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| **A G E N C Y C O N T R A C T**  **(Ö Q Z – 2 4: Austrian quality certificate for placement agencies working in 24-hour care)** | | | | | |
| regarding the person to be cared for: | | | | | |
| Name: | | | | | Address: |
| Date of birth: | | | | | Email: |
| Telephone number: | | | | | Fax: |
| 1. **Contractual partners' personal data** | | | | | |
| * 1. **Client** | | | | | |
| * **The person to be cared for** * **Representation in the name of the person to be cared for** (for example trustee, legal representation, person with power of attorney for care recipient, etc.) * **Another person in support of the person to be cared for** (for example, relative, person in a position of trust) | | | | | |
| Name: | | | | | Date of birth: |
| Address: | | | | | In the case of representation, proof of the power of representation/(for the period of care) power of attorney, ruling by the guardianship court (for example appointment of a trustee): (the proof must be enclosed as a copy) |
| Telephone number: | | | | | e-mail: |
| Fax: | | | | |
| * 1. **Contractor,** in the following **referred to as the** "placement agency" | | | | | |
| Name/company: | | | Date of birth / company registration number: | | |
| Address / main office: | | | e-mail: | | |
| Fax: | | | Telephone number: | | |
| 1. **Regularly accessible point of contact at the placement agency** | | | | | |
| Name: | | | | | Address: |
| e-mail: | | | | | Telephone number: |
| 1. **Basis of the agency contract** | | | | | |
| The subject of the contract is the agency of a care contract and the support of the **client or** person to be cared for in the ongoing implementation of the contract in Austria.   * 1. Theplacement agency declares that the occupationof the organisation of personal care provision has been registered with the competent occupation authority in Austria and will not expire during the entire service period. The **Supplement./V 1** (Supplementary list of duties) **constitutes an integral part of the contract**.   2. The placement agency points out that it can also act for a care company which is the subject of agency and receive a remuneration from this for its agency activity.  The person to be cared for declares * that they are in agreement with this. * that they are not in agreement with this.   1. There is no commission for the placement agency for the mediation of the agency contract if the business concluded with the care company is commercially equivalent to something concluded by the placement agency themselves. Similarly, there is no commission in the case of any other family or commercial relationship between the placement agency and care company which is the subject of agency, if the client is not immediately informed of such a relationship. | | | | | |
| 1. **Costs sheet: Service content, price, and due dates** | | | | | |
| **ATTENTION**: This costs sheet is a MANDATORY COMPONENT and MUST be used by the agency.   * 1. **Price for the agency’s work:**   The following services in advance of the conclusion of the contract are included in the agency activity and are therefore not to be charged separately:   * Mediation of an appropriate care company who only deploys people to perform the care who:  1. have undergone theoretical training which essentially corresponds to that of a home care provider (or have proof of having completed at least one nursing course at a training institute encompassing at least 200 hours of theory and practice); or 2. have properly implemented the care of the person to be cared for for at least six months (within the meaning of the Domestic Care Act or in accordance with §159 of the 1994 Trade Regulation Act); or 3. exercise certain nursing and/or medical activities according to order and instructions and under the control of a qualified nurse or doctor (authorisation in accordance with § 3b or § 15 para. 7 of the Health and Nursing Act or in accordance with § 50b of the 1998 Medical Professionals Act).  * Advice on the necessity and the basics of the care contract (explanation of: scope of activities of the personal caregiving, possibility of obtaining financial support, scope of services, processing, clarification of the necessity of orders by medical specialists, etc.) * Administrative assistance in concluding the care contract to be concluded by the person to be cared for and the care company * Initial ascertainment and documentation of the care and nursing needs of the person to be cared for on site (together with the taking of a nursing history, with the involvement of a qualified nurse entitled to practise the profession in Austria, at the latest on the day that care commences) * Ensuring that the need for care and nursing or the resulting requirements are demonstrably clarified between the care company and the person to be cared for and accepted * Documentation and verification of the living conditions (for example, information about: accessibility, necessity of aids and medical aids, suitability of rooms as accommodation for the care company, etc.) as well as documentation of ongoing services from agency activities (upon request, the documentation is to be made accessible to the person being cared for, or issued to them in copies) * Preparing a requirement profile of the care services or the care company (qualification, availability, price, mobility, language skills and references) * Guarantee of the organisation of a replacement/cover within three days in the event that the care company is unavailable (this is to be accordingly noted in the emergency plan). However, this guarantee or service requires the client and the care company to agree in the care contract that the care company is the one to provide a replacement care company * The documentation shall be made available to the person to be cared for or the contractual partner on request or be handed over as copies.   