

## PARTICIPATING CMHC AGREEMENT FY '18

This Participating CMHC Agreement (the "Agreement") is made and entered into this 1<sup>st</sup> day of July, 2017, by and between, ComCare of Sedgwick County Inc. hereinafter referred to as "CMHC", and the Secretary of the Kansas Department for Aging and Disability Services, whose address is 503 South Kansas Ave., Topeka, Kansas 66603, hereinafter referred to as "KDADS", all of whom may collectively hereinafter be referred to as the "Parties".

Whereas, this contract is meant to provide services for individuals who are uninsured/underinsured and not otherwise eligible for other funding streams;

Whereas, K.S.A. 19-4001 et seq. authorizes the board of county commissioners to establish community mental health centers;

Whereas, the KDADS, authorized by K.S.A. 39-708c to enter into contracts, desires to fund community-based mental health services for individuals needing services within the CMHCs designated service area;

Whereas, the CMHC must meet the licensing requirements in K.A.R. 30-60 and K.A.R. 30-61.

Now, therefore, for and in consideration of the mutual covenants and agreements contained herein, the Parties do hereby mutually covenant and agree as follows:

There are six (6) services that must be given first priority for use with individuals who meet SPMI or SED criteria. The reason for prioritizing services is that these are the services that consistently allow Kansans to be diverted from psychiatric hospitalization and remain in the community.

The top six (6) services are a PRIORITY. CMHCs will consistently use the top six (6) services for consumers who meet the SPMI or SED criteria. CMHCs will monitor use of all other services listed for SPMI or SED consumers.

- Intensive case management (CPST)
- Attendant care
- Peer Support
- 24-hour crisis response, triage, stabilization, and treatment services
- Psychiatric services
- Psychosocial Rehabilitation Services

### **I. Community Based Behavioral Health Services**

K.S.A. 39-1602 states that "'Target Population' means the population group designated by rules and regulations of the KDADS as most in need of mental health services which are funded, in whole or in part, by state and other public funding sources, which groups shall include adults with severe and persistent mental illness, serious emotionally disturbed children and adolescents (i.e., children and adolescents experiencing a serious emotional disturbance), and other individuals at risk of requiring institutional care (because of their mental illness)."

K.S.A 39-1602 (b) states that "'Community based mental health services' includes, but is not limited to, evaluation and diagnosis, case management services, mental health inpatient and outpatient services, prescription and management of psychotropic medication, prevention, education, consultation, treatment and rehabilitation services, twenty-four-hour emergency services, and any facilities required therefor, which are provided within one or more local communities in order to provide a continuum of care and support services to enable mentally ill persons, including targeted population members, to function outside of inpatient institutions to the extent of their capabilities. Community-based mental health services also include assistance in securing employment services, housing services, medical and dental care, and other support services."

K.S.A. 39-1602 (h) states that "'Screening' means the process performed by a participating community mental health center, pursuant to a contract entered into with the secretary under K.S.A. 39-1610 and amendments thereto, to determine whether a person, under either voluntary or involuntary procedures, can be evaluated or treated, or can be both evaluated and treated, in the community or should be referred to the appropriate state psychiatric hospital for such treatment or evaluation or for both treatment and evaluation."

K.S.A. 39-1601 et seq. identifies the CMHC as the recognized vendor of said goods or services and desires to provide the same to the citizens of Kansas.

K.S.A 39-1601 et seq. identifies that funding included in this agreement is intended to, subject to available resources, fund the coordination and provision of mental health services for persons with mental illness who are residents of the service delivery area of the CMHC yet are without an ability to pay for such services

K.S.A. 65-4433 states "for the purpose of insuring that adequate mental health services are available to all inhabitants of Kansas, the state shall participate in the financing of mental health centers in the manner provided by this act."

## **A. SCOPE OF WORK**

Funding for the Scope of Work – Community Based Behavioral Health Services is comprised of funding allotments from Federal Mental Health Block Grant, Mental Health Reform, the Governor's Mental Health Initiatives, and State Aid. The CMHC shall use funds from this agreement to provide to persons in the priority target populations as defined by K.S.A. 39-1602 and stated above community-based behavioral health services including, but not limited to:

1. 24-hour, 7 days a week emergency treatment and first response services;
2. Crisis responsiveness;
3. Evaluation, assessment, and treatment;
4. Screening for admission to a state psychiatric hospital, when applicable and required by K.A.R. 30-61-10; and follow-up with any consumer seen for or provided with any emergency service and not detained for inpatient care and treatment, to determine the need for any further services and/or referral to any services;
5. Basic outpatient treatment services;
6. Basic case management services for adults and basic community-based support services for children, adolescents, and their families;
7. Liaison services to state psychiatric hospitals, nursing facilities for mental health, psychiatric residential treatment facilities, and state hospital alternatives for children and adolescents; including, discharge planning beginning the first day of an admission, connecting to community resources, facilitating a "warm hand-off" upon discharge, and follow up.

This is not an all-inclusive list of required basic community based services of a community mental health center, nor of a "participating community mental health center". For further details specific to

these requirements, please reference K.S.A. 39-1601 through 1612, a.k.a. the Mental Health Reform act; the regulations set forth in K.A.R. article 60, chapter 30 – Licensing of Community Mental Health Centers; the regulations set forth in K.A.R. article 61, chapter 30 – Participating Community Mental Health Centers; and, any other statute and regulation pertaining to community mental health centers and duties and responsibilities thereof, or policies and rules set forth by the Secretary of the Kansas Department for Aging and Disability Services.

CMHCs shall not deny or limit access to medically necessary community behavioral health services to consumers based solely on the presence of a substance use disorder or the receipt of services for a substance use disorder.

## **B. OUTCOME MEASURES**

The CMHC is expected to improve its performance on the outcome measures listed below (1-6). Performance improvement planning may be initiated based upon the trend specific to the CMHC for each outcome. Discussion and further study shall result if the trend for a given outcome begins to move in a negative direction. A performance improvement plan may be initiated at any time upon agreement between KDADS and the CMHC, but shall be developed in the event of a negative trend that persists for 3 consecutive months.

The CMHC will use recognized performance improvement methods to improve its performance on the identified outcome(s).

If the CMHC believes that improving performance on the outcome(s) is beyond its control, the CMHC may, within 15 days of receiving written notification of a need to develop a performance improvement plan, submit a written request to be exempted from developing and implementing a performance improvement plan. The request will include data to substantiate the reason(s) for requesting the exemption. KDADS will evaluate the request and notify the CMHC in writing within 15 days of receiving the request whether or not the exemption request was granted.

All FY2018 Outcomes will specifically monitor the uninsured/underinsured target population served by each CMHC. The target population will be determined by the Medicaid eligibility status in effect at the end of each reporting period, which shall be monthly. KDADS will share available outcomes data with the CMHC at least quarterly.

1. Admissions adult: The rate of State Mental Health Hospital (SMHH) admissions for adults residing within the CMHC catchment area who have been screened for admission to a SMHH.

Measure: Admission Rate is determined by dividing the Numerator by the Denominator and multiplying the quotient by 10,000.

Numerator: The number of adult admissions to a SMHH as a result of a mental health inpatient screen performed by Community Mental Health Center staff.

Denominator: The number of all adults (age 18 and over) within the CMHC catchment area based on the most recent US Census County estimates available at the start of the contract period.

Data Source: Inpatient Screening Database (IPS), US Census County estimates

Reported: Monthly by responsible CMHC reported in IPS

2. Adult Re-admissions within 30 days of discharge: Percent of screening determinations resulting in readmissions of adults, age 18 and over, to any SMHH, occurring within 30 days of previous discharge.

Numerator: Number of adults discharged from SMHH, with a subsequent readmission occurring within 30 days.

Denominator: Total number of Adult discharges from SMHH, occurring within 30 days of reporting period.

Data Source: Inpatient Screening Database (IPS).

Reported: Monthly by responsible CMHC reported in IPS

3. Adult Penetration Rate: The per capita number of consumers with an SPMI the CMHC serves.

Numerator: Number of unduplicated consumers with an SPMI that have received CSS services within the last 90 days.

Denominator: Number of persons living in the CMHC catchment area in the adult age range based on the most recent US Census County estimates available at the start of the contract period.

Data Sources: AIMS system. US Census County estimates

Reported: Quarterly.

4. Access standards post SMHH for adults: Face-to-face services with client, unless refused by client within 3 calendar days of discharge from a SMHH. If the consumer refuses services, the dates, times, and reasons why a face-to-face contact did not occur within the required timeframe shall be documented in the client's file.

Numerator: Number of adults receiving CSS services who had a face to face contact within 3 calendar days of discharge from a SMHH

Denominator: Number of adults receiving CSS services discharged from a SMHH during the previous month

Data Source: Chart reviews, AIMS, and SMHH database

Reported: Monthly by established catchment areas

5. Medication appointment within 30 calendar days of discharge from a SMHH.

Numerator: Number of adults receiving CSS services who had a medication appointment within 30 calendar days of discharge from a SMHH

Denominator: All SMHH discharges that occurred during the previous month

Data Source: AIMS, IPS and State MH Hospital Database

Reported: Monthly by established catchment areas

6. Independent Living: The percentage of consumers with an SPMI who live independently. The CMHC shall report the percentage of consumers with an SPMI who are living independently.

Numerator: Number of consumers with an SPMI that have received CSS services in the last six months who are living independently.

Denominator: Total number of consumers with an SPMI that have received CSS services in the last six months.

Data Source: AIMS system/ Client Status Reports (CSR).

Reported: Monthly by established catchment areas.

