

SCIP IN-HOME CARE CONTRACT

THIS CONTRACT (the "Contract") is made and entered into this _____ day of _____, 2015, by and between Sedgwick County, Kansas (hereinafter referred to as "County" and "Department on Aging"), and Saint Raphael Nursing Services, Inc., a Kansas corporation (hereinafter referred to as the "Contractor").

WITNESSETH

WHEREAS, the Service Provider Agreement authorizes County to subcontract certain home care services to qualified private contractors; and

WHEREAS, Contractor is fully capable and qualified to subcontract the home care services hereinafter described which are eligible for funding by the Sedgwick County Department on Aging In Home Program ("SCIP Program"); and

WHEREAS, County and Contractor desire to enter this Contract to set forth the specific terms and conditions of their relationship;

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the parties hereto agree as follows:

ARTICLE 1: NATURE OF RELATIONSHIP

- I.1 Contractual Relationship. It is understood and agreed that the legal relationship between Contractor and County is contractual in nature.
- 1.2 Independent Contractor. The County hereby engages and retains Contractor as an independent contractor and Contractor accepts said engagement and retention. No other relationship is intended to be created between the parties, and nothing herein shall be construed so as to give either party any rights as an agent, employee, joint venture or partner with the other party. As an independent contractor, the Contractor and its employees will not be within the protection or coverage of the County's worker's compensation insurance. Further, neither Contractor nor any of its employees shall be entitled to receive any current or future benefits provided to employees of the County. The Department on Aging shall not be responsible for withholding social security, unemployment compensation, or state or federal income tax from payments made by County to Contractor.
- 1.3 Term. This Contract shall become a legal and binding agreement upon signature of same by both parties, but shall be effective as of January 1, 2015, (the "Effective Date") and shall terminate on December 31, 2015. This Contract shall continue on a month-to-month basis beyond December 31, 2015, provided that the parties are negotiating for a subsequent contract covering more or less the same services as this Contract.
- 1.4 Required Certifications. If Contractor is a corporation, a limited liability company or other entity that

is officially organized in Kansas, it shall furnish evidence of good standing in the form of a certificate signed by the Kansas Secretary of State. If Contractor is not officially organized in Kansas, it shall furnish evidence of authority to transact business in Kansas, in the form of a certificate signed by the Kansas Secretary of State. The applicable certificate shall be provided to the County on or before the date this Contract is executed by Contractor.

ARTICLE 2: SCOPE OF SERVICES

- 2.1 Purpose. The purpose of this Contract is to extend SCIP Clients' (as defined below in Subparagraph 2.3(A)) community tenure and maximize their functioning in independent living situations.
- 2.2 In-Home Services. During the term of this Contract, Contractor shall provide in-home services pursuant to the SCIP Program. Contractor shall comply with all requirements of Paragraph 2.3. In addition, Contractor shall comply with all requirements of Paragraph 2.4.
- 2.3 SCIP Program Requirements.

- (A) Eligible SCIP Participants. Contractor acknowledges and understands SCIP Program services under this Contract may only be provided to "Eligible SCIP Participants" which shall include those people who are certified as being eligible for SCIP benefits by County in accordance with Subparagraph 2.4(B) prior to the receipt of any services.

Income level does not affect a person's eligibility to receive SCIP benefits, but income/family size does impact the amount of fees required to be paid by the recipient.

- (B) SCIP Services. Contractor shall be qualified to, and capable of, providing one (1) or more of the types of services designated in Subparagraphs 2.3(B)(i)-(iii) for Eligible SCIP Participants who become clients of Contractor through the SCIP Program (hereinafter referred to as "SCIP Client(s)").

- (i) Attendant Care and Homemaker Services,
- (ii) TeleHealth Apparatus and services

For purposes of this Contract, the foregoing services shall collectively be referred to as "SCIP Services." The scope and level of SCIP Services provided to SCIP Clients shall be in accordance with each respective SCIP Client's written SCIP Plan of Care.

- (C) SCIP Program Cost for Services. The rates and terms for services under the SCIP are indicated in Article 5 COMPENSATION FROM COUNTY.

- 2.4 SCIP Program Requirements. The requirements specified in this Paragraph 2.4 apply to the provision of SCIP Services.
- (A) Hours of Service. In order to care for SCIP Clients, Contractor shall be available to provide SCIP Services from 8 a.m. through 5 p.m. on all weekdays to the entire geographic area of

Sedgwick County. Actual times for the provision of SCIP Services may be negotiated between the SCIP Client and Contractor in order to establish a time convenient to the SCIP Client.

(B) Retention of SCIP Clients. Contractor shall not have the authority to retain SCIP Clients on its own behalf. Instead, Contractor may refer potential clients to the County, where the potential clients will be assessed for service needs in the same manner as all other potential clients, as described in this subparagraph. The County will perform an initial assessment using the SCIP Assessment Tool (SCAT) and its standard intake procedures to determine whether or not the person is an eligible SCIP Participant. If the County determines the person is an eligible SCIP Participant, the County will provide the list to the client that includes providers able to provide the appropriate level of assistance. The client will then be able to choose their service provider. The referral will then be sent to the provider with the following information:

- (i) a Notice of Action identifying the eligible SCIP Participant who has elected to become an SCIP Client of Contractor;
- (ii) the SCIP Client's Plan of Care;
- (iii) as applicable, any other actions to be taken in regard to the SCIP Client.

Once an SCIP Client is referred to Contractor, Contractor shall provide SCIP Services in accordance with the information provided by the County.

(C) Contractor's Authorized Representative. A representative of Contractor shall be designated to:

- (i) provide fiscal information on the payment of funds allocated to the SCIP Programs;
- (ii) inform County of any organizational or staffing problems that affect the Contractor's performance hereunder and identify planned solutions (including correction dates);
- (iii) otherwise act as Contractor's point of contact with respect to this Contract and all services Contractor provides hereunder.