The agency fee (commission) arises with the legal effectiveness of the placement agency, is agreed in euros (including VAT): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and must be paid on invoicing.  **PLEASE NOTE:** It is expressly agreed that in the following cases of no successful mediation being made, compensation or reimbursement for expenses and effort is due in the amount of the aforementioned commission to the placement agency if  1. The business described in the contract fails to do so in good faith only because the person to be cared for or client fails, without any noteworthy cause,  to take any necessary legal action in order to conclude the transaction;  2. Business other than equivalent business is concluded with the third party designated by the placement agency (insofar as the mediation of this business falls within the scope of activity of the placement agency)  3. The business referred to in the agency contract is not concluded with the person to be cared for/client but with another person because the client has disclosed the possibility of concluding a contract as specified to it by the placement agency or the business is not with the agency third party but with another person, because the agency third party has disclosed the matter to the person concerned.   * 1. **Other services:** * Support on site relocation   Non-recurring costs EUR (VAT included): \_\_\_\_\_\_\_ * Administrative assistance in the request for support from the support fund according to the Federal Care Act or in the event of any notifications of change  One-time cost EUR (VAT included): \_\_\_\_\_\_\_   The person to be cared for or their representative hereby grants the placement agency **authority** to submit an application to the competent funding agency to receive grants from the support fund for people with disabilities   Place, Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.  (Provider of power of attorney)  The price for these other services is EUR (including VAT): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and this must be paid on invoicing.   * 1. **Accompanying services:** * Ongoing quality control: Inspection / monitoring of the care services and quality assurance by organising house visits at regular intervals (at least once a quarter) by a qualified nurse entitled to practise the profession in Austria  monthly EUR (VAT included): \_\_\_\_\_\_\_ * Ongoing consultations and help with questions concerning the implementation and handling of care   monthly EUR (VAT included): \_\_\_\_\_\_\_ * 24h emergency service (telephone assistance) and provision of or support in drawing up an emergency plan  monthly EUR (VAT included): \_\_\_\_\_\_\_ * Help in the resolution of conflicts and disagreements between the care company that is to be the subject of agency and the person to be cared for or their relatives  monthly EUR (VAT included): \_\_\_\_\_\_\_   The price for these accompanying services is paid monthly at the latest on the (for example, "1st" or "15th" or "last")  \_\_\_\_\_\_\_day of each month (possibly standing order) and amounts in total to EUR (incl. VAT) \_\_\_\_\_\_\_\_\_.  Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   * 1. **Power of collection:** The agency * offers a power of collection for the care company * DOES NOT offer a power of collection for the care company | | | | | |
| * 1. The price is payable as follows at the due date and with a 5-day grace period (tick as appropriate): * to the placement agency in cash in exchange for an acknowledgement of payment; or * with a debt-discharging effect only to the following bank account:   Account holder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   IBAN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  BIC: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.   * 1. In the case of default of payment, default interest of 4% per annum is estimated. Payments transferred on the due date are considered to be timely. | | | | | |
| * 1. All **taxes to be paid from the price shall be borne by the placement agency.**   It is explicitly stated that the placement agency **cannot demand a reimbursement of general costs and expenses incurred in the course of business.** The costs of the placement agency arising from additional orders shall only be reimbursed if the obligation to reimburse has been expressly agreed. The agreed amounts are all-inclusive rates, which include expenses and expenditures (for example, travel, doctor's fees, etc.). | | | | | |
| 1. **Period of performance / termination of the contract** | | | | | |
| * 1. Start of the service is on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (DD.MM.YYYY). | | | | | |
| * 1. Duration of the contract:  (please tick as appropriate) * The term of the contract is limited to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (DD.MM.YYYY) and ends without a period of notice being required. * The contract is concluded for an indefinite period of time (unlimited). | | | | | |
