

## **NOTES ABOUT THE AGREEMENT:**

The following Agreement is written for Parent and Child. However, it can be modified for any relationship between the person needing the help and the one to provide it.

Note that children, and other relatives as well, are *under a microscope* in the sense that family members are generally looked upon to help each other out for free. Not so much as before, given that Medicaid now allows children to be paid to take care of their parents, but the expectation is still there (and greatly varies by family). It may be that additional information should be added to the “Background” section to inform the reader as whether other family members have been asked to help and declined; or why the Parent wants this child in particular to help.

Lump sum contracts can be a risky option. Pay as you go is preferable. However, lump sum contracts may be the only option when lifetime care is contemplated and/or assets are illiquid. If the only asset is the Parent’s home, there may be a transfer of ownership of the home to the Helper with a life estate to the Parent.

Business mileage rates can be found at [www.irs.gov](http://www.irs.gov)

Rates for services vary by region. Inquire about rates in your area and modify the amounts in this Agreement accordingly.

Note that this Agreement may come under review for qualifying for Medicaid benefits, or in an Estate proceeding. Do not underestimate the value of having this Agreement and being clear as to its terms.

## PERSONAL CARE AGREEMENT

This Personal Care Agreement is made on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_ (name) of \_\_\_\_\_ (address) (“Parent”) and his/her son/daughter, \_\_\_\_\_ of \_\_\_\_\_ (“Helper”).

**Background:** Parent is \_\_\_\_ years of age with a life expectancy of \_\_\_\_ years/months, according to the current Social Security Administration’s Period Life Table found at <https://www.ssa.gov/oact/STATS/table4c6.html>.

Due to diagnoses of \_\_\_\_\_/Due to advancing age, Parent may now or soon require assistance with activities of daily living, transportation, and management of financial, medical and personal affairs (collectively, “Services”). Helper is willing to perform the Services for compensation. As such, Parent and Helper desire to enter into an Agreement to delineate the obligation of both parties.

Parent has previously or concurrently executed a Power of Attorney appointing Helper as agent.

**Terms of Agreement:** In consideration of the premises and mutual promises herein, the parties agree as follows:

1. **General** - (a) All services hereinafter described shall be provided on an hourly basis. (b) Helper is not personally responsible for any of Parent’s expenses or bills. Parent is solely responsible for such expenses or bills. (c) In place of the Helper directly providing the Services as set forth herein, the Helper may satisfy Helper’s obligations hereunder by hiring others to provide the Services. (d) The parties acknowledge that some Services provided and compensated for hereunder are in Helper’s capacity as agent under the Power of Attorney, notwithstanding that said Power of Attorney itself is silent concerning compensation of the Agent/Helper.

2. **Personal Care** - Helper shall: (a) Provide, or arrange for, assistance to Parent in performing activities of daily living including, without limitation, transferring, shopping, dressing, feeding, bathing, toileting and such other tasks as necessary, while Parent resides in Parent’s personal residence. (b) Monitor Parent’s health status, physical and mental condition and well-being on a regular basis. (c) Arrange or make necessary changes to Parent’s personal

care plan in the event Parent's personal care needs are not being met to the satisfaction of Parent or Helper. (d) Shop for food, clothing, household, and/or entertainment items.

3. **Household and Travel** - Helper shall: (a) Perform or arrange for necessary and usual household duties at the personal residence of Parent, including, without limitation, cooking, cleaning, laundry and maintaining the residence. (b) Provide or arrange for Parent's necessary travel or transportation, which may entail using Parent's vehicle or Helper's vehicle.

4. **Companionship and Activities** - Helper shall: (a) Periodically visit with Parent. (b) provide opportunities for visiting, telephoning or corresponding with family and friends. (c) Provide opportunities for entertainment, hobby, recreational, social and physical activities consistent with Parent's wishes, abilities and financial resources.

5. **Medical Care** - Helper shall: (a) Ensure that Parent's needs are tended to satisfactorily, including, without limitation, medical care, dental care, podiatry, ophthalmology, chiropractic, physical therapy, occupational therapy, skilled long-term nursing care and pharmaceutical care. (b) Attempt to secure qualified health care professionals, including doctors, nurses, nurse's aides, therapists, and any other health care professionals to aid in diagnosis and treatment of Parent's health, physical and emotional status as may be deemed necessary due to illness, discomfiture or mental health as found to exist from time-to-time. (c) Monitor Parent's health status, physical and mental condition and well-being on a regular basis. (d) Arrange necessary changes to Parent's medical care plan in the event Parent's medical care needs are not being met to the satisfaction of Parent or Helper. (e) Monitor living arrangements and arrange for appropriate living environments, including, without limitation, assisted living and skilled nursing facilities, and changes thereto. (f) Regularly communicate with health care providers and attend care plan meetings of any facility in which Parent may reside and stay in regular contact with personnel and administration thereof, in order to maintain quality of care, services and Parent's rights as a resident.

6. **Financial** – Helper shall: (a) Manage the financial and personal affairs of Parent as Parent requests and as Helper is authorized under the Power of Attorney, including, without limitation, banking, investing, insurance claims, and filing tax returns. (b) Pay all bills for goods and services received by the Parent from the income and assets of Parent. (c) Ensure Parent's governmental and non-governmental benefits are properly applied for and received, including,

without limitation, Social Security, Medicare, Medicaid, health insurance and Veteran's Administration benefits.