Until changed by written notice to the County, Contractor's authorized representative shall be:

AGENCY	Saint Raphael Nursing Services, Inc
ADMINISTRATOR	Tammy Kasselmann
ADDRESS	903 W. 18th
CITY, STATE, ZIP	Wichita, KS 67203
PHONE NUMBER	(316) 269-5400
FAX NUMBER	(316) 269-5406
EMAIL ADDRESS	tnavarrete@saintraphaelhomecare.com

(F) Difficulty in Providing Services. Contractor shall immediately provide notice to the County if Contractor is unable to provide the required quantity or quality of SCIP Services.

- (G) Supervisory Visits. It is understood that Contractor is prepared to provide SCIP Services to SCIP Clients as directed by the County. As such, the County may make supervisory visits to SCIP Clients' homes to ensure service quality meets the County's standards.
- (H) Unmet Needs. Contractor shall notify the County if Contractor identifies any unmet needs during the performance of SCIP Services.
- (I) Service Availability. Contractor shall be prepared to provide services to accommodate existing SCIP Program caseloads by January 1, 2015.
- (J) Evaluation of Contract. This Contract shall be evaluated by County contract monitors, and said parties shall be allowed to:
- (i) work at the Contractor's office;
 - (ii) meet with SCIP Clients to review the quality and appropriateness of services; and
 - (iii) review records of reimbursement requests to other third party funding sources.
- (K) Termination of SCIP Services. Any termination of SCIP Services by Contractor shall be in accordance with the SCIP Regulation controlling termination of services (Closure Reasons and Codes sheet). Subject to the prior approval County, Contractor may utilize its existing discharge criteria, provided it also complies with the discharge requirements specified by SCIP regulations and the County.
- (i) If SCIP Services are to be terminated, written notice of termination shall be given to the SCIP Client (except in instances of death or institutionalization). The notice shall be served by personally delivering a copy of the notice to the SCIP Client or by mailing a copy of the notice to the SCIP Client at the SCIP Client's last known address. **Notice shall be served at least ten (10) calendar days prior to the effective date of termination** (except in cases of violent or sexually inappropriate behavior).
 - (ii) Contractor is responsible for informing the SCIP Client of the Contractor's internal complaint procedures.
 - (iii) A copy of all termination notices shall be faxed to County (to the attention of the SCIP Program Manager: 316-660-5228) so he/she may evaluate the SCIP Client's special needs, if any, and serve as a client advocate where appropriate. In addition, Contractor shall submit a Termination Form (utilizing the appropriate termination codes) to the County whenever SCIP Services are terminated for any reason. The "Closure Reasons & Codes" is attached.

ARTICLE 3: REPRESENTATIONS & WARRANTIES

3.1 Contractor's Representations & Warranties. Contractor acknowledges the County has entered into

this Contract in full reliance on the following representations and warranties.

- (A) Contractor represents and warrants that it shall provide SCIP Clients with an opportunity to assess and evaluate the SCIP Services provided pursuant to this Contract at least once during the Contract term.
- (B) Contractor represents and warrants it shall, at all times, maintain all licenses, permits, certifications and bonds required (by federal, state or local authorities) to perform SCIP Services and the other activities contemplated by this Contract. Contractor shall notify Department on Aging immediately if any required license, permit or bond is canceled, suspended or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate termination by County, in its sole discretion.
- (C) Contractor represents and warrants that it will, at all times, ensure the facilities under its ownership, lease or supervision which are to be utilized in support of this Contract: (i) are not listed on the Environmental Protection Agency's ("EPA") list of Violating Facilities; and (ii) have not been identified to the Contractor by the director of the EPA Office of Federal Activities as facilities being considered for such a listing.
- (D) Contractor represents and warrants that it has not, and will not, make any commitments or obligations that are inconsistent with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*)
- (E) Contractor represents and warrants it shall, at all times, comply with the provisions of state and federal regulations regarding the confidentiality of Eligible SCIP Participant records. Without limiting the foregoing, Contractor represents and warrants it shall maintain the confidentiality of information about individuals collected in performing the services required by this Contract, including the individual's (i) name; (ii) address; (iii) telephone number; (iv) past or present receipt of any state or federal program services; (v) family, social, or economic circumstances; (vi) medical data, including diagnoses and past history of disease, impairment, or disability; (vii) income and other financial information; (viii) assessor's evaluation of personal or medical information; or (ix) SCIP Program eligibility. The Contractor shall not disclose or permit the disclosure of any confidential information without the prior written and informed consent of the individual or of the individual's representative, unless the disclosure is required by court order, to enable the delivery of services for which the individual or the individual's representative has requested or applied, for program monitoring, or by this Contract. The Contractor shall comply with the SCIP policies and procedures relating to confidentiality.
- (F) Contractor represents and warrants it is fully familiar with, and shall comply with, all local, state and federal ordinances, statutes, laws, codes, rules, resolutions and regulations affecting Contractor's performance of the obligations contained herein (regardless of whether such requirements are specifically referred to in this Contract).
- (G) Contractor represents and warrants that it shall provide SCIP Services in conformance with standards and guidelines set forth: (i) by the Kansas Home Care Licensure Regulations; and all regulations, policies and procedures pertaining thereto; (ii) the Department on Aging policy issuances;

and (iii) state certification requirements.

- (H) Contractor represents and warrants it shall: (i) supervise the provision of SCIP Services to SCIP Clients; and (ii) provide quality assurance training and visitations as required with qualified personnel.
- (I) Contractor represents and warrants: (i) it has carefully read and fully understands all provisions of this Contract; (ii) it has been given the opportunity to review this Contract with counsel; (iii) that resolution, motion or other similar action has been duly adopted or passed as an official act of Contractor's governing body authorizing the execution of this Contract; (iv) it possesses the legal authority to enter this Contract; and (v) that this Contract constitutes a valid, legal, and binding contract between the parties and is enforceable in accordance with its terms.