| * 1. Other reasons for termination of the contract:   The agency contract ends at the latest with the death of the person to be cared for, whereby the placement agency must in this case proportionally reimburse money which has been paid in advance.  The agency contract also ends in the case of insolvency or closure of the placement agency.  The agency contract may be terminated by both parties (including in the case of a temporary contract), in each case **with a two-week notice period** **at the end of a calendar month** . | | | | | |
| 1. **Information obligations of the placement agency** | | | | | |
| * 1. The placement agency declares they have informed the person to be cared or the client for before concluding the contract regarding: * the activities permitted for personal care provision * the obligations of the care company (such as the obligation to declare and pay for themselves taxes and social security contributions connected with personal care provision) * the services **the** placement agency offers, stating the cost and provided in writing upon request, * the contents of the costs sheet and to send the costs sheet to the care company BEFORE concluding the organisation contract. | | | | | |
| 1. **Information and details relevant to financial allowance** | | | | | |
| * 1. The person to be cared for can – if the following requirements are met – claim financial aid if they require 24-hour care, are in receipt of nursing allowance under domestic legislation at level 3 and their monthly net income does not exceed 2,500 euros (income limit increases if dependents living in the same household). Nursing allowance, special payments, family allowance, childcare allowance, housing aid and the assets of the person to be cared for are not included in income.   In order to benefit from the allowance, it must also be demonstrated that the care company or persons deployed to provide the care:  • have theoretical training which essentially corresponds to that of a home care provider (or there is proof from a training institute of having completed at least one nursing course encompassing at least 200 hours of theory and practice)  • has provided appropriate care for the person to be care for for at least six months (for the purposes of the Domestic Care Act or § 159 of the 1994 Trade Regulation Act), or  • exercises certain nursing and/or medical activities according to order and instructions and under the control of a qualified nurse or doctor (authorisation in accordance with § 3b or § 15 para. 7 of the Health and Nursing Act or in accordance with § 50b of the 1998 Medical Professionals Act)  The following prerequisites must be provided, in particular, by the client or the person to be cared for and or must be submitted when the application is submitted:  • In the case of two care companies, a declaration that no beneficiary of social insurance cover for caring relatives is used for the grant period within the meaning of the provisions of the General Social Insurance Act (ASVG), the Social Insurance Act (Sozialversicherungsgesetz - GSVG) or the Farmers' Social Insurance Act (Bauern- Sozialversicherungsgesetz) (BSVG).  • A final decision/judgement of the care allowance  • In the case of a nursing allowance of levels 3 and 4, a substantiated (medical) confirmation or a substantiated confirmation by other medical personnel recruited for the assessment of the care requirements concerning the necessity of 24-hour care,   * A declaration of income and maintenance obligations of the person to be cared for; | | | | | |
| * 1. Does the person to be cared for receive a **care allowance**? | | | | | |
| * Yes, a care allowance of level \_\_\_\_   was granted with notice by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  for the person to be cared for. | | | | * No | |
| * 1. Is there a **(specialist) medical confirmation** or a **substantiated confirmation** byother specialist medical personnel who are called upon to assess the nursing requirements regarding the need for 24-hour care? | | | | | |
| * Yes * No |  | | | | |
| If not, is there **a need for 24-hour care**? | | | | | |
| * Yes * No |  | | | | |
| **If yes**, has the person to be cared for or the client already **applied for support for 24-hour care** from the support fund? | | | | | |
| * Yes * No | |  | | | |
| If yes, what is the outcome of the procedure (rejection / approval / grant amount)?  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | |
| 1. **Data protection declaration / agreement** | | | | | |