## **C. DELIVERABLES AND REPORTING**

### **1. Data Reporting**

- a. The CMHC shall report complete and accurate client-level demographic and service encounter data through AIMS for adults and youth with registration values of enrolled target, enrolled non-target, non-enrolled and pending. The CMHC shall also report the number of individuals who are screened for admission to an inpatient psychiatric facility including state-contracted psychiatric inpatient facilities. The CMHC shall also report complete and accurate client status through AIMS for adults and youth with registration values of enrolled targeted.
- b. The CMHC shall provide Client Status Report (CSR) updates for adults and youth in the enrolled targeted reporting populations. The CMHC shall report monthly client status updates according to the definitions for the targeted reporting populations specified in the AIMS Manual to KDADS or its contractor.
- c. The CMHC shall report all client-level data as specified in the AIMS Manual to KDADS or its contractor by the 15<sup>th</sup> of the following month.
- d. The CMHC shall maintain the supporting documentation to verify their AIMS reporting for at least 5 years for inspection by KDADS or an entity designated by KDADS to determine completeness and accuracy.
- e. The CMHC will input Payment Source #4 into AIMS for all uninsured clients receiving services provided with funds from this contract.
- f. The CMHC shall submit quarterly service/financial reports in the format designated by and on the template and instructions developed by KDADS due by the 30<sup>th</sup> of the month following the end of the calendar quarter. Reports shall be submitted to the KDADS' Behavioral Health Adult Program Manager.

### **2. Data Performance Measures**

The CMHC shall:

- a. Report 100% complete and accurate demographic and client service data for 95% of their consumers every month. CMHCs are out of compliance with this requirement if they fail to achieve and maintain a 95% or higher complete reporting rate on the AIMS Data Completion Report.

Numerator: The CMHC's number of consumer record files with an initial submission date during the reporting month where 100% of the demographic and service data is complete and accurate.

Denominator: Total number of record files for the CMHC for the reporting month.

- b. Report 100% complete and accurate monthly service records for at least 95% of their consumers with required AIMS services every month. The CMHC is out of compliance with this requirement if they fail to achieve and maintain 95% or higher complete reporting rate on the AIMS Targeted Population.

Numerator: The CMHC's number of adult and children CSR records with an SPMI/SED chronicity value of 3 or 6 that have 100% of the required CSR fields complete and accurate.

Denominator: Total number of adult and children CSR records with an SPMI/SED chronicity value 3 or 6 for the CMHC for that reporting month.

#### **D. PAYMENT**

1. Total Compensation for Community Based Behavioral Health Services for July 1, 2017 through June 30, 2018 shall not exceed \$6,055,068. Quarterly payments shall be issued in July 2017, October 2017, January 2018 and April 2018.

Prior to the issuance of the first quarterly payment, the agreement must be fully executed and the CMHC must be in compliance with section C of the previous (fiscal year 2017) contract year.

The quarterly payment shall be 25% of the award if compliance with Section C has been achieved. However, up to twenty-five percent (25%) of the quarterly payment may be held for non-compliance in the event requirements in section C have not been met. After compliance has been achieved, withheld payments will be made at the time of the next quarterly payment. If compliance is not achieved for the quarters ending September 2017, December 2017 or March 2018, or June 2018 by August 15, 2018, any outstanding withheld payments shall not be paid with regard to this contract.

From July 1, 2017 through June 30, 2018, KDADS shall work on the development and implementation of a financial report for all non-MHBG funds that shall be utilized by the CMHC in FY '19. The CMHC shall assist KDADS with the development of the financial report template document between July 1, 2017 through December 31, 2017. A trial of the developed financial report shall commence January 1, 2018 through June 30, 2018.

2. Total Compensation for Federal Mental Health Block Grant Services for July 1, 2017 through June 30, 2018 shall not exceed \$258,259.

After the agreement has been fully executed, and the scope of work has been approved by KDADS, KDADS shall issue an advance payment of 25% of the total compensation for the Mental Health Block Grant. Upon receipt of the financial and deliverable reports, a subsequent quarterly payment shall be made during the second month of each quarter in November 2017, February 2018 and May 2018 for the reported amount expended. If compliance is not achieved by August 15, 2018, any outstanding payments for work that has not been demonstrated as complete shall not be paid with regard to this contract. However, the quarterly payment will be reduced by one-third of the advance payment. If block grant funds are fully expended prior to the end of the year, the reduction will be a higher amount to ensure the advance payment is appropriately reconciled.

KDADS will implement a new financial report for all the MHBG funds that shall be utilized by the CMHC beginning January 2018. The CMHC shall provide feedback to KDADS on the financial report template document prior to September 15, 2017. A trial of the developed financial report shall commence between October 1, 2017 through December 31, 2017.

## II. NON-MEDICAID PRE-ADMISSION SCREENINGS

- A. The CMHC shall coordinate the non-Medicaid screens, PRTF and Medicaid State Hospital screens (collectively referred to as the “screens”) through a contractor currently designated as HealthSource Integrated Solutions (referred to as “HIS” formerly Kansas Health Solutions).
- B. Scope of Work: A face-to-face assessment of an individual in crisis by a qualified mental health professional (QMHP) to determine whether the individual can be diverted from hospitalization or other institutional/residential care. If diversion is clinically appropriate, the QMHP and individual in crisis and/or guardians determine the appropriate follow-up or other necessary supports (i.e.: next day appointment, crisis stabilization services, in-home/community based services through Community Support Services or Community Based Services programs, etc.). Where a face-to-face individual assessment is impracticable due to distance or other resource constraint, a CMHC may utilize tele-video technology for the individual assessment. KDADS will monitor the frequency of tele-video technology use. KDADS may implement restrictions for excessive use of tele-video technology.
- C. Goals: Inpatient
  - i. The CMHC will maintain the following average aggregate access standards for inpatient screens under this agreement:
    - 1. Emergent: Services are needed immediately (within eight (8) hours) to meet the needs of an individual who is experiencing an acute psychiatric crisis (this includes behavioral problems with children/adolescents), which is at a level of severity that may meet the requirements of hospitalization, and/or who, in the absence of immediate services, may require hospitalization.
    - 2. Urgent: Services required to prevent a serious complication or deterioration in the individual’s health and cannot be delayed without imposing undue risk on the individual’s well-being and if not promptly treated could rapidly become an emergency situation shall be provided within twelve (12) hours. Additionally, includes situations when an individual’s discharge from the hospital or other inpatient/acute care setting, such as crisis stabilization unit, structured residential setting, NF/MH, etc., will be delayed until services are provided.
    - 3. Routine: Are non-crisis circumstances in nature for which services shall be provided within seventeen (17) hours.
- D. Goals: PRTF
  - i. The CMHC will maintain the following access standard for PRTF screens under this agreement:
    - 1. Upon notification, a screen shall be provided by the CMHC within seven (7) calendar days to determine if an individual meets medical necessity for admission to a PRTF or authorized

community based services to prevent a serious complication or deterioration in the individual's health.

- E. Compensation: Total compensation to be paid to CMHC to perform the screens for July 1, 2017 through June 30, 2018 shall be \$441,258.

### **III. CRITERIA FOR SEEKING, ACHIEVING, AND MAINTAINING DEEMED STATUS**

- A. "Deemed Status" refers to a CMHC that is currently licensed by KDADS and is also accredited by a KDADS approved accrediting body that receives oversight by both KDADS and the accrediting body. Subject to compliance with Kansas statutes and regulations, once a CMHC achieves deemed status, KDADS shall establish through policy the process for how an accredited CMHC shall undergo inspections, investigation, and surveys.

#### **I. Seeking Accreditation**

- 1. A CMHC shall complete a KDADS application form and request review for deemed status. The application shall be processed in accordance with KDADS' policy.
- 2. A CMHC may not have any pending corrective action plan while applying to achieve deemed status.
- 3. If a CMHC seeks accreditation from another accrediting body (other than TJC or CARF) for the purpose of achieving deemed status, the CMHC must receive written approval from the Commissioner of Behavioral Health Services prior to completion of the accreditation process. If the CMHC completes the accreditation process without receiving written approval from the Commissioner of Behavioral Health Services, that CMHC may not be eligible to receive "deemed status".

- A) When the CMHC seeks KDADS approval of a different accreditation (other than TJC or CARF) it must provide written notice to the Commissioner requesting review of the accrediting body along with an informational packet of documentation for the Commissioner to review.

- B) A CMHC that achieves deemed status may continue to undergo KDADS initiated surveys for any licensing requirements that are not adequately addressed by the accrediting body's survey. A crosswalk, approved by KDADS, shall determine what, if any, requirements may not be addressed by the accrediting body.

#### **II. Achieving Accreditation**

##### **1. Licensing**

- A) The Commissioner of Behavioral Health Services shall determine if the CMHC has met the requirements to achieve deemed status.

- B) Subject to Kansas statutes and regulations, a CMHC that achieves deemed status shall continue to request an updated license every 2 years and post the updated license within the CMHC.

##### **2. KDADS-Approved Accrediting Body**

- a) KDADS agrees to approve the Joint Commission (TJC) or the Commission on Accreditation of Rehabilitation Facilities (CARF) as accrediting bodies.

#### **III. Maintaining Deemed Status**

1. Once a CMHC achieves deemed status, the CMHC shall notify KDADS of any and all findings or reports issued by the accrediting body that would lead the CMHC to hold any status other than full accreditation. When the CMHC provides notice, it shall provide KDADS with the report/documentation from the accrediting body that precipitated the change in the CMHC's status.
2. KDADS may engage in an investigation or inspection upon receipt of the report/documentation.

