: dusting furniture; sweeping, vacuuming and mopping floors; removing trash; washing the inside of windows that are reachable from the floor; kitchen care (washing dishes, appliances and counters), bedroom and bathroom care (changing bed linens and emptying and cleaning bedside commodes); laundry care (washing, drying, folding, ironing and putting laundry away); removing trash; and

Routine transportation tasks: performing an errand outside of the presence of the consumer (e.g., picking up a prescription and/or groceries). Homemakers (aides) are prohibited from transporting clients.

Unit of Service: One unit of service is equal to one hour of direct service. The unit rate shall include all administrative costs, travel and documentation time. Homemaker services normally require staffing in 2 hour increments per day, once a week.

Service Goal & Objective Requirements:

Goal: Homemaker services enable a client to achieve and maintain a clean, safe, healthy living environment.

Objective 1: 90% of clients will report receiving satisfactory service from the provider.

Objective 2: To ensure regular service, 85% of the time a replacement aide will be offered if the regular aide cannot provide service.

Service Requirements:

- Clients residing in zip code areas specified as the provider's area must be served within two weeks of the service agreement requested start date.
- Referrals for clients residing in zip code areas specified as the provider's area must be responded to within two business days. If the case manager is not available to receive the call, a message may be left, a supervisor may be contacted or a fax may be sent.
- The provider must have the capability to deliver services Monday through Friday.

- The provider shall furnish evidence of a back-up plan for service delivery when schedule disruptions occur.
- The provider shall have a written policy regarding the aide using the client's funds for grocery shopping or purchasing prescriptions.
- Special Tasks that shall not be assigned to the aide are:
 - Aide shall not do banking, bill paying or writing checks.
 - Aide shall not administer over-the-counter medications to be ingested or eye preparations to be instilled.
 - Aide shall not administer oral prescription medications or apply topical prescription medications.
 - Aide shall not administer food and fluids via feeding tubes.
 - Aide shall not cut toenails or fingernails of clients.
 - Aide shall not transport client or drive client's vehicle.
 - Aide shall not do walls, windows that cannot be reached from the floor or wash draperies or blinds.
 - Aide shall not do heavy cleaning of refrigerators or ovens.
 - Aide shall not move furniture (even to clean under it).

Supervision of Workers: In addition to the requirements specified in the Conditions of Participation, the provider must insure:

- The supervisor to aide paraprofessional ratio shall not exceed 1:25 employees.
- The supervisor shall complete and document a client home visit, which may occur at the initial aide visit to the client, to define the expected activities of the aide and prepare a written activities plan consistent with the Options service checklist that has been completed by Options and the client.
- The supervisor shall evaluate aide compliance with the care plan, and aide performance. The supervisor shall discuss recommended modifications of the service plan with Options and shall comply with the following:
 - Conduct and document a visit to the client at least every ninety-three days to evaluate the aide compliance with the plan or activity checklist; and
 - Conduct and document a supervising visit to the client at least every one hundred eighty-six days while the aide is present and providing client care.

- Performance evaluation of employees shall be completed at the end of the probationary period for new employees and annually thereafter.
- The supervisor shall complete a client status report every ninety-three days and place in client's file within two weeks of the visit.
- The supervisor shall make available to each aide a copy of the daily plan for each client assigned.

Personnel Requirements: In addition to the requirements specified in the Conditions of Participation:

- The provider may only allow an aide to provide the service if the provider has documentation that the aide successfully completed at least twenty hours of training on the following topics that included successful passage of written testing and skill testing by return demonstration:
 - Communication skills, including the ability to read, write and make brief and accurate oral/written reports;
 - Universal precautions for infection control, including hand washing and the disposal of bodily waste;
 - A homemaker service;
 - Recognition of emergencies, knowledge of emergency procedures and basic home safety; and
 - Documentation skills
- Aide training:
 - Orientation training: Before allowing an employee to have direct face-to-face contact with a client, the provider shall provide orientation training to the aides that, at a minimum, address the expectations of employees, the employee code of ethics, an overview of the provider's personnel policies, incident reporting procedures, the agency's organization and lines of communication, and emergency procedures.
 - Continuing education: The provider shall maintain evidence that each aide successfully completes eight hours of continuing education every twelve months, excluding agency orientation and program-specific orientation.
- The provider shall document that the aide:
 - Has received provider agency training and skills testing in homemaking techniques;