ARTICLE 4: BILLING SCIP CLIENTS

- 4.1 Contractor's Fees. The amounts specified in Para. 5.1 and within the County In-Home Program Policy Manual shall comprise the total amount Contractor may receive for the provision of SCIP Services. This amount shall include all of Contractor's time, labor, equipment, and supplies. This total amount shall be paid for by the SCIP Clients and the Department on Aging in accordance with this Article 4 and Article 5 below. The Contractor will only be reimbursed from the County for approved services minus the Clients obligation to pay for SCIP Services directly to the Contractor.
- 4.2 Notice of Billing Requirements. The billing and payment requirements specified in Subparagraphs 4.2(A)-(C) must be provided in writing to persons desiring SCIP Services.
- (A) In order to receive SCIP Services, SCIP Services applicants must agree to pay, and SCIP Clients are required to pay, a fee for the SCIP Services provided to them. The SCIP Client's fee shall be based upon his/her financial status compared to the federal poverty income guidelines. The Contractor shall charge SCIP Clients fees in the amounts required by SCIP Sliding Fee Scale.
- (B) The Contractor shall prepare and send bills to the SCIP Clients for SCIP Services rendered. The SCIP Clients are responsible for paying the bills to Contractor by the due dates indicated thereon. Contractor shall account to the County for all SCIP Client fee payments billed and received.
- (C) SCIP Services may be terminated if an SCIP Client fails to pay his/her fees by the date due. Any termination of SCIP Services shall be conducted in accordance with Paragraph 2.5(K). Notwithstanding any SCIP Client's timely filing of a request for an appeal hearing, SCIP Services may be terminated on the date prescribed on the Notice of Action.
- 4.3 Financial Controls & Billing Procedures. Contractor is authorized to use its existing financial control and patient billing systems for administration of SCIP Program and Sliding Fee Funds provided those systems: (i) follow generally accepted accounting principles; (ii) meet the requirements of Kansas law; and (iii) can be audited by the County or its designated agents.

ARTICLE 5: COMPENSATION FROM COUNTY

5.1 Compensation. Subject to the provisions of this Contract and the Sedgwick County In-Home Program Policy Manual, County shall reimburse Contractor for the provision of SCIP Services to SCIP Clients. The amount reimbursed by County shall be determined by deducting the appropriate SCIP Client co-pay amounts from the per "Unit" rates specified on the SCIP Intake. The remaining balance is the amount owed by

County to Contractor. The County shall not under any circumstances be responsible for the SCIP Clients' co-pay amount. Contractor and County expressly understand and agree that in no event shall the compensation and reimbursement paid to the Contractor exceed the rates set forth on the Intake. All payments to Contractor are conditioned upon written authorization of the County.

A. Contractor will be eligible for reimbursement from Sedgwick Department on Aging In Home Program funds for the provision of SCIP Services in accordance with the rates specified below. Said Reimbursement from the Department on Aging shall be authorized by the Department on Aging in accordance with Article 5 of the Contract.

SCIP SERVICE TYPE	CONTRACTOR RATE
(i) Attendant Care (ATCR)	\$17.00/Unit
(ii) Homemaker Services (HMKR)	\$16.00/Unit
(iii) Telehealth monitoring system plus one sensor	\$180.00/Month rental fee
(iv) Additional Sensor	\$10.00/Month
(v) Telehealth installation fee to initiate services	\$250.00/One time fee

B. The reimbursement of Contractor shall be based upon the number of eligible Units of SCIP Services provided by Contractor. A "Unit" as used herein shall mean one (1) hour of SCIP Services provided directly to an SCIP Client in his/her place of residence. Notwithstanding the foregoing, the TeleHealth Monthly monitoring fee shall be reimbursed pursuant to the monthly rate stated above and the TeleHealth Machine Installation fee shall be reimbursed based upon the above stated onetime fee.

C. All billing, mileage, training, supervisory and related costs chargeable to the SCIP program shall be included in the Contractor Rate specified above. No additional charges will be allowed by the Department on Aging for Contractor travel time, etc. In addition, no special charges for overtime, holidays, weekends, etc., are allowed.

D. The Department on Aging may, in its sole discretion, shift or utilize funding for the above listed SCIP Services to accommodate SCIP Client needs within the contractual and regulatory requirement of "Income Eligible," State and Department on Aging policy and funding.

E. Under no circumstances shall Contractor be eligible for more than 100% of the total Unit cost for the SCIP Services provided.

F. No minimum block of hours is guaranteed by the Contract, and Contractor is encouraged to deliver partial hours where possible to reduce the costs to the SCIP Client.

- G. All income earned by Contractor for the provision of SCIP Services in addition to reimbursement by the Department on Aging shall be reported to the Department on Aging. The amount and source of such income shall be clearly identified.
- H. The Department on Aging does not guarantee that funds will be available for the entire term of the Contract. In the event that the amount of funds allocated for this program is depleted prior to the expiration of this Contract, authorization for Units of service will cease immediately.
- I. Reports to the Department on Aging shall include a breakout of Units billed, the market rate, and total cost. Collection of fees from the SCIP Client shall be the sole responsibility of the Contractor.
- J. TeleHealth Services shall include: risk assessment, consumer training, staff training, data collection and transmission, data analysis, intervention determination, intervention execution and data recollection.
- K. TeleHealth Recordkeeping shall include: based upon income and cost share, shall be managed by a nurse that is trained on the TeleHealth system, the nurse shall report to the Department of Aging and be responsible for the TeleHealth services day-to-day operation, the SCIP manager will conduct quality reviews using standards and methods of the Senior Care Act, and the SCIP manager will maintain records and submit reports based upon requirements of the Department of Aging.
- L. TeleHealth Training shall include: The Contractor will provide training to all SCIP clients, their caregivers, case managers and other persons that have been pre-authorized by the client on the use on the in-home devices, the Nurse shall provide training to attendant care staff on the clinical pathways, which outline best practice interventions, and additional training will occur as identified by the Executive Director, TeleHealth Nurse and Department of Aging staff as appropriate and needed.

5.2 Billing Procedures. Contractor agrees that billings and payments under this Contract shall be processed in accordance with established budgeting, purchasing and accounting procedures of the County. Notwithstanding the foregoing, Contractor's bills to the County for SCIP Services provided must be received by the County no later than the tenth (10th) day of the month following the month in which SCIP Services have been provided. Payments shall be made within a reasonable time after receipt of Contractor's billing provided all necessary information has been accurately provided in a timely manner.