#### **IV. OTHER REQUIREMENTS**

- A. Community Assessment and Partnership Plan. In accordance with, and support of, K.S.A. 39-1608, and in accordance with the rules and regulations adopted by the Secretary each mental health center shall meet with community and regional partners to prepare and adopt a comprehensive community assessment and partnership plan. The purpose of this community needs assessment and partnership plan is to, at a minimum, develop and foster local and regional partnerships, leverage resources, build service capacity, enhance crisis services, and to create diversionary plans in order to provide community based services for persons who are residents of the service delivery area of the community mental health center (CMHC) and maintain individuals in their community to the greatest extent possible. Each CMHC shall submit such assessment of needs and plan to the secretary for approval on or before October 1, 2018.
- B. Annual screens for continued stay (SCS) for NF/MH consumers for whom each CMHC is responsible. This includes reporting to KDADS Behavioral Health Services the results of these screens, and submission of any other appropriate data or reports as KDADS may determine necessary to fully explain the CMHCs determination for continued stay or discharge. The CMHC shall make a good faith effort of arranging for a consumer facilitator to participate in each Screen for Continued Stay. The CMHC shall submit claims for payment of the Screens for Continued Stay (SCS) per State policy (KMAP, 8400, Mental Health Services for Nursing Facility for Mental Health Beneficiaries). The CMHC shall identify a liaison who will stay connected with individuals in the NFMH to help promote reintegration in the home community when possible.
- C. CMHCs, KDADS, and the Governor's Behavioral Health Services Planning Council agree to collaborate on increasing data/knowledge related to veteran affairs for the purpose of improving treatment, supporting veterans, and gaining access to Federal benefits. The CMHC will build into their data collection process for input into AIMS one question around military service. AIMS question will be: "Have you ever served in the U.S. military? Yes or No.
- D. The CMHC shall participate in mental health disaster planning at both the local and state levels.
- E. The CMHC will build into their AIMS transition file the consumer's Social Security Number field by 1/1/18. If the SSN is not able to be added to the AIMS transaction, the CMHC will work with KDADS to implement a workaround to provide the data in the interim.
- F. The CMHC shall make available at least one individual (either a staff member or designee) who is trained and certified as an SSI/SSDI Outreach, Access and Recovery (SOAR) Benefits Specialist. The SOAR Benefit Specialists shall assist clients with applying for Social Security Benefits and other mainstream benefits following the SOAR

model. The SOAR Benefits Specialists shall be certified in the SOAR model and enter data into the SOAR TA Center Online Application Tracking database (SOAR OAT). The SOAR Benefits Specialists shall effectively participate in training and activities that are designed to improve consumer eligibility for federal disability benefits and Medicaid eligibility. (SOAR).

- G. The CMHC shall designate staff to be the CMHC Housing Specialist, the staff are responsible for taking steps to increase the array of housing options available to its consumers. The CMHC Housing Specialist(s) shall assist persons with behavioral health issues, including co-occurring mental health and substance use disorders, to access safe and affordable housing of their choice and to provide the necessary supports and services that ensure the person lives a safe, healthy, self-determined life in their home. In addition, the CMHC Housing Specialist(s) shall actively participate in and assist with local, regional, and/or statewide efforts to decrease homelessness and situations where individuals are precariously housed. The CMHC Housing Specialist(s) shall participate the quarterly statewide Housing Specialist meetings/trainings facilitated by KDADS.
- H. From July 1, 2017 through October 31, 2017, KDADS and the CMHC shall review what employment supports or programs are available through the CMHC. During the course of the review, KDADS, with input from the CMHC, shall determine how best to synthesize this information reviewed into reportable information that shall be provided to KDADS in January 2018. KDADS shall provide, in writing, what information is sought from the CMHCs related to employment supports or programs. Beginning January 1, 2018, the CMHC shall implement reporting of the available employment information.
- I. KDADS and the CMHC shall review services provided to nursing facilities for individuals with mental health (NFMH).
- J. The CMHC shall designate staff to perform liaison functions as defined in K.A.R. 30-61-11 for SMHs, SMHAs and PRTFs.

## V. MISCELLANEOUS

Both the CMHC and KDADS further agree that:

- a. **Compensation:** Compensation shall not exceed, \$6,754,585, which is comprised of the Mental Health Block Grant and other applicable funds.
- b. **Term of Agreement:** The term of this Agreement shall commence on July 1, 2017 and shall end on June 30, 2018, unless earlier terminated pursuant to the provisions herein.
- c. **Agreement Termination, Default and Remedies:**
  - 1. Any party may terminate this Agreement, other than as specified herein below, by giving written notice of the termination at least 20 calendar days prior to the date of termination stated in the written notice.
  - 2. KDADS may terminate this Agreement without prior notice upon making the determination that termination is necessary to avoid harm to the public, to prevent fraud or abuse, or to protect public funds.
  - 3. In the event that Contractor fails to perform a material provision of this Agreement, KDADS may, in addition to such other remedies provided for by law:
    - i. Terminate this Agreement; or

- ii. Delay payment until KDADS verifies Contractor's performance.
- 4. In the event this Agreement is terminated under Section V, sub-section "c" herein, the KDADS shall pay Contractor for services provided through the date of termination.
  
- d. **Suspension or Termination for Lack of Program Funding.** This Agreement may be suspended for any length of time or terminated at any time by either party for failure of the Kansas Legislature or the United States Congress to appropriate funds to finance their respective shares of the State Medical Assistance (Medicaid) Program established by Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*). No party shall be required to use any of its State or Federal funds designated for expenditure in any other State or Federal program, project, or contract to pay for another party's performance of this Agreement after the date on which notice of termination or suspension is given by any party to the others.
  
- e. **Debarment.** Contractor warrants that it is currently not debarred from participation in any federal or stated funded program(s) and that it shall immediately provide written notice to KDADS if it becomes debarred during the term of this Agreement.
  
- f. **Retention of and Access to Records:** All records prepared pursuant to this Agreement shall be retained and safeguarded for a five-year period following termination of this Agreement, and said records shall be made available to any other party to this Agreement, and independent auditor retained by any other party, the Secretary of Health & Human Services, the U.S. Comptroller General, the Auditor of the Kansas Legislative Division of Post Audit, or their designees. Each party shall bear the costs of storing, retrieving, and producing its records created and required to be kept under this Agreement.
  
- g. **Independent Contractor Status:** At all times pertinent to this Agreement, Contractor shall perform as and hold the status of independent contractor. Nothing in this Agreement is intended to create or imply any type of employer-employee, principal-agent, master-servant, or any other relationship other than that of independent contractor as between KDADS and Contractor. KDADS shall not withhold any form of taxes, insurance, assessments, or other amounts from payment to Contractor. Contractor shall be solely responsible for payment of any and all taxes incurred as a result of this Agreement.
  
- h. **Confidentiality:** In accordance with U. S. Department of Health & Human Services, Centers for Medicare and Medicaid Services Medicaid regulations, 42 C.F.R. 431.300 *et seq.*, Contractor shall maintain the confidentiality of information about individuals learned in performing the duties required by this Agreement, including the individual's name; address; telephone number; past or present receipt of any state or federal program services; family, social, or economic circumstances; medical data, including diagnoses and past history of disease, impairment, or disability; income and other financial information; State agency evaluation of personal or medical information; program eligibility; or third-party liability for payment for program services to any person or entity. Contractor shall not prepare and publish, or permit the preparation and publication of, any electronic or written report disclosing confidential information about any individual in a manner which permits the identification of that individual. Contractor shall not disclose or permit the disclosure of any confidential information about any

individual without the prior 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 Medicaid program administration, or by this Agreement. Contractor shall comply with the Health Insurance Portability and Accountability Act of 1996, as amended. Contractor shall further develop and maintain policies and procedures, which protect the confidentiality of and guard against the unauthorized disclosure of confidential information about individuals obtained through the performance of this Agreement. Contractor's policies and procedures shall be binding on their employees, agents, and independent Contractors and describe the penalties and sanctions imposed for violations of those policies and procedures.

- i. **Health Insurance Portability and Accountability Act-Business Associate Agreement:** The CMHC shall comply with the provisions of the federal Health Insurance Portability and Accountability Act of 1996 and amendments thereto (HIPAA), together with regulations issued modifying 45 CFR Parts 160 and 164 (the "HIPAA Security and Privacy Rule"); and the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" (the "HITECH ACT") and any accompanying and subsequently adopted amendments or regulations including the final rule issued January 25, 2013 (FR Vol. 78, No. 17 (Jan. 25, 2013)). The Parties shall further cooperate in executing a Business Associates' Agreement ("BA Agreement"). The BA Agreement shall be provided by the KDADS and shall be a condition precedent of information sharing and payment under this Agreement.
- j. **Non-Discrimination:** Contractor shall not discriminate against any person in violation of any applicable state or federal law.
- k. **Incorporation of the State of Kansas Contractual Provisions Attachment:** The provisions of Contractual Provisions Attachment, Form DA-146a (Rev. 6/12), a copy of which is attached hereto and identified as Appendix A, are incorporated by this reference as if the same were set forth in full herein.
- l. **Glossary:** Attached hereto and incorporated herein as Appendix B is a "Glossary".
- m. **Service of Notices:** All notices required or which may be given pursuant to this Agreement shall be in writing, personally delivered by courier or commercial delivery service, or sent by facsimile and United States mail, first class, postage prepaid, to the following addresses or such other address as may be designated in writing by the named person during the term of this Agreement:

If to Contractor:

Marilyn Cook, Executive Director  
ComCare of Sedgwick County, Inc.  
635 North Main, Wichita, KS 67203

If to KDADS:

Tim Keck, Secretary  
Kansas Department for Aging and Disability Services  
New England Building  
503 South Kansas Avenue  
Topeka, Kansas 66603-3404

With a copy to:

Chief Counsel  
Kansas Department for Aging and Disability Services  
New England Building  
503 South Kansas Avenue  
Topeka, Kansas 66603-3404

- n. **Reporting:** Unless otherwise specified elsewhere in this agreement, Contractor shall prepare and deliver to KDADS program and financial quarterly reports (the “Reports”). Reports shall be due as follows:

<u>1. Time Period</u>	<u>Report Due Date</u>
SFYQ1	October 31, 2017
SFYQ2	December 31, 2017
SFYQ3	April 30, 2018
SFYQ4	July 31, 2018

2. Report Format. All reports required (unless otherwise specified) herein shall be provided to KDADS in electronic format (portable document format) and sent to: Program reports sent to Diana Marsh at [diana.marsh@ks.gov](mailto:diana.marsh@ks.gov). Fiscal reports should be sent to Melanie Snider at [Melanie.snider@ks.gov](mailto:Melanie.snider@ks.gov).