| * 1. Personal data   In order to carry out the contractually agreed services, it is necessary for the person to be cared for and their representative or any client who is not the person to be cared for (hereinafter referred to collectively as the “data subjects”) to inform the placement agency of the data to be filled out in advance. If these data are not provided, this would result in the placement agency not being able to provide contractually agreed services. The “data subjects” also include any other person whose data may be collected and/or processed in the context of the conclusion of this contract.  The placement agency declares that it will only collect, process and use the personal data of the data subjects in so far as this is necessary to perform and transact the contractually agreed services based on this contract, and it shall do so in compliance with data protection and civil law provisions. The legal basis in this regard is provided by Art 6 para. 1 lit. b) and c) GDPR. This stipulates that processing is lawful if it is necessary to fulfil this contract concluded with the data subjects, or to carry out pre-contractual measures that take place at the request of the data subjects, or to fulfil a legal obligation. The latter point relates, in particular, to the clarification of the need for care and the care situation of the person in need of care on site (see Points 4. and 7.2 as well as § 7 of the Rules of Professional Ethics and Conduct for Organising Personal Caregiving).   * 1. Rights of the data subjects   The data subjects have the right to access information about their stored  personal data, the origin and recipients of that data and the purpose of the data processing as well as a right to  rectification, data to data portability, to object to or to restrict the processing, and to the blocking or erasure of no longer required or incorrect or illicitly processed data. The data subjects commit to notify the placement agency of any changes to their personal data. The data subjects have the right at any time to revoke any consent that they have expressly provided outside of this contract to the use of their personal data that goes beyond processing and transacting the contractually agreed services.  The placement agency named under Point 1.2. of this contract, who is represented by the contact person specified in Point 2 below, is responsible for collecting the data. The data subjects may assert their rights (e.g. provision of information, erasure, rectification, objection) to the responsible placement agency and to the contact person using the contact details specified under Point 1.2 or Point 2, respectively.  In the event that the data subjects are of the opinion that the processing  of their personal data by the placement agency violates the applicable data protection law or that  their claims under data protection law are being or have been violated in any other way, it is possible to lodge a complaint with the data protection authority responsible in Austria as the supervisory authority.   * 1. Data security   The care company must take appropriate organisational and technical precautionary measures to protect the relevant personal data of the data subjects. These precautions relate in particular to the  protection against unauthorised, illegal or even accidental access, processing, loss, use and manipulation. The placement agency must therefore ensure that the data are processed in such a way that adequate security of the personal data is guaranteed.   * 1. Transfer of data to third parties   In order to fulfil or undertake the services agreed in this contract, it is necessary for the data of the data subjects to be transferred to persons involved in fulfilling the obligations under Point 4.1(Agency), Point 4.2 (Other services) and Point 4.3 (Accompanying services). This concerns, in particular, the following categories of recipient, in connection with the services to be provided by them, in each case: medical institutions or specialist medical staff, care institutions, family members of the person to be cared for, rescue services, insurance providers, transport companies, authorities and contractual partners of the person to be cared for (e.g., care companies). However, the data must be forwarded exclusively on the basis of the GDPR, and any such forwarding shall be limited by the purposes required to fulfil this agency contract or on the basis of any prior consent expressly received from the data subjects.  Some of the recipients of personal data represented in the aforementioned groups of recipients may  be outside of Austria and/or process the personal data abroad. The level of data protection in other countries may potentially not be the same as in Austria. The placement agency therefore declares that the personal data of the data subjects  will be transferred only to countries which the EU Commission has decided to have an adequate  level of data protection, or will otherwise to take measures to ensure that  all recipients have an adequate level of data protection (in which case, the placement agency must conclude  standard contractual clauses with the recipients (2010/87/EC and 2004/915 /EC). The placement agency must inform the data subjects in writing in advance if it intends to transfer data to a recipient in a third country that is not a member of the EU.   * 1. Announcement of data breaches   The placement agency must ensure that data breaches are detected at an early stage and that, if necessary, they are immediately notified to the data subjects or the responsible supervisory authority (data protection authority), including the particular data categories concerned.   * 1. Retention of data   The placement agency declares the data of the data subjects will not be retained for longer than is necessary to fulfil contractual or legal obligations and to avert any liability claims. The criteria in this regard are the statutory periods for accounting, under tax and customs law, for contractual administration, under labour and employment law, and sector-specific periods (e.g. amounts to the obligation to retain a housekeeping book and the supporting documents for two years in accordance with § 160 of the Trade Regulation Act).   * 1. Further obligation of the placement agency to provide information   **In the event that data of the data subjects is not collected by the placement agency itself (e.g, by care company), the placement agency must pay heed to the notification obligation under Article 14 GDPR, which goes beyond the preceding data protection declaration.** | | | | | |