- (A) Support Documentation. Billing shall be supported with documentation required by County including, but not necessarily limited to, that documentation described in Paragraph 9.1 below.
- (B) Reimbursement Restrictions. Payments shall be made to Contractor only for items and SCIP Services specifically authorized by this Contract. County reserves the right to disallow payment or reimbursement for any item or service billed by Contractor if County believes that

such item or service was not provided to support the Contract purpose or was not authorized by the Contract.

- (C) Pre-disbursement Requirements. Contractor must provide to County the documentation required pursuant to this Contract prior to any disbursements being made by the County to Contractor.
- (D) Mailing Address. Payments shall be mailed to Contractor's address as set forth in Paragraph 17.2 below.

5.3 Billing Adjustment. Adjustments to billings shall be processed as follows.

- (A) Billing from the Contractor received after the tenth (10th) day of the month will be processed and paid with the following month's billing report.
- (B) Corrections to previous billing from the Contractor must be received by the County within forty-five (45) days following the month in which the applicable SCIP Services were provided. The corrections must be submitted as handwritten changes on the original incorrect form. All incorrect information should be crossed out. The summary report must also be corrected and all necessary documents must be submitted to the Department on Aging. In addition, Contractor must provide the following information to obtain payment for unreported Units of SCIP Services:
 - (i) the number of Units;
 - (ii) the appropriate Unit rate;
 - (iii) the program;
 - (iv) the service provided;
 - (iv) program Income billed; and
 - (v) program income collected.

Regardless of when discovered, underpayments or overpayments made by the County to Contractor shall be compensated for by making appropriate adjustments to the Contractor's next payment.

- (C) Billings and/or corrected billings made more than thirty (30) days after the close of the calendar 2015 year shall not be paid to the Contractor.

5.4 Taxes. County shall not be responsible for any federal, state or local taxes that may be imposed or levied upon Contractor as a result of this Contract.

5.5 Services not Performed. Contractor shall not be entitled to receive payments for any SCIP Services Contractor is failing or has failed to perform.

ARTICLE 6: APPEALS & AUDITS

6.1 Internal Review & Corrective Action. Internal review & corrective action shall be carried out pursuant to the Department on Aging Policies & Procedures Manual. An individual who feels that she or he has

been treated in an unfair or discriminatory manner by employees, contractors, providers, should contact the County within sixty (60) days of the occurrence. An incident report will be completed and forwarded to the Director of the Sedgwick County Department on Aging for review. The Director will issue a timely, written response to the individual, addressing his or her concern and detailing any actions taken to correct the inappropriate treatment. The decision by the Director is considered to be final action on the issue. Identities of individuals filing a grievance shall be kept confidential to the extent possible.

- 6.2 Appeals of Internal Review Decisions. The Contractor does not have the right to appeal.
- 6.3 Audits by State or Federal Agencies. The Contractor shall assist the County in any audit or review of the SCIP Programs which might be performed by the Kansas Division of Legislative Post Audit or by any other local, state or federal agency by making persons or entities, documents, and copies of documents subject to the Contractor's control available for the auditors or their representatives.

ARTICLE 7: CONTRACTOR'S PERSONNEL

- 7.1 Qualified Personnel. Contractor has, or shall secure at its own expense, personnel who are fully qualified in accordance with all applicable state and federal laws to provide the SCIP Services described in Paragraphs 2.2 and 2.3. Such personnel shall not be Sedgwick County Department on Aging employees or have any other contractual relationship with the Sedgwick County Department on Aging. All of Contractor's personnel engaged, directly or indirectly, in the provision of SCIP Services shall meet the requirements of this Contract, all applicable federal laws, and all applicable laws of the State of Kansas.
- 7.2 Minimum Wages. Contractor shall comply with the minimum wage and maximum hour provisions of the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*).
- 7.3 Employee Conflict of Interest. Contractor shall establish written safeguards to prevent its employees from using their position with Contractor for a purpose that is, or gives rise to the perception that it is, motivated by a desire for private gain for themselves or others (particularly those with whom they have family, business, or other ties). Written safeguards will be in the way of a Conflict of Interest Policy established and approved by the governing board of the Contractor being represented.
- 7.4 Employee Background Checks. Contractor acknowledges and understands that entities or persons providing government-funded services to the public are subject to public scrutiny. During the term of this Contract and at all times when Contractor is providing SCIP Services hereunder, Contractor shall assume an affirmative and ongoing obligation to comply with the SCIP Policy Manual requirements relating to background checks and to ensure the restrictions in Subparagraph 7.5(A)-(C) are adhered to. This will require the use of criminal or other legal background checks upon all employees, agents, independent contractors and other personnel who provide services pursuant to this Contract, or administer the funds conveyed under this Contract. County may request the proof or affidavits of said documentation.
- 7.5 Participant Safeguards. Persons convicted of the following types of crimes during the consecutive ten

(10) year period immediately preceding the execution of this Contract or, at any time during the pendency of this Contract, are restricted as follows:

- (A) persons convicted of any felony, drug or drug-related offense, crime of falsehood or dishonesty, or crime against another person are prohibited from performing SCIP Services, administering this Contract, or handling any funds conveyed hereunder;
- (B) persons convicted of any crimes of moral turpitude, including without limitation, sex offenses and crimes against children are prohibited from performing SCIP Services or otherwise interacting in any way with persons served pursuant to this Contract; and
- (C) persons convicted of a serious driving offense, including without limitation, driving under the influence of alcohol or a controlled substance, are prohibited from operating a vehicle in which a person served pursuant to this Contract is a passenger. For purposes of this section, "serious traffic offense" shall not include any offense deemed a "traffic infraction" under K.S.A. §§ 8-2116 and 8-2118.

The terms "convicted" and "conviction" shall include: (i) convictions from any federal, state, local, military, or other court of competent jurisdiction; (ii) nolo contendere ("no contest") pleas; and (iii) being placed into a diversion or deferred judgment program in lieu of prosecution.