Such Reports shall itemize Contractor’s progress for the reporting period. An additional cumulative report with findings and recommendations for the project shall be due July 30, 2018.

- o. **Amendment or Assignment:** Modification or amendment to this agreement shall be in writing and executed with the same formality as the original. Similarly, this Agreement shall not be assigned unless approved in writing by the parties hereto. All assignments not approved pursuant to this provision are void.
- p. **Prior Negotiations:** This Agreement supersedes all prior negotiations and agreements between these parties with respect to the matters stated herein, and it represents the entire agreement of the parties.
- q. **Signatures:** This Agreement (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the parties hereto as if they were originals.

- r. **Terms Read and Understood:** The signatories to this Agreement certify that they have read this Agreement, have had opportunity to confer with counsel and fully understand all of the terms. The parties acknowledge and represent that they enter into this Agreement of their own free will, and not from any representation, commitment, promise, pressure or duress from any other party.
- s. **Cooperation:** The parties agree to fully cooperate with each other in the performance hereunder, and shall execute such additional agreements, documents, or instruments, if any, as may reasonably be required to carry out the intent of the Agreement.
- t. **Waiver of Breach:** Waiver of a breach in performance of any term of this Agreement by KDADS shall not be construed as a waiver of any subsequent breach of the same or any other performance or provision of this Agreement.
- u. **Invalidity:** Any provision of this Agreement determined to be invalid or unenforceable shall not affect the validity or enforceability of the remaining provisions, and in all respects the agreement shall be construed as if such invalid or unenforceable provision was omitted.
- v. **Governing Law:** This Agreement shall be governed by the laws of the State of Kansas. Should judicial intervention be required, the parties agree that venue shall only be proper in the District Court for Shawnee County, Kansas.
- w. **Accounting System:** The CMHCs accounting system shall meet generally accepted accounting principles.
- x. **Payments.** In no event shall the CMHC be entitled to payments for costs incurred in excess of the amount set forth in this Agreement without prior written approval of KDADS. Unless modified by written amendment to this Agreement, there shall be no allowance for costs incurred outside this Agreement. Payments will be issued in the manner prescribed within the contract.
- y. **Duplication of Funds.** By acceptance of this Agreement, the CMHC declares and assures that no costs or expenditures which have been funded by other federal or state grant funds have been duplicated or otherwise included as part of the funding request in this Agreement.
- z. **Unearned Funds.** Unless otherwise specified in the Agreement, all unexpended funds paid pursuant to this Agreement identified by the CMHCs independent audit shall be returned to the Kansas Department for Aging and Disability Services within 30 days of the CMHC receiving their independent audit.

The CMHC may keep any interest or other investment income earned on advances of funds paid pursuant to this Agreement as long as the monies are reinvested in the services supported by the Agreement. This includes any interest or investment income earned by sub-grantees and cost-type contractors on advances to them from funds paid pursuant to

this Agreement. Funds subject to recoupment shall not include revenue earned from program activities or interest received from any source.

- aa. **Cure for Failure to Perform.** All funds paid pursuant to this Agreement are based on performance measures rather than line item budgets. Therefore, funds may be recouped, suspended or withheld based on non-compliance of performance requirements identified in this Agreement. Prior to recouping, suspending, or withholding funds from a CMHC, KDADS must notify the CMHC of non-compliance of performance. The notification of non-compliance of performance must specifically identify what requirements the CMHC has failed to perform. In instances where the health and safety of the persons served is not in imminent jeopardy, KDADS will allow the CMHC 30 days to correct the non-compliance; develop a corrective action plan acceptable to KDADS; or appeal the findings through the Department of Administration Administrative Appeals process. If the CMHC fails to correct the non-compliance; or does not adhere to the corrective action plan approved by KDADS; or has not appealed the findings, KDADS will recoup all payments made from the date of notification of non-compliance and will suspend or withhold all future payments.
  
- bb. **Data.** The CMHC may have access to private or confidential data maintained by KDADS to the extent necessary to carry out its responsibilities under this Agreement. The CMHC must comply with all the requirements of the Kansas Open Records Act in providing services under this Agreement. The CMHC shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. The CMHC must agree to return any or all data furnished by KDADS promptly at the request of KDADS in whatever form it is maintained by the CMHC.
  
- cc. **Reviews and Hearings.** KDADS has the discretion to require the CMHC to participate in any review, appeal, fair hearing or litigation involving issues related to this Agreement.
  
- dd. **Audit Requirements.** All services that are provided pursuant to the terms of this Contract and in consideration of the funds received, may, at any time, be audited, monitored or evaluated by KDADS. Funds allocated pursuant to this Contract are subject to KDADS Independent audits which shall be carried out in accordance with the KDADS Recipient Monitoring Policy, as amended. The CMHC must submit an audit completed by an independent public accountant within six months of the completion of the CMHCs fiscal year to KDADS Office of Audits and Consulting Services.

If the CMHC receives over \$750,000 or more in a year in Federal awards (total of all applicable federal awards), the CMHC shall have a single or program-specific audit conducted for that year in accordance with the provisions of Uniform Guidance on Administrative Requirements, Cost Principles, and Audit Requirements (Uniform Guidance a.k.a OMB Super Circular).

If the CMHC receives less than \$750,000 in combined Federal awards, the audit may be a limited scope engagement with agreed-upon procedures.

Limited scope engagements with agreed-upon procedures should be conducted in accordance with the provisions of Uniform Guidance on Administrative Requirements, Cost Principles, and Audit Requirements (Uniform Guidance a.k.a OMB Super Circular).

The cost for the single audit may be charged against the Federal award. Additional requirements imposed by KDADS, and the resulting audit work necessary to achieve them, would not be able to be charged against the Federal award but would be able to be charged against the State portion of that award.

These limited scope engagements shall include at a minimum:

1. A financial audit of the CMHC conducted in accordance with generally accepted auditing standards. It should assess the extent to which the CMHCs financial reports fairly reflect the CMHCs financial condition and include a statement of financial position, statement of activities, and statement of cash flows. There shall also be (1) a schedule of award expenditures for the period covered by the recipient's financial statements, (2) a schedule of findings and questioned costs, and (3) a summary schedule of prior audit findings.
2. A report on internal controls and a report on compliance to the award terms and conditions.
3. The report on compliance shall address one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and reporting; or compliance requirements as specified in the award document or applicable OMB Compliance Supplement.
4. Any correspondence (e.g., management letters) from the auditor associated with the audit.
5. A review of performance measures required within the award.
6. A detailed schedule of revenues and expenditures must be prepared with some assurance by the auditor that it is an accurate representation of federal and state funds. The independent auditor should include a schedule listing total revenues and total expenditures (state share and federal share) for each award.

The cost for a limited scope engagement may be charged against the State award, provided the recipient does not have a single audit. In all other instances, the costs may be charged against a state only award. The limited scope engagement may be conducted by either an independent auditing firm or by KDADS. The KDADS Audit Unit may conduct an audit of the provider at their discretion.

- ee. **Timely Billing.** The CMHC must use due diligence in submitting billings for services to third party payers, including Medicaid. Should KDADS determine the CMHC is not using due diligence in billing third party payers, KDADS will notify the CMHC of the deficiency. The CMHC must then either:
1. Develop and carry out a plan which improves its performance in this area to the satisfaction of KDADS, or
  2. Demonstrate to KDADS's satisfaction that the KDADS finding is invalid

- ff. **Certification Regarding Lobbying:** The undersigned certifies, to the best of his/her knowledge and belief, that:
1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of the Congress, or an employee of a Member of the Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  2. If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of the Congress, or an employee of a Member of the Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
  4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

gg. **Certification Regarding Environmental Tobacco Smoke:**

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

- hh. **Compliance with Laws and Regulations:** The CMHC agrees that it will comply with all federal, state, and local laws and regulations including, but not limited to:

42 CFR Part 2	Confidentiality of Alcohol and Drug Abuse Patients
45 CFR Part 5	Availability of Information to the Public
45 CFR Part 46	Protection of Human Subjects
45 CFR Part 80	Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services; Implementation of Title CVI of the Civil Rights Act of 1964
45 CFR Part 84	Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance
45 CFR Part 91	Nondiscrimination on the Basis of Age in Health and Human Services Programs or Activities
45 CFR Part 96	Block Grants
OMB Circular A-110	Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Non-Profit Organizations
OMB Circular A-122	Cost Principles for Non-Profit Organizations
OMB Circular A-133	Audits of State, Local Government, and Non-Profit Organizations

The CMHC shall certify to KDADS that it will provide a drug-free workplace, and as a condition of this Agreement, the CMHC will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the Agreement.

ii. **Authorities Incorporated by Reference:** The Parties agree that the following authorities shall be incorporated by this reference as if set forth in full herein:

1. Applicable federal or State of Kansas statutes and/or regulations; and,
2. Applicable KDADS' Policies and Procedures.

jj. **Severability.** If any provision of this Contract is determined by a Court of competent jurisdiction to be invalid or unenforceable to any extent, then the balance of all other independent terms of this Contract shall not be affected, and each such provision of this Contract may be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized official or officers.

