



SELF-DIRECTED PARTICIPANT AGREEMENT

WHEREAS

- A. The Participant or Representative/Managing Party is assuming responsibility to hire and manage their own supports using a self-directed service option under program rules and the following terms and conditions.
- B. AND (A New Direction Inc.) dba CDI (Consumer Directions) is a FMS (Financial Management Services) provider certified by ASD (Applied Self-Direction) and agrees to perform certain responsibilities required of employers; including management and support services related to enrolling and processing support worker timesheets and paying service provider wages and vendor payments, invoicing the payer source and providing program and tax reporting under the following terms and conditions.

TERMS AND CONDITIONS

- 1. Effective Date Upon Intake
This agreement will take effect after successful completion of the intake process and at the time you are notified by AND that your Financial Management Services are approved and activated by AND and go through the date span of your plan.

Effective Date Upon Renewal
This agreement will take effect on the renewing plan start date or date of lead agency signature, whichever is later. In order to avoid a gap in services, plans should be submitted to lead agency at least 30 days prior to the expiration of your current plan.
- 2. Collaboration
Participants are expected to maintain a professional, collaborative and respectful working relationship with AND staff. AND will withdraw from serving a Participant Employer if treated offensively or disrespectfully.

3. Responsibilities

A table of responsibilities is laid out in **Exhibit A** and incorporated herein by reference.

4. New Hire Employment Verification and Determination of Support Worker Eligibility

- a. AND will provide, process and maintain all necessary new hire and payroll forms for Support Workers that are recruited by the Participant.
- b. AND will perform the applicable background check on all Support Workers.
- c. AND will report all New Hires to the State of MN for the purposes of determining child support obligations.
- d. AND will verify all social security numbers and verify all employment eligibility using E-Verify with the Department of Homeland Security.
- e. As required by program rules, AND will provide mandated training materials and information to the Support Worker regarding, but not limited to: Vulnerable Adults Reporting Act, Maltreatment of Minors Reporting Act, Minnesota Government Data Practices, Anti-Fraud Requirements, and HIPAA.
- f. AND provides Worker's Compensation coverage on all Support Workers' wages.

5. Recruiting, Hiring, Firing, Supervising, Training, Scheduling and Determination of Wages

- a. The Participant controls all aspects of managing the Support Worker.
- b. The Participant is responsible to recruit, hire, fire, supervise, train and schedule Support Workers.
- c. In accordance with applicable State and federal laws against discrimination, the participant agrees to and will not illegally exclude any person from full employment rights and will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex (including pregnancy, sexual orientation or gender identification), genetic information (including medical or family medical history), disability (mental or physical), veteran status, age, marital status, familial status, citizenship, membership or activity in a local human rights commission, or status with regard to public assistance or other status protected by law.
- d. The Participant determines the wage of Support Workers, as long as they comply with program and regulatory minimum and maximum wage limits.
- e. The Participant is responsible for the provision of services; including job description, training, supervision, health and safety and back-up emergency planning in the event a Support Worker is late, unable to work, does not show up or resigns.
- f. The Participant will be responsible for any disciplinary actions and termination of a Support Worker.
- g. The Participant agrees to provide information to document the rationale for any termination, so AND is able to assist the Participant in unemployment compensation requests and hearings.