Any issues concerning the interpretation of this Paragraph 7.5 or its application to an individual shall be referred to the Director of the Sedgwick County Department on Aging. The Director's decision shall be final for purposes of compliance with this Contract.

- 7.6 *Contractor's Training.* Contractor shall demonstrate to the County personnel how each person providing SCIP Services will be trained, and their skills maintained and improved. The training provided shall include, at a minimum, training and instruction on legal and proper behavior and conduct towards SCIP Clients, their family members and their property while in SCIP Clients' homes. County staff may offer technical assistance when necessary.

ARTICLE 8: FUNDING

- 8.1 *Reprogramming of Funds.* It is understood and agreed that in the event the amount of funds the Sedgwick County Department on Aging actually receives from the Sedgwick County Mill Levy is less than anticipated, or in the event that no funds are available to the Department on Aging for funding this Contract, County may decrease the total compensation and reimbursement to be paid hereunder or may terminate or suspend the Contract without liability.
- 8.2. *Inability to Perform Contract.* It is understood and agreed that in the event Contractor's rate of progress on this Contract is leading to underspending due to inability to provide SCIP Services at planned levels, County may decrease the total compensation and reimbursement to be paid hereunder or terminate the Contract without any further liability.
- 8.3. *Cash Basis and Budget Laws.* The right of the County to enter into this Contract is subject to the provisions of the Cash Basis Law (K.S.A. §§10-1112 and 10-1113), the Budget Law (K.S.A. § 79-

2935), and other laws of the State of Kansas. This Contract shall be construed and interpreted in such a manner as to ensure the County shall at all times remain in conformity with such laws. Further, the County reserves the right to unilaterally sever, modify, or terminate this Contract at any time if, in the opinion of County, the Contract may be deemed to violate the terms of any laws of the State of Kansas.

- 8.4 Open Meetings. By accepting public funding from Department on Aging, or funding administered by County, Contractor agrees that all administrative meetings at which the management or distribution of such funding is a topic will be open to County Officials and/or employees of the County.

ARTICLE 9: RECORDS, REPORTS, PROCEDURES & INSPECTIONS.

- 9.1 Documentation of Costs. All costs incurred by Contractor for which Contractor purports to be entitled to reimbursement shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation (hereinafter collectively referred to as "Expense Information") evidencing in proper detail the nature and propriety of the costs charged to the Department on Aging.
- 9.2 Availability of Accounting Information. Contractor shall clearly identify and make readily accessible to the Department on Aging:
- (A) all Expense Information; and
 - (B) any other checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract.

The information listed in **Subparagraphs 9.2(A) and (B)** is collectively referred to as "Accounting Information").

- 9.3 Audit. For all funds that are received by Contractor from County as part of this Contract; an audit may be requested by County. Any such audit shall be performed in accordance with the provisions of the Contract. The audit shall cover Contractor's Accounting Information and other financial records which apply to this Contract only. A copy of the audit requested by the Department on Aging shall be provided to Department on Aging within twenty (20) days after receipt thereof. The audit may be requested by County at any time throughout the calendar year.
- 9.4 Reports. During the term of this Contract, Contractor shall furnish to Department on Aging, in such form as Department on Aging may require, such statements, records, reports, data and information (hereinafter collectively referred to as "Reports") pertaining to matters covered by this Contract as Department on Aging requests. Payments to Contractor may be withheld by Department on Aging if Contractor fails to provide all required Reports in a timely, complete and accurate manner. Any payments withheld pursuant to this **Paragraph 9.4** shall be submitted to Contractor when all requested Reports are furnished to Department on Aging in an acceptable form. All records and information used in preparation of Reports are subject to review by Department on Aging to ensure the accuracy and validity of the information reported.
- (A) Without limiting the foregoing Contractor shall report the following information to Department on Aging on a monthly basis no later than the tenth (10th) day of the month following the month

in which SCIP Services were provided:

- (i) an unduplicated count (by service) of SCIP Clients served;
- (ii) units and type of service provided to each SCIP Client;
- (iii) cost of service per SCIP Client;
- (iii) such other data necessary to evaluate the SCIP Program's effectiveness and efficiency.

(B) In addition Contractor shall submit required eligible SCIP Participant data, program progress, financial and demographic information upon request during the term of this Contract. Such information shall be provided on forms designated by the Department on Aging.

9.5 Retention of Records. Except as otherwise authorized by the Department on Aging, Contractor shall retain all documentation for a period of five (5) years after receipt of the final expenditure report under this Contract. Contractor may be required to maintain the aforementioned documentation beyond the five (5) year period if circumstances (including, but not limited to, litigation or audit resolution proceedings) reasonably necessitate an increased retention period.

9.6 Access to Records. At any time during which records are retained by Contractor pursuant to **Paragraph 9.5**, Contractor shall make any and all of its Accounting Information and other records, books, papers, documents and data available to Department on Aging (or an authorized representative of a State agency with statutory oversight authority) for the purposes of:

- (A) assisting in litigation or pending litigation; or
- (B) any audits or examinations reasonably deemed necessary by the Department on Aging.

The Department on Aging shall be entitled to make excerpts, copies and transcriptions of any of the foregoing information.

ARTICLE 10: CONFLICTS OF INTEREST

10.1 Interest of Contractor. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of SCIP Services pursuant to this Contract.

10.2 Interest of Public Officials and Others. No officer or employee of the Department on Aging or any member of its governing body or other public official shall have any interest, direct or indirect, in this Contract or the proceeds hereof.

10.3 Employment Conflicts. Contractor shall submit written notice to the Department on Aging in the event Contractor becomes aware that:

- (A) an employee of the Department on Aging shall also be an employee of Contractor at time this Contract is executed;
- (B) an employee of Contractor seeks additional/alternate employment with Department on Aging during the term of this Contract;
- (C) an employee of the Department on Aging seeks additional/alternate employment with Contractor during the term of this Contract.

The Department on Aging shall have the sole discretion to determine what actions need to be taken to resolve the conflict. The Department on Aging may immediately terminate this Contract without any further liability to Contractor if Contractor fails to adhere to the Department on Aging's decision.