Kansas Department for Aging and  
Disability Services

\_\_\_\_\_  
CMHC Board Chairperson  
or Authorized signatory  
Date:\_\_\_\_\_

\_\_\_\_\_  
Timothy E. Keck  
Secretary  
Date:\_\_\_\_\_

\_\_\_\_\_  
CMHC Executive Director  
or Authorized signatory

Date: \_\_\_\_\_

  
Approved As To Form

Michael L. Fessinger  
Assistant County Counselor

## APPENDIX A

State of Kansas  
Department of Administration  
DA-146a (Rev. 06-12)

### CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

- Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
- Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration. Contractor agrees to comply with all applicable state and federal anti-discrimination laws. The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
- Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403),

and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**
12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying**: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

## **APPENDIX B:** **GLOSSARY**

**AIMS Manual:** The designated reference document of the Automated Information Management System (AIMS), providing the identification and definition of values to be collected for 85 distinct data fields that reflect demographic, client status, and encounter data for the mental health consumers served by local Community Mental Health CMHCs (CMHCs) in Kansas. The AIMS manual combined with a succession of established processes carried out by each CMHC in collaboration with The Mental Health Consortium, Inc., result in the comprehensive data set known as AIMS.

**Community Based Services (CBS) Program Manager:** The CMHC will designate a staff person to be administratively responsible for target populations for children & youth.

**Community Support Services (CSS) Program Manager:** The CMHC will designate a staff person to be administratively responsible for target populations for adults.

**Hospital Liaison:** Designated representative from the consumer's home community who meets regularly with the consumer, family, and hospital treatment team to assist with accessing information and resources and to provide supportive services and follow up for treatment and discharge to the community of the consumer's choice.

**Independent Living:** Percentage of consumers enrolled in CMHC Community Support Services (CSS) that live in a private residence. This includes a consumer living with a spouse, friends, or family and who is capable of self-care. This category includes the consumer who is living independently with CSS support or CMHC financial support. The consumer in independent living is largely independent yet may choose to live with others for reasons not related to mental illness. Residing in this housing is not contingent upon participation in a specific treatment program.

**Medical Necessity:** A mental health intervention is medically necessary, according to all of the following criteria:

- a. Authority. The mental health intervention is recommended by the treating clinician and is determined to be necessary by the KDADS or the KDADS' designee.
- b. Purpose. The clinical intervention has the purpose of treating mental illness.
- c. Scope. The mental health intervention provides the most appropriate level of service, considering potential benefits and harms to the client.
- d. Evidence. The mental health intervention is known to be effective in improving mental health outcomes. The scientific evidence for each existing intervention shall be considered first and, to the extent possible, shall be the basis for determinations of medical necessity. If no scientific evidence is available, professional standards of care shall be considered. If professional standards of care do not exist, or are outdated or contradictory, decisions about existing interventions shall be based on expert opinion. Coverage of existing interventions shall not be denied solely on the basis that there is an absence of conclusive scientific evidence. Existing interventions may be deemed to meet this definition of medical necessity in the absence of scientific evidence if there is a strong consensus of effectiveness and benefit

expressed through up-to-date and consistent professional standards of care or, in the absence of those standards, convincing expert opinion.

- e. Value. The mental health intervention is cost-effective for mental illness compared to alternative interventions, including no intervention. The term “Cost-effective” shall not necessarily be construed to mean lowest price. An intervention may be clinically indicated and yet not be a covered benefit or meet the definition of medical necessity. Interventions that do not meet the definition of medical necessity may be covered at the choice of the KDADS or the KDADS' designee. An intervention shall be considered cost-effective if the benefits and harms relative to costs represent an economically efficient use of resources for members with this condition. In the application of this criterion to an individual case, the characteristics of the individual member shall be determinative.

**Severe and Persistent Mental Illness (SPMI):** To meet functional criteria for SPMI, persons with a primary diagnosis in Category A or B must, as a result of their qualifying diagnosis, demonstrate impaired functioning through use of the following assessment. Those with a primary diagnosis in Category B must meet these criteria as well as criteria outlined in Step 3.

### **Method to Define Adults with SPMI**

**Purpose:** To ensure that adults with Severe and Persistent Mental Illness (SPMI), or who are most at risk of developing SPMI, are promptly and accurately identified.

To ensure that those most in need are offered the full array of community-based mental health services necessary to successfully manage their illness, support their recovery process, and live meaningful lives in their community.

**Approach:** Apply two main areas of assessment to determine an individual’s status as meeting criteria for SPMI: (1) diagnostic criteria, and (2) functional and risk criteria.

**Step One:** Apply diagnostic criteria to determine an individual’s identification as meeting initial criteria for the Community Support Services (CSS) target population. To meet diagnostic criteria for SPMI, individuals must be assessed to determine whether they have a principle diagnosis in either Category A or Category B not solely related to an intellectual/developmental disability or induced by a substance.

#### **Category A Diagnoses:**

- 295.70 (F25.0) Schizoaffective Disorder, Bipolar type
- (F25.1) Schizoaffective Disorder, Depressive type
  
- 295.90 (F20.9) Schizophrenia
  
- 296.34 (F33.3) Major Depressive Disorder, Recurrent, Severe, with Psychotic Features

- 296.44 (F31.2) Bipolar I disorder, most recent episode (or current) manic, severe, specified as with psychotic behavior
- 296.54 (F31.5) Bipolar I disorder, most recent episode (or current) depressed, specified as with psychotic behavior
- 298.9 (F28) Other Specified Schizophrenia Spectrum and Other Psychotic Disorder

Category B Diagnoses:

All Other Bipolar I Disorders, moderate to severe not listed in Category A: (F31.12) (F31.13) (F31.32) (F31.4)

- 296.23 (F32.2) Major Depressive Disorder, Single Episode, Severe
- 296.24 (F32.3) Major Depressive Disorder, Single Episode, With Psychotic Features
- 296.32 (F33.1) Major Depressive Disorder, Recurrent, Moderate
- 296.43 (F33.2) Major Depressive Disorder, Recurrent, Severe, Without Psychotic Features
- 296.35 (F33.41) Major Depressive Disorder, Recurrent, In Partial Remission
- 296.89 (F31.81) Bipolar II Disorder
- 297.10 (F22) Delusional Disorder
- 300.01 (F41.0) Panic Disorder
- 300.22 (F40.00) Agoraphobia
- 300.3 (F42) Obsessive-Compulsive Disorder
- 300.3 (F42) Hoarding Disorder
- 301.83 (F60.3) Borderline Personality Disorder
- 309.81 (F43.10) Posttraumatic Stress Disorder

Category C Diagnoses: Removed

**Step Two:** To meet functional criteria for SPMI, persons with a primary diagnosis in Category A or B must, as a result of their qualifying diagnosis, demonstrate impaired functioning through use of the following assessment. For those with a primary diagnosis in Category A who **do** meet the functional criteria listed below, no further assessment is needed to determine eligibility for CSS. Those with a primary diagnosis in Category B must meet these criteria as well as criteria outlined in Step 3.

Impaired functioning<sup>1</sup> is evidenced by meeting at least one (1) of the first three criteria, and at least three (3) of the criteria numbered 4 through 9 that have occurred on either a continuous or intermittent basis over the last two years:

- 1. Required inpatient hospitalization for psychiatric care and treatment more intensive than outpatient care at least once in her/his lifetime;
- 2. Experienced at least one episode of disability requiring continuous, structured supportive residential care, lasting for at least two months (e.g. a nursing facility; group home, half-way house, residential mental health treatment in a state correctional facility);
- 3. Experienced at least one episode of disability requiring continuous, structured supportive care, lasting at least two months, where the family, significant other or friend of the consumer provided this level of care in lieu of the consumer entering formalized institutional services. (In this case, the Qualified Mental Health Professional (QMHP) must fully document the consumer’s level of severe disability and lack of functioning that required the family or other person to provide this level of care).
- 4. Has been unemployed, employed in a sheltered setting, or has markedly limited skills and a poor work history;
- 5. Requires public financial assistance for their out-of-institutional maintenance and is unable to procure such financial assistance without help;
- 6. Shows severe inability to establish or maintain a personal support system, evidenced by extreme withdrawal and social isolation;
- 7. Requires help in instrumental activities of daily living such as shopping, meal preparation, laundry, basic housekeeping, and money management;
- 8. Requires help in attending to basic health care regarding hygiene, grooming, nutrition, medical and dental care, and taking medications. (*Note: this refers to the lack of a basic skill to accomplish the task, not to the appropriateness of dress, meal choices, or personal hygiene*);
- 9. Exhibits inappropriate social behavior not easily tolerated in the community, which results in demand for intervention by the mental health or judicial systems (e.g. screaming, self-abusive acts, inappropriate sexual behavior, verbal harassment of others, physical violence toward others).

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<sup>1</sup> Adults that would have met functional impairment criteria during the referenced time period without the benefit of treatment or other support services are included here.

**Step Three: Risk Assessment**

**Directions:** For each item listed below: (1) determine with the person being assessed whether the item applies to her/his life situation; (2) circle the correct number for the item, based on the time period that applies; and (3) enter the number in the box labeled “Score”.