- Skills testing shall include a return demonstration of the skills.
- Training and skills testing shall be documented by the provider and shall include training site information, date and length of training including the number of hours, instruction material and subjects, signature of trainer, and all skills testing results.
- The supervisor shall meet at least one of the following qualifications:
 - Be an RN or an LPN that works under the supervision of an RN
 - Has successfully completed a baccalaureate or associate degree in at least one of the following areas: home economics/nutrition or dietetics; counseling; gerontology; social work; nursing; public health; health education or other related field, or
 - Possess a minimum of four years of direct community service experience in the provision of home care services.

Structural Requirements: See Conditions of Participation

Client Service Management: In addition to the requirements specified in the Conditions of Participation the provider of homemaker services shall maintain the following documentation:

- The initial client assessment
- Client specific homemaker care plans
- Record of each supervisory visit
- Supervisor and aide case consultation and written communication
- Options client status report
- Documentation signed and dated by the client for each instance of service delivery
- Incident reports

ARTICLE II - TERMS OF SERVICE:

The Provider shall successfully provide all services as specified in the contract commencing on July 1, 2012 and ending on the close of business on June 30, 2014, which serves as the official termination date of this contract. All services outlined in this contract must be performed to the full and complete satisfaction of DSAS.

The Provider's failure to render "satisfactory" services as outlined in the terms and conditions of this contract, its proposal and other contract deliverables specified herein including subcontracted services (if applicable) shall serve as a breach of this contract and provide DSAS with ample justification to terminate this contract at any time period preceding the aforementioned termination date.

ARTICLE III - CONTRACT VALUE:

Payment for all services provided in accordance with the provisions of this contract is contingent upon the availability and appropriation of local funding and allocation of federal funds annually. **The total amount of the contract shall not exceed \$229,632.00 for the two year contract period.**

ARTICLE IV - BILLING RATES/UNITS PER SERVICE CODE:

Subject to terms and conditions set forth in this contract, DSAS agrees to purchase on behalf of, and the Provider agrees to furnish to eligible Cuyahoga County residents, those specific social service(s) detailed in this contract and in accordance with the Provider's proposal including subcontractor services (if applicable).

Subject to the limitations specified in Article III, the amount to be paid for purchased services pursuant to the terms and conditions of this agreement will be based on the following unit rate(s) and/or fixed rate structure for the duration of this agreement. The Provider agrees to provide the following service units per service code subject to the limitations specified by the unit rate.

Service	Unit Rate	Total Units	Total Value By Service
Homemaker (HMK)	\$16.00	14,352	\$229,632.00
Total Contract:			\$229,632.00

The aforementioned rates will remain in effect for the entire two (2) year contract period.

ARTICLE V – BILLING INSTRUCTIONS:

The Provider shall adhere to all billing procedures as listed in Conditions of Participation (see Exhibit 1 – Billing 6.1-6.13). Under no circumstances shall DSAS be subject to late fees or interest payment penalties. The Provider will invoice DSAS covering purchased services rendered to OPTIONS eligible clients no later than the 10th business day of the month following the end of the service month.

Such billing shall include the monthly actual aggregate number of units of service(s) provided per client. Examples of acceptable invoicing and required client summary detail are presented in Exhibit 2 entitled: **OPTIONS Client Summary Detail**. Such unit rates shall be in accordance with the authorized unit rate(s) in Article III of this contract.

All invoices should be forwarded to the attention of:
Financial Services Unit
Cuyahoga County Department of Senior & Adult Services
1701 East 12th Street – Reserve Square (Lower Level)
Cleveland, Ohio 44114

& via email at: DSASOPTIONSBILLING@ODJFS.STATE.OH.US

ARTICLE VI – TERMS OF PAYMENT:

DSAS shall reimburse the Provider for all authorized services rendered through the course of this contract. DSAS shall review all invoices for completeness before making payment within twenty (20) business days after receipt of an accurate invoice.

All invoices submitted are subject to adjustment by DSAS before such payment is made in order to adjust for mathematical errors, incorrect rates, or non-covered services; and the reported expenditures are subject to audit by appropriate County, State or Federal officials or an independent audit as described in Article XIII after payment is made.