6. Payment to Support Workers

- a. The Participant will set the rate of pay for the Support Worker and will inform AND of the starting pay rate and all subsequent rate changes using the ERR or Employer Rate Record.
- b. The Participant will be responsible for evaluation of the Support Worker's performance and will grant wage increases at their discretion. Rate of pay changes must be indicated on the timesheet and cannot exceed the maximum rate approved in the Participant's Budget.
- c. Overtime is not allowed for Support Workers, unless specifically documented in the Participant's Plan. Overtime occurs when an employee works more than 40 hours in a week. If overtime occurs, it is required to be paid at one and a half times the agreed upon rate of pay.
- d. The Support Worker will be required to sign the timesheets, submit to the Participant to confirm the accuracy and completeness of the hours indicated on the time sheets.
- e. The Participant or Representative agrees to submit accurate timesheets to AND. All timesheets must be signed by the Support Worker and Participant.
- f. Timesheets must be submitted to AND in a timely manner per the Payment Schedule. AND will issue paychecks to the Support Worker every other Friday, per the Payment Schedule, provided that complete, accurate and signed timesheets were received at AND by the due date cut off.
 - a. Any timesheets submitted after six months of service date will need to be paid to the employee by the Participant. The Participant will be required to pay out-of-pocket for this expense.
 - b. Similarly, if any late timesheets are received after a plan year that does not have adequate remaining funds, employees will need to be paid by the Participant. The Participant will be required to pay out- of-pocket for this expense.
- g. AND will maintain wage information and payroll records and issue worker Forms W-2, Wage and Tax Statement.
- h. AND will prepare and report all applicable payroll tax filings.

7. Status of Support Worker

- a. Definition of Common Law Employee, per Internal Revenue Service, Publication 15, Circular E, Employer's Tax Guide, "Under common-law rule, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed."
- b. AND will verify correct classification of workers and independent contractors.
- c. The Support Worker is a common law employee of the Participant, by IRS definition.

- d. This Agreement between the Participant or Representative and AND is not a contract guarantee of employment for the Support Worker. The Support Worker, selected by the Participant or Representative, is employed at will by the Participant or Representative and is not a common law employee of AND
- e. Any theft and damages that result from the Support Worker's presence in the Participant or Representative's home or when providing assistance to the Participant or Representative is the liability of the Participant or Representative.
- f. The Participant or Representative understands that the Support Worker is a mandated reporter under the Vulnerable Adults Reporting Act and Maltreatment of Minors Reporting Act. ANDI is also a mandated reporter and must also report known incidents of maltreatment.

8. Payment to Vendors or Independent Contractors

- a. The Participant Employer or Representative will enter into an agreement with the vendor or independent contractor.
- b. The Participant or Representative will be responsible for evaluation of vendor or independent contractor's performance
- c. The Participant will be invoiced for all goods and services. Invoices must be in the Participant's name and not invoiced to AND.
- d. Invoices must be submitted to AND in a timely manner per the Payment Schedule. AND will issue payments to the vendor or independent contractor, per the Payment Schedule, provided that invoices were received at AND by the due date cut off and are approved in the plan.
 - a. Any invoices submitted after six months of service date will not be paid by AND.
 - b. The vendor or independent contractor will be directed to the Participant for collection of payment.
 - c. Similarly, if any late invoices are received after a plan year that does not have adequate remaining funds, vendors or independent contractors will be directed to the Participant for collection of payment.
- e. AND will maintain payment information and issue reportable payments under IRS Form 1099 MISC, Miscellaneous Income to qualifying vendors and independent contractors.

9. Payment of Services

- a. For the services provided under this Agreement, the assigned payer source will be billed or invoiced.
- b. Participants charged a patient responsibility are obligated to pay within 14 days of invoice. If payment in full is not received by the due date, employees will be suspended.

- c. Fees are charged according to the fees approved in the plan and within the established program rates and state set maximums.

10. Grievance Procedure

- a. A grievance is a complaint about something you do not like about the customer service you are receiving from AND.
- b. You should feel free to bring any complaints or grievances to AND without being afraid of losing any services or having anything bad happen to you.
- c. A copy of the Grievance Procedure is provided as **Exhibit B**.
- d. AND wants you to be more than just satisfied with our services, we want you to be extremely happy! We encourage you to provide feedback at any time.
You will be given the opportunity to fill out an online service satisfaction survey annually. We want you to take advantage of this opportunity to share your ideas and thoughts about how we can better serve you and meet your needs.

11. Liability and Indemnification. The Participant or Representative shall be liable for, indemnify, and hold A New Direction, Inc., harmless from any and all liabilities which may arise out of or related to the employment relationship. This indemnification shall include any and all liabilities to the Support Worker for any purpose including, but not limited to, breach of any employment laws in the course of the employment of the Support Worker. This indemnification shall also include any and all liabilities to any third parties including, but not limited to, any vicarious liability for the actions of the Support Worker related to the employment relationship. This indemnification shall specifically include, but not be limited to, any attorney's fees incurred by AND in defending against any such liabilities and/or enforcing this indemnification agreement against the Participant or Representative.