- 10.4 Gratuities and Favors. Contractor shall not directly or indirectly offer any of the Department on Aging's officers, employees, or agents anything having monetary value including, without limitation, gratuities and favors.

ARTICLE 11: ASSIGNMENT & SUBCONTRACTING.

- 11.1 Assignment. Neither this Contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by Contractor without the prior written consent of the Department on Aging. This Contract is binding upon and fully enforceable against the successors and assigns of Contractor, whether consented to or not.
- 11.2 Subcontracting. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of Department on Aging. All approved subcontracts shall conform to the applicable requirements set forth in this Contract including any and all documents incorporated herein and amendments, if any. Notwithstanding the Department on Aging's consent to any subcontracting, Contractor shall remain fully responsible for all obligations of this Contract.

ARTICLE 12: PUBLICATION OF CONTRACT RESULTS

- 12.1 Contract Related Publications. If this Contract results in a book or other material which may be copyrighted, the author is free to copyright the work. However, the Department on Aging hereby reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all such copyrighted material and all material which can be copyrighted.
- 12.2 Documentation of Originality or Source. All published material and written reports submitted under this Contract or in conjunction with any third party agreements under this Contract will be originally developed material unless specifically provided for otherwise. Material not originally developed that is included in reports shall have the source identified either in the body of the report or in a footnote (regardless of whether the material is verbatim or in an extensive paraphrase format). All published material and written reports shall give notice that funds were provided by a grant from the Department on Aging

ARTICLE 13: EQUAL OPPORTUNITY & AFFIRMATIVE ACTION.

- 13.1 Discrimination Prohibited. In carrying out this Contract, Contractor shall not discriminate against any person on the basis of race, ancestry, national origin, color, sex, disability, age, or religion and shall comport its performances with all pertinent provisions set out in all applicable Federal and State anti-discrimination acts and associated regulations, all as amended, including, but not limited to:
- (A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.* and 45 C.F.R. Part 80);
 - (B) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.* and 45 C.F.R. Parts 1602, 1604, 1605, and 1606);
 - (C) the Age Discrimination in Employment Act (29 U.S.C. 621 *et seq.* and 29 C.F.R. Part 1625);
 - (D) the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.* and 45 C.F.R. Parts 90 and 91);
 - (E) the Americans with Disabilities Act ("ADA") (42 U.S.C. 12101 *et seq.*, 28 C.F.R. Parts 35 and 36, and 29 C.F.R. Parts 1602, 1627, and 1630);
 - (F) the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.* and 45 C.F.R. Parts 84 and 85);
 - (G) the Kansas Acts Against Discrimination (K.S.A. 44-1001 *et seq.* and K.A.R. Articles 21-30, 21-31, 21-32, 21-33, 21-34, 21-50, and 21-70); and
 - (H) the Kansas Discrimination in Employment Act (K.S.A. 44-1110 *et seq.* (including the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 *et seq.* and K.A.R. Article 21-80)).
- 13.2 Soliciting Employees. In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission.
- 13.3 Non-Compliance. If Contractor:
- (A) fails to comply with the reporting requirements of K.S.A. § 44-1031 or K.S.A. § 44-1116;
 - (B) is found guilty of a violation of the Kansas Act Against Discrimination or the Age Discrimination in Employment Act under a decision or order of the Kansas Human Rights Commission which has become final;
 - (C) violates the applicable provisions of the ADA; or
 - (D) violates the applicable provisions of any of the other acts, regulations or policies cited in **Paragraph 13.1,**

Contractor shall be deemed to be in default of this Contract and it may be immediately canceled, terminated or suspended, in whole or in part, by Department on Aging.

- 13.4 *Exempt Contractors.* The provisions of this **Article 13** (with the exception of those provisions relating to the ADA) are recommended but not enforceable against Contractor if:
- (A) Contractor employs fewer than four (4) employees at all times during the term of this Contract; or
 - (B) all of Contractor's contracts with the Department on Aging cumulatively total Five Thousand dollars (\$5,000.00) or less during the calendar year of 2015.

ARTICLE 14: SUSPENSION & TERMINATION

- 14.1 *Suspension of Services.* Department on Aging may, in its sole discretion, indefinitely suspend Contractor's performance of SCIP Services pursuant to this Contract by providing a two-day notice to Contractor. Contractor shall resume performance of services within three (3) days after receipt of notice from the Department on Aging.
- 14.2 *Termination in Specific Circumstances.* In addition to the other provisions of the Contract authorizing termination in specific situations, the Contract may be terminated as specified in **Paragraphs 14.3 and 14.4** below.
- 14.3 *Termination for Cause.* If Contractor:
- (A) fails to fulfill in a timely and proper manner any of its obligations under this Contract (and fails to cure such default within five (5) days after receipt of written notice);
 - (B) violates any of the terms, covenants, representations, warranties, conditions, or stipulations of this Contract;
 - (C) authorizes the winding up or reorganization of Contractor;
 - (D) makes a general assignment for the benefit of creditors; or
 - (E) appoints a receiver,

Contractor shall be deemed to have materially breached this Agreement, and the Department on Aging shall be entitled to terminate the Contract by providing written notice to the Contractor. In such event, the Department on Aging may pursue all damages incurred by Department on Aging as a result of Contractor's breach including, without limitation, incidental, consequential and punitive damages (to the extent allowed by law). The Department on Aging may withhold any payments due to Contractor for the purpose of set-off until such time as the exact amount of damages due Department on Aging from Contractor are determined. In addition, any information prepared by Contractor to carry out this Contract including, without limitation, data, studies, surveys, records, drawings, maps and reports shall, at the option of Department on Aging, become the property of the Department on Aging. Said items shall be delivered to the Department on Aging within ten (10) days after receipt of a written request from Department on Aging.

14.4 Termination for Convenience. Either party may terminate this Contract, in whole or in part, without stating any reason therefor by providing thirty (30) days written notice to the other party. To be effective, a partial termination shall be assented to in writing by the non-terminating party. Notwithstanding the foregoing, a refusal by a non-terminating party to assent to partial termination shall in no way limit the other party's right to unilaterally terminate the entire Contract.