DSAS shall not be required to, nor will it reimburse the Provider for any administrative cost, fees, or other charges for services rendered above and beyond the unit rate(s) stipulated in Article IV of this contract including any subcontracted services.

Upon receipt from the OPTIONS Administrator, the Financial Services Unit will review the invoice for completeness and accuracy before making payment (within thirty (30) business days of receipt). Payment made will not be subject to late fees or interest payment penalties.

UNDER NO CIRCUMSTANCES SHALL DSAS REIMBURSE THE PROVIDER MORE THAN \$229,632.00 WHICH IS THE TOTAL OF THIS CONTRACT.

ARTICLE VII – BILLING TIME LIMIT:

DSAS reserves the right to withhold payment from the Provider in the event invoices for services rendered are not submitted for payment in a timely manner based on the following:

- a. Invoices received by DSAS 1 to 3 calendar days after the due date will be subject to a 5% reduction in amount billed to be paid to the provider.
- b. Invoices received by DSAS 4 to 6 calendar days after the due date will be subject to a 10% reduction in amount billed to be paid to the provider.
- c. Invoices received by DSAS later than 7 calendar days after the due date will be subject to a 20% reduction in amount billed to be paid to the provider.

ARTICLE VIII - DUPLICATE BILLING:

The Provider warrants that invoices submitted and claims made to DSAS for payment for purchased services shall be for actual services rendered to eligible OPTIONS clients and they are not duplicate claims made by the Provider to other governmental entities, municipalities or non-profit organizations for the same service.

ARTICLE IX - SUBCONTRACTING: (IF APPLICABLE)

When deemed necessary to deliver the quantity and quality of services as specified in this contract and/or the Provider's proposal, the Provider may need to subcontract appropriate service(s). All such subcontracted services shall be in the same form as stipulated in this contract and subject to the same terms, conditions, and covenants contained herein. No such subcontracted services shall in any case release the Provider of its liability under this contract. The Provider is responsible for making direct payment to its subcontractors for such service(s) rendered as part of this contract. DSAS will not be required to make direct payment(s) to nor held liable for any payment not made by the Provider for subcontracted services provided under the auspices of this contract.

ARTICLE X - INDEPENDENT PROVIDER STIPULATIONS:

The Provider, its employees, agents and subcontractors will act in accordance with the terms of this contract in an independent capacity and not as officers, employees, agents or subcontractors of DSAS and/or the BOCC.

ARTICLE XI – MAINTAINING CLIENT AND FINANCIAL RECORDS:

Client Records - The Provider shall prepare and maintain independent client records that reflect each OPTIONS client serviced under this contract with DSAS as outlined in the Conditions of Participation (Exhibit 1). The Provider shall keep client files current and in good order.

Financial Records – The Provider shall maintain financial records, payroll reports, and other pertinent accounting transactions in good order, which sufficiently and properly reflect direct and indirect costs expended in the performance of this contract and/or used in development of the unit rate(s) for each service proposed under contract.

Such client and financial records shall be subject at all reasonable times to inspection, review and/or audit by duly authorized federal, state or DSAS personnel and are subject to inspection by an individual(s) or entity selected to perform the audit as stipulated in Article XI of this contract.

Such completed records, logs and financial documents shall include but not limited to the following:

A. Client Records:

1. Client Daily Attendance Records/Logs for all contracted services
2. Client Case File(s)

B. Financial Records:

1. Payroll Distribution Reports/Time Sheets
2. Current Organizational Chart/Position Descriptions
3. Bank Statements/Cancelled Checks
4. General Ledger
5. Accounts Payable Transactions
6. Audited Financial Statements

ARTICLE XII- AVAILABILITY AND RETENTION OF RECORDS:

The Provider shall maintain and preserve all financial records related to this contract and other documentation used in the administration of the program including any client information to support and substantiate each service code billed to DSAS as stated in Article IV.

All records must remain in the Provider's possession for a period of seven (7) years after the termination date of this contract as outlined in the Conditions of Participation (Exhibit 1) and/or it must assure the maintenance of and availability of such for a like period of time if in the possession of a second or third party unless otherwise directed by DSAS. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the seven (7) year period, the Provider shall retain records until completion of this action and all issues which arise from it or until the end of the seven (7) year period, whichever is later.