12. Termination. Either party may terminate this agreement pursuant to any one of the following:

- a. By AND with a ten (10) day written notice to the Participant or Representative in the event:
 - 1. The Participant or Representative is in default under any provision of this Agreement.
 - 2. If the County, State or Federal Government terminates the grant or program.
- b. Without cause by AND, for any reason or no reason at all, giving the Participant or Representative written notice of its intent to terminate at least thirty (30) days before termination.
- c. By the Participant or Representative at any time.

- d. AND may terminate services immediately if we discover or suspect any fraud or negligence on the part of the Participant or Representative. AND is mandated to report this information to the proper authorities.

13. Suspension of Services.

a. CDI reserves the right to immediately suspend services to any Participant pursuant to any one of the following:

1. The Participant or Representative is in default under any provision of this Agreement and the Participant or Representative has not corrected the default.
2. The Participant's budget approval has not been received from the Lead Agency.
3. The Participant's spending patterns have left insufficient funds or expected deficient in remaining funds to support continued services.
4. Participant becomes ineligible for grant or program funding; or grant or program funding ends or closes.
5. During a State or Federal government shut-down or suspension; if AND does not obtain funding from the Minnesota Legislature, Minnesota or County agencies, Medicare, or other funding sources.
6. Participant becomes past due on the submission of their responsibility or share of the services.

b. AND will notify the Participant or Representative when services are in jeopardy of service disruption and discuss a plan to remedy the situation. If the situation is not resolved in a timely matter, AND may proceed to service termination. Once the reason for termination is resolved and the Participant request to restart services, AND will evaluate and decide if we will restart services with Participant.

14. Miscellaneous

- a. This Agreement may not be modified except in a written document signed by an authorized Representative of AND and the Participant or Representative and shall be construed and interpreted according to the laws of the State of Minnesota.
- b. This Agreement shall be binding upon the parties and their successors.
- c. The Participant or Representative shall not assign this Agreement without the express written consent of AND, and any attempt to assign this Agreement without the consent of AND shall be void.

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EXHIBIT A

Roles & Responsibilities

Self Directed Services (Private Pay and DeafBlind Consumer Directed Services)	Participant	A New Direction dab CDI Consumer Directions
Roles		
Qualified Fiscal Management Services Provider		X
Common law employer	X	

Management of Support Workers		
Recruit, interview, check references and hire Support Workers	X	
Complete necessary employment paperwork with new hires	X	
Process and maintain new hire employment paperwork/files		X
New hire employment verification and determination of eligibility		X
Setting support worker pay rates, within floor and approved maximum in plan and budget worksheet	X	
Develop job descriptions that are adequate to ensure health and safety of participant	X	
Provide initial and on-going training needs to support workers, as required to ensure health and safety of the participant and as identified in the plan. Evaluate job performance ongoing.	X	
Scheduling of staff; ensuring the hours worked do not exceed the limits designated by the job description or approved plan and budget worksheet. Additionally, employees are limited to being paid up to 275 hours per month or approximately 60 hours per week regardless of the number of clients they work for across all agencies and clients they serve in MN.	X	
Overtime is not allowed under this program unless specifically budgeted as such in your plan	X	

Households with multiple participants, that are being managed by the same person are responsible to ensure that no support worker exceeds 40 hrs/week between all participants; unless overtime is approved in the plan(s) and paid at time-and-a-half.	X	
Supervise, discipline, terminate & manage support workers	X	
Observe and comply with Department of Labor Laws, City Ordinances, Collective Bargaining Unit, Equal Employment Opportunity Commission (EEOC), Child Labor Laws, Fair Labor Standards Act Home Care Ruling, and Federal and State Employment Laws	X	X
Manage unemployment claims; gather required information		X
Provide relevant information to raise an issue with an unemployment claim if you believe the Support Worker should not be eligible for benefits or your account should not be charged	X	