If the Department on Aging terminates for convenience, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. If the Contract is terminated by either party pursuant to this Paragraph 14.4, the Contractor shall be paid for work satisfactorily completed prior to the effective date of termination, provided the provisions of Paragraph 5.2 have been complied with by Contractor.

ARTICLE 15: INDEMNIFICATION

15.1 *Indemnification:* (A) Each party further agrees to indemnify and hold the other, including directors, officers, agents and employees, harmless from all claims, suits, judgments and demands arising from the indemnifying party's negligent and/or intentional acts and omissions in the performance of duties prescribed in this Contract. Each party shall give the other immediate written notice of any claim, suit or demand which may be subject to this provision. This provision shall survive the termination of this Contract.

ARTICLE 16: INSURANCE

16.1 *Insurance:* Liability insurance coverage indicated below must be considered as primary and not as excess insurance. Contractor shall furnish a certificate evidencing such coverage, with County listed as an additional insured, except for professional liability, workers' compensation and employer's liability. Certificate shall be provided with bid/proposal submittals. Certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited, or restricted until thirty (30) days after County receives written notice of such change. All insurance must be with an insurance company with a minimum BEST rating of A-VIII and licensed to do business in the State of Kansas. It is the responsibility of Contractor to require that any and all approved subcontractors meet the minimum insurance requirements. Contractor shall obtain the above referenced certificate(s) of insurance, and in accordance with this Agreement, provide copies of such certificates to County.

Workers' Compensation:

Applicable coverage per State Statutes

Employer's Liability Insurance: \$100,000.00

Commercial General Liability Insurance:

Bodily Injury:

Each Occurrence \$500,000.00

Aggregate \$500,000.00

Property Damage:

Each Occurrence \$500,000.00

Aggregate \$500,000.00

Personal Injury:

Each Occurrence \$500,000.00

General Aggregate \$500,000.00

Automobile Liability-Owned, Non-owned and Hired

Each Occurrence Bodily Injury and Property damage \$500,000.00
General Aggregate \$500,000.00

**Professional Liability
If required**

ARTICLE 17: NOTICES

- 17.1 Notice Requirements. Any formal notice required or permitted under this Contract shall be deemed sufficiently given if said notice is personally delivered, sent by registered or certified mail (return receipt requested) or sent by means of telefacsimile or telecopier, to the party to whom said notice is to be given. Notices delivered in person or sent via telefacsimile or telecopier shall be deemed to be served effective as of the date the notice is delivered or sent, as applicable. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served seventy-two (72) hours after the date said notice is postmarked to the addressee, postage prepaid.
- 17.2 Notice Information: Until changed by written notice given by one party to the other, the addresses and numbers of the parties shall be as follows:

If to Department on Aging
Attn: Excutive Director
2622 W. Central Ave, Suite 500
Wichita, KS 67203
Phone: 316-660-5221
Fax: 316-660-1936

If to Contractor: Saint Raphael Nursing Services, Inc.
903 W 18th
Wichita, KS 67203
Phone:316-269-5400
Fax: 316-269-5406

And

Sedgwick Department on Aging Counselor's Office
Sedgwick Department on Aging Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790
Phone: 316-660-9340
Fax: 316-383-7007

ARTICLE 18: MISCELLANEOUS

- 18.1 Publicity. Contractor shall not publicize in any manner whatsoever the SCIP Services to be performed under this Contract or Contractor's participation in the SCIP Programs without prior written consent of Department on Aging. Department on Aging's support of the SCIP Services and Program shall be conspicuously acknowledged in all publicity releases.
- 18.2 Applicable Law. This Contract shall be governed by, interpreted and construed in accordance with the laws of the State of Kansas, without regard to its conflict of law provisions.

- 18.3 Waiver. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Contract or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.
- 18.4 Descriptive Headings. The descriptive headings of the provisions of this Contract are formulated and used for convenience only and shall not be deemed to affect the meaning and construction of any such provision.
- 18.5 Attorneys' Fees. In any action or proceeding, arising out of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees.
- 18.6 Amendments. This Agreement may not be amended unless such amendment is in writing and signed by both parties hereto.
- 18.7 Survivorship. Notwithstanding the termination of this Contract, Contractor's obligations with respect to **Article 3** ("Representations & Warranties"), **Article 6** ("Appeals & Audits"), **Article 9** ("Records, Reports, Procedures & Inspections"), **Article 12** ("Publication of Contract Results"), **Article 15** ("Indemnification"), **Article 16** ("Insurance"), **Article 18** ("Miscellaneous"), and any other terms and conditions which by their nature should survive termination, shall survive the termination of this Contract.
- 18.8 Invalidity. In the event that any provision in this Contract shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.
- 18.9 Phraseology. In this Contract, the singular includes the plural, the plural includes the singular and any gender includes the other gender.
- 18.10 Incorporation of Appendices. The Appendices attached hereto and incorporated by reference are a part of this Contract to the same extent as if fully set forth herein.
- 18.11 Authorities Incorporated by Reference. The parties shall be bound by those provisions and requirements which are applicable and relevant to the SCIP Program and contained in the following authorities which are incorporated into, and made a part of, this Contract by this reference: (A) Sedgwick County In-Home Program Policy Manual (including any revisions to said policies and procedures adopted during the term of this Contract and (B) the HIPAA Rules Business Associates Addendum.
- 18.12 Merger. This Contract and the documents incorporated by reference constitute the entire agreement between the parties with respect to their relationship as it relates to the provision of SCIP Services. There are no verbal understandings, agreements, representations or warranties between the parties which are not expressly set forth herein. This Contract supersedes all prior agreements and understandings between the parties, both written and oral.