7. **Compensation** – Parent shall compensate Helper for the services rendered at fair market value as follows:

(a) Helper shall be paid for Helper's time as incurred for meeting Helper's obligations hereunder at a rate which is competitive for the payment of similar providers in the community in which Parent resides. The parties agree that the following rates of compensation are typical in the Parent's community: (i) Geriatric Care Managers, \$60 per hour; (ii) Bookkeeper, Accountant, \$40 to \$150 per hour; (iii) Personal Care Providers, \$15 to \$25 per hour.

(b) In light of the aforesaid typical community rates, Helper shall be paid as follows: (i) \$15 per hour for services rendered under paragraphs 2, 3, and 4 (collectively, "Personal Care"); and (ii) \$30 per hour for services rendered under paragraphs 5 and 6 (collectively, "Financial and Health Services").

(c) Helper may obtain assistance in meeting Helper's obligations hereunder by hiring and paying such other person(s) or organization(s) as Helper deems necessary, in Helper's sole discretion.

(d) The parties may adjust the hourly rates set forth above to reflect changes in the fair market value of the services rendered, by means of a writing signed by both parties.

(e) Helper shall be reimbursed for the expenses for which Helper provides receipts and that which were incurred in the performance of Helper's obligations hereunder, including, without limitation, lodging, travel, and transportation from Helper's residence to Parent's residence as shall reasonably be required for Helper to perform Helper's obligations hereunder (collectively, "Out-of-Pocket Expenses"). If Helper uses Helper's own vehicle for such travel, Helper shall be reimbursed at the business mileage rate then in effect under the Internal Revenue Code ("Mileage").

8. **Payment** – (a) Since the Services to be performed hereunder are furnished on an hourly basis, the actual hours of Services performed each day, week, or month will vary over the lifetime of the Parent. The parties agree that over the Parent's lifetime, the average time that the Helper will spend on the duties hereunder is \_\_\_\_\_ hours per month for Personal Care and \_\_\_\_\_ hours per month for Financial and Health Services. (b) Accordingly, the

Parent herewith pays Helper the lump sum of \$ \_\_\_\_\_, receipt of which is acknowledged by Helper, based upon the following:

i. Parent's Life Expectancy (months)	_____
ii. Hours of Personal Care (monthly)	_____
iii. Hourly Rate	x \$ _____
iv. Personal Care Subtotal	_____
v. Parent's Life Expectancy (months)	_____
vi. Hours of Financial & Health Services (monthly)	_____
vii. Hourly Rate	x \$ _____
viii. Financial & Health Services Subtotal	_____
ix. Total Paid for Services	_____

9. **Record Keeping** – In order to substantiate the payment for Services and reimbursement of Out-of-Pocket Expenses and Mileage, Helper shall provide the following to Parent, on a monthly basis: (a) a log of time spent on various Services provided to Parent; (b) copies of receipts for any Out-of-Pocket Expenses; and (c) a log of the miles traveled performing the Services.

Helper shall maintain the same information in his/her own possession, but with the original Receipts. Said records shall not be discarded or destroyed until the latter of Parent's death or the conclusion of Parent's Estate proceeding. (Helper must also maintain the records as long as the Internal Revenue Service requires for Helper's income tax returns.)

10. **Gifts** – Parent has told Helper of Parent's wishes regarding the gifting of certain tangible personal property to specific individuals, and Helper will make reasonable efforts to honor such wishes.

11. **Term** – (a) This Agreement is effective on the date first written above. (b) This Agreement is binding upon the parties, their heirs and personal representatives. (c) This Agreement terminates upon the earliest occurrence of any one of the following events: (i) The death of Parent. Regardless of whether or not Parent dies before or after Parent's Life Expectancy of \_\_\_\_ months, Helper shall immediately reimburse Parent's Estate for that portion of the total payment hereunder which has not been previously earned and substantiated by the log of time spent on the various Personal Care and Financial & Health Services, as required by paragraph 9. (ii) The application and eligibility of Parent for chronic care (nursing home)

Medicaid. Helper shall immediately reimburse Parent for that portion of the total payment hereunder which has not been previously earned and substantiated by the log of time spent on the various Personal Care and Financial & Health Services, as required by paragraph 9. (iii) The death of Helper. The personal representative of Helper's Estate, at the sole discretion of said personal representative, shall either: (1) Fulfill Helper's obligations hereunder, or (2) Reimburse Parent for that portion of the total payment hereunder which has not been previously earned and substantiated by the log of time spent on the various Personal Care and Financial & Health Care Services, as required by paragraph 9.

12. **No Assignment** – This Contract may not be assigned except as provided in Paragraph 11(c)(iii)(1).

13. **Taxes** – Helper will act only as an independent contractor. Helper is not to be considered an employee of Parent for any purpose. Helper is responsible for reporting and paying all federal and state income taxes with respect to moneys received by Helper pursuant to this Agreement.

14. **Headings** – Paragraph headings are for convenience only and are not to be used in construing this Agreement.

15. **Applicable Law & Severability** – This Agreement is to be construed under the laws of the State of New York. If any part of this Agreement is deemed invalid by any court of law, all other parts of this Agreement not so invalidated shall remain effective.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

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Parent

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Helper

State of New York )  
County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public: State of New York  
Commission Expires:

State of New York )  
County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public: State of New York  
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