ARTICLE XIII - RIGHT TO AUDIT:

DSAS reserves the right to audit and monitor the manner in which the terms and conditions of this contract are being carried out and evaluated through periodic operational reviews, the extent to which the goals and objectives of OPTIONS program are being achieved based on operational reviews as outlined in the Conditions of Participation (Exhibit 1)

- a. Compliance and Operational Reviews will be performed by DSAS for compliance of all deliverables and/or upon request by the County of Cuyahoga Executive, or in tandem with another state/federal agency in the event of adverse information pertaining to the operation of the Provider.

ARTICLE XVI - RESPONSIBILITY FOR AUDIT/AUDIT EXCEPTIONS:

The Provider agrees to have an independent financial or operational audit performed by an autonomous firm if required by DSAS on the basis of evidence of misuse of inappropriate accounting of funds. The Provider will make available the audit report findings, within 30 days of receipt, to DSAS and/or the BOCC or its duly appointed agent.

The Provider agrees to accept responsibility for receiving, replying to and/or complying with any audit exception(s) noted during a compliance or financial audit performed by DSAS or any appropriate state or federal agency that directly relates to the service(s) billed and payment made by DSAS. Full and timely repayment is expected in the event of an audit and discovery of audit exceptions including, but not limited to the following:

- a. Services billed and payment made by DSAS for services not covered by the contract.
- b. Duplicate billings, over billings, erroneous billings, and or unsubstantiated *deceptive claims.

*As used in this section "deceptive" means knowingly deceiving another or causing another to be deceived, by fake or misleading representation, by withholding information, by preventing another for acquiring information or by any other act, conduct, or omission which creates, confirms or perpetuates a fake impression in as to law, value, state of mind or other objective or subjective fact.

ARTICLE XV - CONTRACT AMENDMENT:

This contract may be amended at any time as mutually agreed to by both parties and a written amendment signed by both parties and submitted to the County of Cuyahoga Executive for approval in the same manner required by the County's Procurement Policy. Reasons for amendment may include, but are not necessarily limited to the following:

- a. The quality, quantity or scope of purchased services furnished by the Provider has been reduced or increased.
- b. The quality, quantity or scope of purchased services requested by DSAS has been reduced or increased.
- c. The reimbursable fixed unit rate varies significantly from actual cost.

- d. The Provider fails to meet the necessary state and federal licensing requirements.
- e. The local match rate changes.
- f. The time period needs to be extended.

In addition, DSAS reserves the right to unilaterally adjust and amend the maximum contract amount should it determine that the maximum contract amount will not be expended during the contract period based on DSAS' quarterly projections. DSAS will give notice of twenty-one days to the Providers affected advising of the proposed amendment before seeking the County's Executive resolution. The purpose of the twenty-one day notice is to give the parties affected a period of time to discuss the proposed adjustment or amendment.

The Provider expressly waives its signature and approval of the contract amendment submitted to the County permitting the adjustment/amendment, based on information provided in the twenty-one day notice referenced above.

ARTICLE XVI - CONTRACT TERMINATION:

DSAS shall have the right to terminate this agreement for any reason as a result of the Provider's failure to perform all contract deliverables as specified within this contract. Either party shall have the right to terminate this contract upon sixty (60) days written notice to the other party if either party does not meet the terms and conditions specified in this contract. The Provider shall provide all services required by this contract up to and including the date of termination, and shall be compensated upon receipt of an itemized invoice for services rendered. Under no circumstance shall DSAS be responsible for or subject to any type of penalty and/or interest payment upon the cancellation of this contractual contract.

ARTICLE XVII - SAFEGUARDING/CONFIDENTIALITY OF CLIENT'S INFORMATION:

The Provider agrees that the use of, or disclosure by any of its employees, agents and subcontractors of any information concerning client's information for any purpose not directly related to the administration of this contract or carrying out its responsibilities is prohibited except upon the written consent of the client or his/her responsible guardian and/or DSAS.