IN WITNESS WHEREOF, Department on Aging and Contractor have executed this Contract as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

SAINT RAPHAEL NURSING SERVICES, INC

Richard Ranzau, Chairman
4th District

Tammy Kasselman

Tammy Kasselman
Administrator

Date: _____

Date: 02/03/2015

ATTEST:

Kelly B. Arnold, County Clerk

Date: _____

APPROVED AS TO FORM

Justin M. Waggoner

Justin M. Waggoner

Date: 2-18-15

HIPAA RULES

BUSINESS ASSOCIATE ADDENDUM

DEFINITIONS

1.1 The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Sedgwick County.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

2.1 not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law;

2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;

2.3 report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, as further provided for in Par. 12.1, *et seq.*;

2.4 mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;

2.5 in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on

behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

2.6 make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

2.7 make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

2.8 make its internal practices, books, and records available to the Covered Entity or the Secretary for purposes of determining compliance with the HIPAA Rules; and

2.9 maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528.

PERMITTED USES AND DISCLOSURES BY ASSOCIATE

3.1 Except as otherwise limited in this Agreement, Business Associate may only Use or Disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the purposes of the contractual relationship, if such Use or Disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the Minimum Necessary policies and procedures of the Covered Entity.

SPECIFIC USE AND DISCLOSURE PROVISIONS

4.1 Except as otherwise limited in this Agreement, Business Associate may Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the contractual or legal responsibilities of the Business Associate.

4.2 Business Associate may Use or Disclose Protected Health Information as Required By Law.

4.3 Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.

4.4 Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

4.6 Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

OBLIGATIONS OF COVERED ENTITY

5.1 Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.

5.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to Use or Disclose Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.

5.3 Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

PERMISSIBLE REQUESTS BY COVERED ENTITY

6.1 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity. If necessary in order to meet the Business Associate's obligations under the Agreement, the Business Associate may Use or Disclose Protected Health Information for Data Aggregation, management and administrative activities, or contractual or legal responsibilities of Business Associate.

TERM

7.1 **Term.** The Agreement shall be effective as of date of execution of the Agreement by the parties, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, has been returned to Covered Entity or, at Covered Entity's option, is destroyed, or, if it is infeasible to destroy Protected Health Information, the protections are extended to such information, in accordance with the termination provisions in this Agreement.

MISCELLANEOUS

8.1 A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

8.2 The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules.

8.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

8.4 In addition to any implied indemnity or express indemnity provision in the Agreement, Business Associate agrees to indemnify, defend and hold harmless the Covered Entity, including any employees, agents, or Subcontractors against any actual and direct losses suffered by the Indemnified Party(ies) and all liability to third parties arising out of or in connection with any breach of this Agreement or from any negligent or wrongful acts or omissions, including failure to perform its obligations under the HIPAA Rules, by the Business Associate or its employees, directors, officers, Subcontractors, agents, or other members of its workforce. Accordingly, upon demand, the Business Associate shall reimburse the Indemnified Party(ies) for any and all actual expenses (including reasonable attorney's fees) which may be imposed upon any Indemnified Party(ies) by reason of any suit, claim, action, proceeding or demand by any third party resulting from the Business Associate's failure to perform, Breach or other action under this Agreement.

SECURITY RULE REQUIREMENTS

9.1 Business Associate agrees, to the extent any Protected Health Information created, received, maintained or transmitted by or in electronic media, also referred to as electronic protected health care information, as defined by 45 CFR § 160.103, that it will only create, maintain or transmit such information with appropriate safeguards in place.

Business Associate shall therefore: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health care information; ensure that any agent, including Subcontractors, to whom it provides such information shall agree to also implement reasonable and appropriate safeguards to protect the information; and report to the Covered Entity any Security Incident, as that term is defined by 45 CFR § 164.304, of which it becomes aware.

TERMINATION

10.1 Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

EFFECT OF TERMINATION

11.1 Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

Provided however, Business Associate may retain Protected Health Information if necessary for management and administration purposes or to carry out its legal responsibilities after termination of the Agreement.

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

- return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;

- continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at in this Agreement which applied prior to termination; and

- return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

The obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

NOTIFICATION OF BREACH

12.1 To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses, or Discloses Unsecured Protected Health Information, it shall, following the discovery of a Breach of such information, notify the Covered Entity of such Breach. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, Used, accessed, acquired, or Disclosed during such Breach. The Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in notification to the Individual under 45 C.F.R. § 164.404(c) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.

12.2 For purposes of this section, a Breach shall be treated as discovered by the Business Associate as of the first day on which such Breach is known to such Business Associate (including any person, other than the Individual committing the breach, that is an employee, officer, or other agent of such associate) or should reasonably have been known to such Business Associate (or person) to have occurred by the exercise of reasonable diligence.

12.3 Subject to section 12.4, all notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach by the Business Associate involved in the case of a notification required under section 12.2. The Business Associate involved in the case of a notification required under section 12.2, shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

12.4 If a law enforcement official determines that a notification or notice required under this section would impede a criminal investigation or cause damage to national security, such notification or notice shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a Disclosure covered under such section.

If a law enforcement official states to the Business Associate that any notification or notice would impede a criminal investigation or cause damage to national security, the Business Associate shall:

- (a) If the statement is in writing and specifies the time for which a delay is required, delay such notification or notice for the time period specified by the official; or
- (b) If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification or notice temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in (a) is submitted during that time.

PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.

13.1 Except as provided in section 13.2, the Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Covered Entity has obtained from the Individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Individual.

13.2. Section 13.1 shall not apply in the following cases:

- (a) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- (b) The purpose of the exchange is for research (as described in sections 164.501 and 164.512(i) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.
- (c) The purpose of the exchange is for the treatment of the Individual, subject to any regulation that the Secretary may promulgate to prevent Protected Health Information from inappropriate access, Use, or Disclosure.
- (d) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations in section 164.501 of title 45, Code of Federal Regulations.
- (e) The purpose of the exchange is for remuneration that is provided by the Covered Entity to the Business Associate for activities involving the exchange of Protected Health Information that the Business Associate undertakes on behalf of and at the specific request of the Covered Entity pursuant to the Agreement.
- (f) The purpose of the exchange is to provide an Individual with a copy of the Individual's Protected Health Information pursuant to section 164.524 of title 45, Code of Federal Regulations.
- (g) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (a) through (f).