| 1. **General contractual provisions** | | | | | |
| * 1. Declarations and notifications, etc. addressed to the placement agency – with the exception of declarations of withdrawal - must be in writing, thus a written document together with original signature, in order to be legally effective; transmission via fax or simple email is sufficient..   2. **Information on the right of withdrawal/revocation**: If the placement agency and the client, as the consumer, have:   a. not concluded this agency contract on the premises of the placement agency; or  b. the client was approached personally and individually by the placement agency outside of their business premises before the conclusion of this agency contract; or  c. concluded this agency contract via direct selling, that is, exclusively using remote means of communication (e.g. telephone, email) without the placement agency or a representative attributable to the placement agency within the context of a sales or service system being present in person at the same time,  then the client can withdraw from the agency contract within 14 days without giving reasons.  The period begins at the time the contract is concluded, but not before the delivery of the **revocation form** **which is to be filled in beforehand** (**Supplement ./V2**). The declaration of withdrawal or revocation can either take place without a specific form by means of a clear declaration or by means of the pre-filled revocation form (Supplement/V2). The deadline is met if the declaration is sent to the placement agency within 14 days. The client can also withdraw if the placement agency is in breach of the occupational regulations on collecting and receiving orders for services (§ 54 GewO 1994), as well as on seeking out private individuals and promotional events (§ 57 GewO 1994).  NOTE: With regard to point b., reference is made to § 3 para 3 of the Rules of Professional Ethics and Conduct for Organising Personal Caregiving Services, which stipulates that seeking out private individuals for the purposes of collecting orders for services relating to the organisation of personal caregiving is only permitted if this is expressly requested of the placement agency, and, furthermore, the receipt of orders for such services is only permitted in the business premises or on the occasion of the permissible seeking out of private individuals in accordance with the previous sentence.  If the client has revoked this agency contract, the placement agency must repay the client for all payments received from them, including any delivery costs (with the exception of the additional costs resulting from the fact that the client has chosen a different type of delivery than the cheapest standard delivery offered by the placement agency), immediately and at the latest within 14 days from the day of receipt of the revocation by the placement agency. For the repayment, the placement agency must use the means of payment of the original transaction and the person to be cared for may not be charged any additional fees for this.  **If, by ticking the following option of “yes”, the client expressly requests the commencement of services by the placement agency before expiry of the withdrawal/revocation period, an appropriate price must be paid for the services already provided up until that point, even in the case of withdrawal from or revocation of the contract.**  Level of the price: the services which the placement agency has already provided by the time the placement agency is informed of the exercising of the right to withdrawal/revocation shall be compensated by a partial amount of the total price (pro-rated allocation) that corresponds to the proportion of services that have already been provided relative to the total scope of the services provided for in the contract.  **With this in mind, the client may choose whether it would like services to commence before expiry of the withdrawal/revocation period (e.g., immediately):**  **The client wishes for the services agreed in this contract to be commenced before expiry of, or the end of, the withdrawal period outlined above (the client themselves is to tick their choice):**  **⭘ Yes ⭘ No**   * 1. For disputes arising from this contract, the agreed place of jurisdiction shall, in each case, be the competent court with in rem jurisdiction in whose judicial district the client’s place of residence is located.   2. This contract is exclusively subject to Austrian law.   3. One counterpart of this contract is drawn up. The original is given to the placement agency; the client receives a copy.   4. The provisions of the Brokers Act are applied on a subsidiary basis. | | | | | |

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Place, Date:

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| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature of the person to be cared for/client | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature of the placement agency |