Worker Injury		
Pay and maintain workers' compensation coverage		X
Supervisory authority over the worker's compensation insurance policy, instances of worker injuries and reporting point person		X
Report work related injuries to AND immediately	X	
File <i>First Report of Injury</i> on-line or using the injury hotline		X

Payment of Support Workers & Reimbursement of Expenses		
Ensure accuracy of hours and expenses, sign-off approving and submit by deadline	X	
Administer any legislative or mandated wage or benefit changes		X
Collect, verify compliance with federal, state, program and collective bargaining agreement guidelines, process and maintain Support Worker timesheets		X
Withhold all appropriate taxes from support workers' pay; report and submit those withheld amounts to the federal and state governments, including Medicare, Social Security, Federal and State Unemployment, and Federal Income Tax (FICA, FUTA, SUTA)		X

Process all judgements, garnishments, tax levies or any related holds as may be required by local, State and/or federal laws		X
Prepare paychecks, including a payroll statement, as required by the MN Fair Labor Standards Act and the MN Department of Labor and Industry		X
Disburse paychecks, based on submitted time records, on the posted payroll schedule		X
Complete authorized, requested employment and wage verification forms		X
Prepare and issue annual W-2, Wage and Tax Statements		X

Payment of Vendors		
Responsibility to request and obtain copies of invoices from vendors to ensure that correct payments are being made on their behalf	X	
Ensure accuracy of reimbursements, sign-off approving and submit by deadline	X	
Enter into a formal agreement (ideally written) with vendors or independent contractors	X	
If using an independent contractor and paying for that service directly and requesting reimbursement from CDI; responsible to ensure correct independent contractor status, obtain applicable W-9 and issue any required 1099 Forms at year-end.	X	
When using an independent contract and AND is paying for that service directly to the independent contractor; responsible to ensure correct independent contractor status, obtain applicable W-9 and issue any required 1099 Forms at year-end.		X

Manage Spending		
Fully understand what is included in your plan and the budget limits imposed on each category and item	X	
Provide monthly spending utilization		X
Monitor spending utilization monthly, at a minimum	X	X
Responsibility to stay within budget limits without going over	X	

Responsible to pay back any expenses incurred over the budget limits	X	
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Other Self-Direction Responsibilities		
Responsibility to complete, get approved and make any required revisions to your plan and spending budget in a timely manner	X	
Responsibility to pay any participant responsibility	X	
Responsibility to check with your insurance agent regarding any additional liability, property or umbrella insurance that may be recommended in role as a common-law employer of domestic/ household employees. Additional costs incurred for adding this insurance, for this purpose, may qualify for reimbursement under your plan.	X	
Responsible for care, supervision, health and safety of child or adult using Self Directed Services	X	
Obtain service authorization and approved plan, bill the payer(s) source for program expenditures, track accounts receivable and manage/secure adequate cash flow		X

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EXHIBIT B

Your Grievance Procedure

What is a Grievance?

A grievance is a complaint about something that you do not like about the customer service or processes involving the services within the scope of AND's services that has been communicated but has not been resolved.

You should feel free to bring any complaints to AND without being afraid of losing any services or having anything bad happen to you. If you have a complaint or problem, you should follow these steps:

Step One: Gather and document the facts of the issue at hand.

Step Two: Talk to your Assigned Primary Contact at AND right away. They will discuss your concern with you and work to resolve the matter with you within 48 hours. AND will document your complaint in a complaint log, along with how the issue was resolved.

Step Three: If you do not feel like the issue was resolved to your satisfaction, contact the Program Manager. The Program Manager will contact you within five (5) days to hear your complaint and work to resolve the matter with you.

Step Four: If you believe that the matter is still not resolved to your satisfaction, you may bring the complaint to the highest level of authority in this program. That person is Shantel Jaszczak, Director of Financial Management Services. The Director may be reached, by Direct Dial at 320-420-3423, email: Shantel@yourfse.com or A New Direction, P.O. Box 6128, St. Cloud, MN 56302-6128. Your grievance will be presented to the Board of Directors and you will receive a formal response in writing within two (2) weeks.