<b>Risk Factor</b>	<b>Circle a number if the item applies</b>		<b>Score</b>
	<b>Within the past 30 days</b>	<b>Between 31 and 180 days</b>	
1. Has been discharged from inpatient psychiatric hospitalization.	5	3	
2. History of suicide attempts/life threatening self harm	5	5	
3. Documented threats of physical harm to others without follow through	2	1	
4. Has been released from jail or prison due to a crime involving physical harm to self or others that was related to psychiatric symptoms	3	1	
5. Experienced severe to extreme impairment due to physical health status (Impairment may be due to chronic health problems and/or frequency and severity of acute illnesses)	2	1	
6. Experienced severe to extreme impairment in thought processes (as evidenced by symptoms such as hallucinations, delusions, tangentiality, loose associations, response latencies, incoherence)	5	3	
7. Experienced moderate to severe impairment due to use of drugs and/or alcohol.	3	2	
8. Experienced severe to extreme impairment due to significantly insufficient finances and/or access to healthcare.	3	2	
9. Experienced severe to extreme impairment due to significant loss of or conflict with primary support group member(s).	3	2	

10. History of activity of self-mutilating behavior	3	2	
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<b>NOTE:</b> You may mark only <u>ONE</u> of the following housing statuses, if one applies:	<b>Within the past 30 days</b>	<b>Between 31 and 180 days</b>	<u>Score</u>
11. Currently homeless or had an incident of homelessness (defined as lack of an overnight, fixed address resulting in sleeping in places not fit for human habitation, i.e. streets, cars, etc., or sleeping in a homeless shelter), meets the HUD definition of homelessness.	4	2	
12. Currently residing in a RCF or has resided in an RCF (RCF's are state-licensed Residential Care Facilities providing congregate living to adults with mental illness. These include Nursing Facilities for Mental Health, group homes, Adult Care Homes, etc.)	3	1	
13. Currently at imminent risk of homelessness (reference current HUD definition) and/or placement in an RCF.	2	1	
	<b>TOTAL SCORE:</b>		

**Circle Score:**

12 or higher  
11 or less

**Risk Assignment:**

High Risk  
Low Risk

**CSS Eligibility Status:**

YES  
NO

This tool is meant as a screening device, not the final and only assessment of risk. Should a worker or consumer rank him/her at a higher level of risk than is indicated, the score should be changed to reflect that level of risk and the change and rationale for it be documented below:

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**Kansas Criteria for Serious Emotional Disturbance (SED):** The term serious emotional disturbance refers to a diagnosed mental health condition that substantially disrupts a child's ability to function socially, academically, and/or emotionally.

Complete the following checklist to determine if the youth has SED.

\_\_\_\_\_  
Name of Youth

\_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Evaluator Signature

\_\_\_\_\_  
Date

**Check yes or no on #1 - 3 to determine if the youth has SED:**

YES NO 1. AGE:

\_\_\_ \_\_\_ The youth is under age 18, or under the age of 22 and has been receiving mental health services prior to the age of 18 that must be continued for optimal benefit.

YES NO 2. DURATION and DIAGNOSIS:

\_\_\_ \_\_\_ The youth currently has a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the most current DSM.

Disorders include those listed in the most current DSM or the ICD - 9 equivalent with the exception of DSM - IV "V" codes, substance abuse or dependence, and developmental disorders, unless they co-occur with another diagnosable disorder that is accepted within this definition.

Diagnosis \_\_\_\_\_  
YES NO 3. FUNCTIONAL IMPAIRMENT

\_\_\_ \_\_\_ The disorder must have resulted in functional impairment which substantially interferes with or limits the youth's role or functioning in family, school, or community activities.

Functional impairment is defined as difficulties (internalizing and externalizing) that substantially interfere with or limit a youth from achieving or maintaining one or more developmentally-appropriate social, behavioral, cognitive, communicative, or adaptive skills. Functional impairments of episodic, recurrent, and continuous duration are included.

Youth that would have met functional impairment criteria without the benefit of treatment or other support services are included in this definition.

Which of the following functional areas has been disrupted as a direct result of the child's mental health condition? (**Examples are not intended to be all inclusive, and more than one can be marked**).

- School (for example: exhibiting behaviors that interfere with the child's ability to perform such as inattentive in class, unable to sit in one place, unable to concentrate, withdrawn at school to the point that the child's ability to function at school is impacted, accumulating sick days as a result of being overwhelmed/depressed which places the

student at risk for truancy, in-school suspension, out-of-school suspension)  
Describe \_\_\_\_\_  
\_\_\_\_\_

- Family (for example: at-risk of out-of-home placement, physical aggression at home, suicidal, isolative and withdrawn to the point that youth is not engaging in day to day family activities)

Describe \_\_\_\_\_  
\_\_\_\_\_

- Community (for example: impairment necessitates law enforcement contact such as youth is running away due to delusional symptoms; unable to or serious difficulty participating in regular community and/or peer activities due to behavior, isolating from peers)

Describe \_\_\_\_\_  
\_\_\_\_\_

**EXCLUSIONS: Functional impairment does not qualify if it is a temporary response to stressful events in the youth's environment. Functional impairment also does not qualify if it can be attributed solely to intellectual, physical, or sensory deficits.**

<b>Youth meets the criteria for SED:</b>	<b>YES</b> _____	<b>NO</b> _____
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**Consumer:** as defined by K.A.R 30-60-2 means a person, whether a child, an adolescent, or an adult, who is in need of, is currently receiving, or has recently, received any services from any mental health services provider.

**Youth:** means a person younger than 18 years of age.

**Priority Populations:** - means persons in the priority target population and include:

- a. Youth who have a serious emotional disturbance (SED) as defined in the glossary;
- b. Adults who have a severe and persistent mental illness (SPMI) as defined in the glossary;
- c. Other persons who are determined by the center's established clinical criteria and procedures to be at high risk of the following due to their mental illness:
  1. Adults or youth requiring inpatient or residential mental health care and treatment;
  2. Causing or at serious risk of causing serious harm to themselves or others;
  3. Experiencing serious deterioration in their mental health;
  4. Being or becoming homeless;
  5. Being incarcerated or those who have frequent contact with law enforcement and the judicial system; and
  6. Being placed in the custody of the Department for Children and Families or the Juvenile Justice Authority.
- d. Persons who are uninsured or underinsured and being discharged from state mental health hospitals, psychiatric residential treatment facilities (PRTFs), or nursing facilities for mental health (NFs/MH).

**Engagement:** Identification of individuals in need, screening for eligibility, development of rapport, offering support while assisting with immediate and basic needs, and connection with appropriate resources.

**Outreach:** - The process of bringing individuals who do not access traditional services into treatment. Effective outreach utilizes strategies aimed at engaging persons into the needed array of services, including identification of individuals in need, screening, development of rapport, offering support while assisting with immediate and basic needs, and referral to appropriate resources. Outreach results in increased access to and utilization of community services. Outreach may include methods such as distribution of flyers and other written information, public service announcements, and other indirect methods. Outreach may also include “in reach,” defined as when placement of outreach staff is in a service site such as a school, shelter, community resource center, (other) and direct, face-to-face interactions occur at that site. In this form of outreach, individuals seek out outreach workers.

**BUSINESS ASSOCIATE AGREEMENT  
BETWEEN  
THE KANSAS DEPARTMENT FOR AGING AND  
DISABILITY SERVICES  
AND  
COMCARE OF SEDGWICK COUNTY, INC.**

THIS Business Associate Agreement (the "Agreement") is made and entered into effective July 01, 2017, by and between the Secretary of the Kansas Department for Aging and Disability Services ("KDADS") and ComCare of Sedgwick County, Inc., having its principal address at 635 North Main, Wichita, KS 67203, ("Business Associate"), all of whom may collectively hereinafter be referred to as the "Parties".

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public law 104-191, known as "the Administrative Simplification provisions" direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplifications provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Security and Privacy Rule"); and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" (the "HITECH ACT") provides modifications to the HIPAA Security and Privacy Rule (hereinafter all references to the "HIPAA Security and Privacy Rule" are deemed to include all amendments to such rule contained in the HITECH ACT and any accompanying regulations, and any other subsequently adopted amendments or regulations including the final rule issued January 25, 2013 (FR Vol. 78, No. 17 (Jan. 25, 2013)); and

WHEREAS, the Parties have entered into one or more agreements ("Underlying Agreement") whereby Business Associate will provide certain services to KDADS and, pursuant to such agreement, Business Associate is considered a "business associate" of KDADS as defined in the HIPAA Security and Privacy Rule at 45 CFR 160.103.

NOW, THEREFORE, for and in consideration of their mutual promises contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**I. INTRODUCTION**

In furtherance of its duties specified in the Underlying Agreement, Business Associate may receive from KDADS Protected Health Information ("PHI"). Federal and state laws restrict use or disclosure of such identifiable health information. The exchange of information by the

Parties is governed by HIPAA, as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the “HITECH Act”), the federal regulations published at 45 C.F.R. parts 160 and 164 and amendments thereto including the final rule published 78 Fed. Reg. 17 (Jan. 25, 2013) (collectively hereinafter termed “HIPAA”), Federal law 42 U.S.C. § 290dd-2: Confidentiality of Records and amendments thereto, and the federal regulations published at 42 C.F.R. part 2: Confidentiality of Alcohol and Drug Abuse Patient Records and amendments thereto (hereinafter termed “42 C.F.R. Part 2”). With regard to the services that the Business Associate will be providing, KDADS is a “Covered Entity” and the Parties are entering into this Agreement to establish the responsibilities of the Covered Entity and the Business Associate regarding PHI. The Parties acknowledge that as provided for in 45 CFR 160.103(2) Business Associate may also be a covered entity however, for purposes of this agreement, the term Covered Entity refers exclusively to KDADS.