ARTICLE XVIII - ANTI-DISCRIMINATION:

DSAS and the Provider agree that as a condition of this contract, there shall be no discrimination against any client or any employee because of race, color, sex, religion, national origin, handicap, or any other factor as specified in Title VII of the Civil Rights Act of 1964, Rehabilitation Act of 1973, and subsequent amendments including the Americans With Disabilities Act of 1992.

It is further agreed that the Provider will comply with all appropriate federal and state laws regarding such discrimination and the right to and method of appeal will be made available to all persons under this contract.

The Provider also agrees as a condition of the contract to comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulations (45 CFR 84) and all guidelines and interpretations issued pursuant thereto.

If the Provider or its agents or subcontractors are found to be out of compliance with any aspects of this provision, it may be subject to investigation by DSAS, the Board of

County Executive or its duly appointed agent and subject to termination of this contract.

ARTICLE XIX – SALE OR TRANSFER OF OWNERSHIP

The Provider must notify DSAS of impending sale or transfer of business. Upon sale or transfer of ownership of said business, the following procedures will apply:

- a) The new owner/proprietor will have the opportunity to continue to provide services at the unit rate(s) & conditions contained within this contract.
- b) If new owner/proprietor wishes not to provide service at the unit rate agreed upon within this contract or conditions contained herein, upon sale or transfer of said business this contract becomes void.

ARTICLE XX- INDEMNITY:

The Provider agrees that it will, at all times during the existence of this contract indemnify and save the County of Cuyahoga, all of its departments, agents and employees harmless from suits or actions of every nature and description, brought against the County, any and all of its officers, agents, servants or employees, thereof, for or on account of any injuries or damages received or sustained by a party or parties from any act of Provider, its servants or agents that arise out of the injuries or damages sustained during performance of services against this contract.

ARTICLE XXI - INSURANCE:

The Provider shall have in effect during the term of the contractual contract comprehensive auto and general liability insurance (if applicable) wherein **CUYAHOGA COUNTY AND ITS EMPLOYEES ARE NAMED AS CO-INSURED OR ADDITIONAL INSURED**. This insurance shall protect the Provider, Cuyahoga County and its employees, and any subcontractor(s) performing work covered by the contractual contract against claims for damage for personal injury including accidental death, as well as for property damages which may arise from operations under the contractual contract whether such operations be by Provider or by any subcontractors or by anyone directly or indirectly employed by either of them. An exact copy of such insurance policy or policies shall be made available to the contracting authority for review upon request.

Such policy or policies should be inclusive of a Certificate of Insurance with the following minimum levels:

- a. **Bodily Injury Liability:**
\$250,000 per person, \$500,000 per accident
- b. **Property Damage Liability:**
\$50,000 per accident, \$100,000 per aggregate.
- c. **Comprehensive Automobile Liability:**
\$250,000 per person, \$500,000 per accident.

The Provider shall also either (1) require each of its subcontractors to procure and to maintain during the life of the subcontract, Subcontractor's Public Liability, Property Damage and Vehicle Liability Insurance (if applicable) of type and in the amounts specified above, or (2) the Provider shall insure the activities of its subcontractors in its own policy as specified above.

The policy or policies shall contain the following, special provisions: "The Company agrees that ten (10) days prior to cancellation or reduction of the insurance afforded by this policy with respect to the contract involved, written notice shall be mailed to the Department of Senior & Adult Services".

ARTICLE XXII - PUBLICITY:

In any publicity release or other public reference including media release, information pamphlets, etc., on the services provided as part of this contract, it will clearly state that the project is in part funded by the County of Cuyahoga Executive.

ARTICLE XXIII - ELECTRONIC TRANSACTIONS:

By entering into this Agreement, I agree on behalf of the contracting or submitting business entity, its officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, the County of Cuyahoga, Ohio and the Provider have each caused this contract to be signed and delivered by its duly authorized representative as of the date first written above.

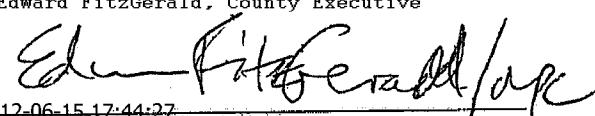
XCEL HEALTHCARE PROVIDERS, INC.

By:



COUNTY OF CUYAHOGA, OHIO

Edward FitzGerald, County Executive


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Edward FitzGerald, County Executive