You may choose to represent yourself during a grievance or you may have someone else do it, such as a family member, case manager, an advocate, or legal representative.

AND wants you to be more than just satisfied with our services, we want you to be extremely happy! We encourage you to provide feedback at any time.

You will be given the opportunity to fill out an online service satisfaction survey annually. We want you to take advantage of this opportunity to share your ideas and thoughts about how we can better serve you and meet your needs.

Initial Here _____

EXHIBIT C

NOTICE OF PRIVACY PRACTICES

YOUR INFORMATION. YOUR RIGHTS. OUR RESPONSIBILITIES.

This notice describes how information about you may be used and disclosed and how you can get access to this information. **Please review it carefully.**

Your Rights

You have the right to:

- Get a copy of your paper or electronic service record
- Correct your paper or electronic service record
- Request confidential communication
- Ask us to limit the information we share
- Get a list of those with whom we've shared your information
- Get a copy of this privacy notice
- Choose someone to act for you
- File a complaint if you believe your privacy rights have been violated

Your Choices

You have some choices in the way that we use and share information as we:

- Discuss your services with family, friends and caregivers
- Provide disaster relief
- Provide services
- Market our services

Our Uses and Disclosures

We may use and share your information as we:

- Serve you
- Run our organization
- Bill for your services
- Help with public health and safety issues
- Comply with the law
- Respond to required county, state and federal program requests
- Address workers' compensation, law enforcement, and other government requests
- Respond to lawsuits and legal actions

Your Rights

When it comes to your health information, you have certain rights. This section **explains** your rights and some of our responsibilities to help you.

Get an electronic or paper copy of your service record

- You can ask to see or get an electronic or paper copy of your medical record and other health information we have about you. Ask us how to do this.
- We will provide a copy or a summary of your service information, usually within 30 days of your request. We may charge a reasonable, cost-based fee.

Ask us to correct your service record

- You can ask us to correct any information about you that you think is incorrect or incomplete. Ask us how to do this.
- We may say “no” to your request, but we’ll tell you why in writing within 60 days.

Request confidential communications

- You can ask us to contact you in a specific way (for example, home or office phone) or to send mail to a different address.
- We will say “yes” to all reasonable requests.

Ask us to limit what we use or share

- You can ask us not to use or share certain information for services, payment, or our operations. We are not required to agree to your request, and we may say “no” if it would affect your services or our legal obligation.
- If you pay for a service or care item out-of-pocket in full, you can ask us not to share that information for the purpose of payment or our operations with your health insurer. We will say “yes” unless a law requires us to share that information.

Get a list of those with whom we’ve shared information

- You can ask for a list (accounting) of the times we’ve shared your service information for six years prior to the date you ask, who we shared it with, and why.
- We will include all the disclosures except for those about services, payment, and health care operations, and certain other disclosures (such as any you asked us to make). We’ll provide one accounting a year for free but will charge a reasonable, cost-based fee if you ask for another one within 12 months.

Get a copy of this privacy notice

You can ask for a paper copy of this notice at any time, even if you have agreed to receive the notice electronically. We will provide you with a paper copy promptly.

Choose someone to act for you

- If you have given someone power of attorney or if someone is your legal guardian, that person can exercise your rights and make choices about your service information.
- We will make sure the person has this authority and can act for you before we take any action.

Your Choices

For certain service information, you can tell us your choices about what we share. If you have a clear preference for how we share your information in the situations described below, talk to us. Tell us what you want us to do, and we will follow your instructions.

In these cases, you have both the right and choice to tell us to:

- Share information with your family, close friends, or others involved in your care
- Share information in a disaster relief situation

We may also share your information when needed to lessen a serious and imminent threat to health or safety.

In these cases we never share your information unless you give us written permission:

- Marketing purposes
- Sale of your information

Our Uses and Disclosures

Serve You

We are allowed or required to share your information in other ways – usually in ways that coordinate your services with the contracted or governing government agencies.