## II. DEFINITIONS

### A. Catch-all provision

Except as otherwise defined herein, any and all terms used in this Agreement shall have the same meaning as those terms in HIPAA including: *Protected Health Information, Unsecured Protected Health Information, Breach, Minimum Necessary, Notice of Privacy Practices, Use, Disclosure, Individual, Secretary, Security Incident, Subcontractor, Required by Law, Health Care Operations, Data Aggregation, and Designated Record Set.*

### B. Specific definitions

(1) Business Associate. “*Business Associate*” shall generally have the same meaning as the term “*business associate*” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean ComCare of Sedgwick County, Inc.

(2) Workforce. “*Workforce*” shall generally have the same meaning as the term “*workforce*” at 45 CFR 160.103, meaning employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity or business associate, is under the direct control of such covered entity or business associate, whether or not they are paid by the covered entity or business associate.

(3) 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 KDADS.

(4) Protected Health Information (“PHI”). “*PHI*” shall have the same meaning as the term “*Protected health information*” at 45 CFR 160.103; individually identifiable health information (*except as provided in paragraph (2) of the definition of PHI in 45 CFR 160.103*) original data and any health data derived or extracted from the original data that has not been de-identified and is transmitted by or maintained in electronic media or transmitted or maintained in any other form or medium. PHI includes,

without limitation, “Electronic Protected Health Information” or “EPHI,” as defined below.

(5) Electronic Protected Health Information (“EPHI”). “*EPHI*” shall have the same meaning as the term “Electronic protected health information” at 45 CFR 160.103; a subset of PHI that is transmitted by Electronic Media or maintained in Electronic Media.

(6) Security Incident. “*Security Incident*” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as defined in 45 CFR 164.304.

(7) Breach. “*Breach*” shall mean the acquisition, access, use or disclosure of Protected Health Information (PHI) in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI, and subject to the exceptions set forth in 45 CFR. 164.402.

(8) Unsecured Protected Health Information (“UPHI”). *UPHI* shall have the same meaning as the term “unsecured protected health information” in 45 CFR 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

### **III. OBLIGATIONS OF KDADS**

KDADS shall designate one liaison to serve as the single point of contact for Business Associate as identified in Section X of this Agreement, or as later amended.

KDADS shall notify Business Associate of any limitation(s) in the KDADS Notice of Privacy Practices under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.

KDADS shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his/her PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.

KDADS shall notify Business Associate of any restriction on the use or disclosure of PHI that KDADS has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI.

KDADS shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA or 42 C.F.R. Part 2, if done by KDADS.

### **IV. GENERAL OBLIGATIONS OF BUSINESS ASSOCIATE**

Business Associate acknowledges and agrees as follows:

(1) Business Associate shall designate one liaison to serve as a single point of contact for KDADS as identified in Section X of this Agreement, or as later amended.

(2) Business Associate will use or disclose the PHI solely to perform functions, activities, or services for, or on behalf of KDADS as specified in the Underlying Agreement, provided that such use or disclosure would not violate HIPAA if done by KDADS, or as required by law.

(3) Business Associate acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received from KDADS identifying or otherwise relating to PHI, Business Associate is fully bound to comply with the provisions of the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(4) Business Associate agrees that all PHI obtained in the scope of this Agreement is confidential and agrees that it shall safeguard and prevent the use and/or disclosure of the PHI other than as permitted in this Agreement or in accordance with federal and state law. Further, Business Associate agrees not to disclose any PHI obtained from the KDADS for purposes other than those described herein unless it has obtained express written prior approval from KDADS or as contained in an Underlying Agreement, or as required by law.

(5) Business Associate agrees to inform all workforce members, agents and subcontractors accessing PHI that the violation of this Agreement may result in disciplinary action or criminal prosecution if warranted. Business Associate also agrees to take appropriate disciplinary action against its respective workforce members, agents and subcontractors that are found to have violated this Agreement, in a manner consistent with Business Associate's policies and procedures. Business Associate agrees to provide KDADS upon request a copy of its policies and procedures relative to HIPAA compliance.

(6) Business Associate agrees that it is responsible for compliance with the terms of this Agreement by its workforce, agents, subcontractors and any and all other persons or entities which may have access to the PHI, its use or disclosure, as part of the Underlying Agreement between KDADS and Business Associate.

(7) Business Associate may not release, reproduce, distribute or publish any PHI or other confidential information obtained in the performance of this Agreement without prior written permission of KDADS, which shall not be unreasonably withheld. This provision does not apply to uses and disclosures related to Business Associate's role as a covered entity to carry out treatment, payment, or healthcare operations; in response to a valid authorization per 45 C.F.R. 164.508; routine requests for use, disclosure, access or copies of PHI by Business Associate clients, client guardians, and health care providers; a permitted use or disclosure per 45 C.F.R. 164.512; or as otherwise required by law. Business Associate agrees to use reasonable and

appropriate safeguards to maintain the privacy and confidentiality of data obtained from KDADS.

**A. Security obligations**

The Security Standards specified in 45 CFR 164 Subpart C including the requirements of Sections 164.306, 164.308, 164.310, 164.312, 164.314 and 164.316, apply to the Business Associate in the same manner that such sections apply to KDADS (45 CFR 164.302). The Business Associate's required obligations include, but are not limited to, the following:

(1) Safeguards to be in Place: Business Associate shall abide by all applicable provisions of the Security Standards and use all appropriate safeguards to ensure the confidentiality, integrity, and availability of PHI the covered entity or business associate creates, receives, maintains, or transmits and prevent the use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, Business Associate shall:

- a. Implement Administrative, Physical and Technical Safeguards that are required and those that are reasonable and appropriate to protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of KDADS as required;
- b. Adopt written policies and procedures to implement the same Administrative, Physical and Technical Safeguards currently required;
- c. Implement technical policies and procedures as required by the most current guidance issued by the Secretary of Health and Human Services on the use of reasonable and appropriate Technical Safeguards;
- d. Ensure in accordance with 164.308(b)(2) that any subcontractors that create, receive maintain, or transmit electronic PHI on behalf of Business Associate agree to comply with the applicable requirements of 45 CFR 164 Subpart C by entering into a contract that complies and reporting to the covered entity any security incident of which it becomes aware, including breaches of UPHI as required by 164.410; and
- e. Comply with the policies, procedures, documentation and implementation standards and requirements in accordance with 164.306 and 164.316.

**V. PRIVACY OBLIGATIONS**

Pursuant to applicable law, PHI that Business Associate will have access to and/or receive from KDADS may be used or disclosed only in accordance with this Agreement and the Privacy Rule. KDADS is a Covered Entity under the act and therefore Business Associate is not permitted to use or disclose PHI in ways that KDADS could not use or disclose the PHI. This protection continues as long as the data is in the hands of Business Associate. Business

Associate agrees to comply with the privacy obligations imposed by HIPAA including but not limited to:

A. Required/Permitted Uses - 164.504(e)(2)(i). Business Associate is required/permitted to use the PHI only for the purposes described in the Underlying Agreement.

B. Required/Permitted Disclosures - 164.504(e)(2)(i). Business Associate shall disclose KDADS' PHI only as allowed herein or as specifically in the Underlying Agreement, or as specifically directed by KDADS.

C. Limitation of Use and Disclosure - 164.504(e)(2)(ii)(A). Business Associate agrees that it will not use or further disclose PHI other than as permitted or required by this Agreement, the Contract or as required by law.

D. Disclosures Allowed for Management and Administration - 164.504(e)(2)(i)(A) and 164.504(e)(4)(i). Notwithstanding any other provision to the contrary herein, Business Associate is permitted to use and disclose PHI received from KDADS in its capacity as a recipient of PHI from KDADS if such use is necessary for the management and administration of the Business Associate's obligations under the Underlying Agreement with KDADS or to carry out the legal responsibilities of Business Associate and for data aggregation services, if such services are to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of PHI by Business Associate with the PHI received by business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

E. Minimum Necessary. Business Associate agrees to limit the amount of PHI used and/or disclosed pursuant to this Agreement to the minimum necessary to achieve the purpose of the use and disclosure.

F. Safeguarding and Securing PHI - 164.308, 164.310, 164.312, 164.314 and 164.504(e)(2)(ii)(B). Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and/or EPHI that Business Associate creates, receives, maintains, or transmits under this Agreement. Business Associate will furnish KDADS with a written description of such safeguards upon request. Business Associate agrees to allow authorized representatives of KDADS access to premises where the PHI and/or EPHI is kept for the purpose of inspecting physical security arrangements during normal business hours and upon reasonable prior written notice to Business Associate. Because the PHI belonging to KDADS may be co-located with that from other entities, KDADS agrees not to use or disclose any such PHI with which it comes into contact during such inspections.

Business Associate shall use reasonable efforts to update its privacy and security policies, procedures, processes and protections as operational and environmental changes warrant, safeguarding the privacy and security of PHI provided under this Agreement. On an annual basis, Business Associate shall conduct an internal review and evaluation of physical and data

security operating procedures and personnel practices and shall provide KDADS with verification of such review.

G. Workforce, Agents and Sub-Contractors - 164.504(e)(2)(ii)(D). Business Associate will ensure that any entity, including its workforce, agents, and subcontractors, to whom it discloses PHI received from KDADS or created or received by Business Associate on behalf of KDADS, agree to the same restrictions, conditions and safeguards that apply to Business Associate with respect to such information.

H. Right to Review. KDADS reserves the right to review terms of agreements and contracts between the Business Associate and its workforce, agents, and subcontractors as they relate to the use and disclosure of PHI belonging to KDADS.