Run our organization

We are allowed or required to share some Participant Employer data, billing and accounts receivable information with our bank, government tax auditors, and CPA auditors. We have to meet many conditions in the law before we can share your service information for other purposes. For more information see: www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/index.html.

Bill for your services

We can use and share your health information to bill and get payment from health plans or other entities.

Help with public health and safety issues

We can share health information about you for certain situations such as:

- Reporting suspected abuse, neglect, or domestic violence
- Preventing or reducing a serious threat to anyone's health or safety

Comply with the law

We will share information about you if state or federal laws require it, including with the Department of Health and Human Services if it wants to see that we're complying with federal privacy law.

Address workers' compensation, law enforcement, and other government requests

We can use or share health information about you:

- For workers' compensation claims
- For law enforcement purposes or with a law enforcement official
- With oversight agencies for activities authorized by law

Respond to covered County, State or Federal program requests

We can share service information about you in response to a covered request by the county, state or federal program requests.

Respond to lawsuits and legal actions

We can share service information about you in response to a court or administrative order, or in response to a subpoena.

Our Responsibilities

- We are required by law to maintain the privacy and security of your protected health information.
- We will let you know promptly if a breach occurs that may have compromised the privacy or security of your information.
- We must follow the duties and privacy practices described in this notice and give you a copy of it.
- We will not use or share your information other than as described here unless you tell us we can in writing. If you tell us we can, you may change your mind at any time. Let us know in writing if you change your mind.

For more information see: www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/noticepp.html.

Changes to the Terms of this Notice

We can change the terms of this notice, and the changes will apply to all information we have about you. The new notice will be available upon request, in our office, and on our web site.

Other Instructions for Notice

- Effective Date of this Notice: 10/15/2018
- Privacy official:
 - o Lisa Kampfer, CEO
 - o Lisa@yourfse.com
 - o 425 East St. Germain Street, St. Cloud, Minnesota 56304
 - o (320) 420-1017
- We never market or sell personal information
- We will never share any service records without your written permission; excluding government entities entitled to the information

File a complaint if you feel your rights are violated

- You can complain if you feel we have violated your rights by contacting the privacy official listed above.
- You can file a complaint with the U.S. Department of Health and Human Services Office for Civil Rights by sending a letter to 200 Independence Avenue, S.W., Washington, D.C. 20201, calling 1-877-696-6775, or visiting www.hhs.gov/ocr/privacy/hipaa/complaints/.
- We will not retaliate against you for filing a complaint.

Initial Here _____

Self-Directed Services Participant Agreement

THIS AGREEMENT is made effective on _____, by and between
AND (A New Direction, Inc.) as the Financial Management Services (FMS) Entity and

_____, Participant Employer or Representative.
(Participant Name or Managing Party)

WITNESSETH: That in consideration of the mutual agreements to be kept and performed on the part of both parties as identified, respectively as stated:

- I. The Participant or Representative is choosing to and has the responsibility of self-directing or managing their own support for: _____
(Participant Name)
- II. As a Minnesota Health Care Provider (MHCP) and qualified FMS Entity, A New Direction, Inc. DBA Consumer Directions agrees to perform certain fiscal employer agent management and support services related to employee enrollment, timesheet processing, paying service providers or vendors, invoicing the payer source, and completing all program and payroll tax reporting.
- III. This agreement will be signed upon intake and any updates.
- IV. Both parties agree to the terms set forth in the current and future updates to the **FMS Self-Directed Participant Agreement** and the table of the Roles and Responsibilities of each party, incorporated herein, referenced as **Exhibit A**.

This Statement of Review and Receipt is to verify that AND has provided copies of Notice of Privacy Practices (known as HIPAA), included as **Exhibit C**. I have read and understand my rights and know that I can also view my rights on www.consumerdirections.info

IN WITNESS WHEREOF, the parties execute this Agreement this day and year above written.

A New Direction

Participant or Representative/Managing Party

Sara Theisen