I. Ownership. Business Associate shall at all times recognize ownership of the PHI by KDADS.

J. Notification of Disclosure - 164.304, 164.314 (a)(2)(C) and 164.504(e)(2)(ii)(C). Business Associate shall notify KDADS, both orally and in writing, of any use or disclosure of PHI and/or EPHI not allowed by the provisions of this Agreement of which it becomes aware. Business Associate shall report to KDADS any security incident which compromises the privacy and/or security of KDADS PHI within ten (10) business days of becoming aware of such incident. In the event of a security breach or disclosure that compromises the privacy or integrity of PHI, Business Associate shall, within ten (10) business days of the discovery of said breach or disclosure, notify the KDADS privacy officer and shall take all other measures required by state or federal law. Business Associate shall provide KDADS with a copy of its investigation results. KDADS will take appropriate remedial measures up to termination of this Agreement pursuant to Section 17 below.

K. Transmission of PHI 164.312 (c)(1) and 164.312 (c)(2). Business Associate agrees to comply with HIPAA standards and, where applicable, 42 C.F.R. Part 2 standards with regard to the transmission of PHI. All PHI exchanged between KDADS and Business Associate will be via a mutually agreed upon secure mechanism. If electronic media is utilized, such information will be password protected by a password consisting of at least eight characters with four character types (upper case, lower case, symbols and numbers) and will be encrypted.

L. Employee and/or Agent Compliance with Applicable Laws and Regulations. Business Associate agrees to require each of its workforce, agents and subcontractors having any involvement with the PHI to comply with applicable laws and regulations relating to security, confidentiality and privacy of the PHI and with the provisions of this Agreement.

M. Custodial Responsibility. Business Associate will designate an employee as the custodian of PHI and will be responsible for observance of all conditions of use. If custodianship is transferred within the organization, Business Associate shall notify KDADS, in writing within ten (10) days of any such transfer.

N. Access, Amendment, and Accounting of Disclosures 164.504(e)(2)(ii)(E-G). Business

Associate will provide access to the PHI in accordance with 45 C.F.R. 164.524, and any fee assessed for access to PHI provided by KDADS to Business Associate in paper format shall be a reasonable, cost based fee consistent with the requirements of 45 C.F.R. 164.524 (e.g., labor and supplies for copying records; postage; preparation of an explanation or summary of PHI). Business Associate will make the PHI available for amendment and incorporate any amendments to the PHI in accordance with 45 C.F.R. 164.526. Business Associate will make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528.

In addition, Business Associate must provide access in an electronic format to any PHI provided by KDADS to Business Associate in an electronic format and thereafter maintained in an Electronic Health Record by Business Associate, if so requested by an Individual as specified in 164.502. Access to and a copy of the PHI must be provided to the Individual who made the request or a person of the Individual's choosing. Any fee that Business Associate may charge for such copy in an electronic format shall be a reasonable, cost-based fee (e.g., labor costs to review the access request and to produce the electronic copy; costs of supplies, including electronic media; postage for mailing electronic media) in responding to the request.

O. Documentation Verifying HIPAA Compliance 164.504(e)(2)(ii)(H). Business Associate will make its policies, procedures, and documentation relating to the security and privacy of PHI, including EPHI, available to the Secretary of Health and Human Services for purposes of determining KDADS' compliance with 45 C.F.R. Parts 160 and 164. Business Associate will make these same policies, procedures, and documentation available to KDADS or its designee upon request.

P. Contract Termination 164.314(a)(2)(i)(D) and 164.504(e)(2)(ii)(I). Business Associate agrees that within forty-five (45) days of the termination of this Agreement, it will return or destroy, at KDADS' direction, any and all PHI that it maintains in any form and will retain no copies of the PHI, except as permitted in an Underlying Agreement. If the return or destruction of the PHI is not feasible, the protections of this section of the Agreement shall be extended to the information, and further use and disclosure of PHI is limited to those purposes that make the return or destruction of PHI infeasible. Any use or disclosure of PHI, except for the limited purpose, is prohibited. KDADS acknowledges and agrees that Business Associate will retain KDADS Member PHI as necessary for the purposes of performing its obligations under the Underlying Agreement, carrying out its legal responsibilities, and ongoing licensure, as applicable.

Q. Duty to Record Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for KDADS to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Information that Business Associate is required to document includes, but is not limited to, disclosures made by Business Associate through an Electronic Health Record for purposes of treatment, payment or health care operations.

R. Duty to Provide Record of Disclosures to KDADS. Business Associate agrees to provide to KDADS or an Individual, in a time and manner specified by KDADS, information

collected in accordance with Section 18, in order to permit KDADS to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. If an Individual requests that KDADS provide him or her with an accounting of disclosures made through an Electronic Health Record, KDADS may elect to request the information from Business Associate, as provided above, and provide the Individual with the accounting directly, or, in the alternative, provide the Individual with Business Associate's contact information (mailing address, phone and email address) and require Business Associate to provide the accounting of disclosures made through the Electronic Health Record directly to the Individual.

S. Application of Knowledge Standards. If KDADS knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate obligations under HIPAA, upon notification from KDADS, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, KDADS shall either: (i) terminate the contract, if feasible; or (ii) if termination is not feasible, report the problem to the Secretary.

T. Prohibition on Sale of PHI. Business Associate is prohibited from receiving any remuneration, directly or indirectly, in exchange for any PHI.

U. Prohibition on Marketing. Business Associate is prohibited from engaging in any marketing activities or communications with any Individuals unless so allowed by the terms of the Agreement or 45 C.F.R. 164.508(a)(3).

## VI. TERM

This Agreement shall continue in force unless otherwise terminated herein, and shall terminate as to each Underlying Agreement when all PHI provided by KDADS to Business Associate, or created or received by Business Associate on behalf of KDADS pursuant to the Underlying Agreement, is destroyed or returned to KDADS. Despite such termination, herein, Business Associate agrees to protect any remaining PHI in accordance with the provisions herein and applicable HIPAA, state or federal law.

## VII. TERMINATION

A. Termination with Cause. Upon KDADS' knowledge of a material breach or violation by Business Associate of this Agreement, KDADS may:

- (1) Provide written notice of such breach or violation to Business Associate and an opportunity for Business Associate to cure the breach or end the violation within a reasonable period specified by KDADS, or may terminate this Agreement and the Underlying Agreement (or the applicable provisions thereof) if Business Associate does not cure the breach or end the violation within the time specified by KDADS;

(2) Immediately terminate this Agreement and the Contract (or the applicable provisions thereof) if Business Associate has breached a material term of this Agreement and cure is not feasible; or

(3) If neither termination nor cure is feasible, report the violation to the Secretary. The termination provisions of this Agreement shall supersede any termination provisions of the Underlying Agreement as it relates to Business Associate's use of PHI.

(4) This Agreement can be terminated without cause by KDADS with thirty (30) days written notice; provided, that Business Associate may continue to use the PHI for a reasonable period of time following such termination in order to perform any of its remaining obligations under the Contract and in accordance with Section V.P.

(5) A material breach shall include, but is not limited to, Business Associate's improper use or disclosure of PHI, any changes or diminution of Business Associate's security procedures or safeguards relating or pertaining to PHI that are unsatisfactory to KDADS or a breach of any provision(s) of this Agreement.

B. Termination after Repeated Violations. KDADS may terminate the Underlying Agreement if Business Associate repeatedly violates this Agreement or any provision hereof, regardless of whether, or how promptly, Business Associate may remedy such violation after being notified of the same. In the event of such termination, KDADS shall not be liable for payment of any services performed or expense incurred by Business Associate after the effective date of such termination, except for services provided in conjunction with Section VII.A.4 above.

C. Changes in Law. In the event of passage of a law or promulgation of a regulation or an action or investigation by any regulatory body which would prohibit the relationship between the Parties, or the operations of either Party with regard to the subject of this Agreement, the Parties shall attempt in good faith to renegotiate the Agreement to delete the unlawful provision(s) so that the Agreement can continue. If the Parties are unable to renegotiate the Agreement within thirty (30) days, the Agreement shall terminate immediately upon written notice of either Party.

D. Effect of Termination.

(1) Except as otherwise provided in this Agreement, upon termination of this Agreement for any reason, Business Associate shall return or destroy (at KDADS' election), and shall retain no copies of, all PHI received from KDADS, or created or received by Business Associate on behalf of KDADS. Business Associate shall ensure that this provision shall apply equally to PHI that is in the possession of subcontractors of Business Associate or agents of Business Associate.

(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to KDADS written notification of the conditions that make return or destruction infeasible. Upon KDADS' written approval, which shall not be unreasonably withheld, Business Associate may retain the PHI, but

shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **VIII. DISCLAIMER**

KDADS makes no warranty or representation that compliance by Business Associate with this agreement, HIPAA, or 42 C.F.R. Part 2 will be adequate or satisfactory for Business Associate's own purposes or that any information in the possession or control of Business Associate, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure, nor shall the KDADS be liable to Business Associate for any claim, loss or damage relating to the unauthorized use or disclosure by Business Associate from the KDADS or from any other source, Business Associate acknowledges that it is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

## **IX. GENERAL PROVISIONS**

A. Business Associate and KDADS, to the extent permitted by Kansas law, agree to assume responsibility for their own respective losses, damages, judgments, and costs of liability they incur arising from their own improper release or use of PHI provided or developed under this Agreement.

B. Business Associate agrees, to the extent permitted by Kansas law, to hold the KDADS harmless and to assume responsibility for any and all claims, demands, and causes of action of every kind and character arising out of, or in connection with, acts or omissions by Business Associate under this Agreement. KDADS agrees, to the extent permitted by Kansas law, to hold the Business Associate harmless and to assume responsibility for any and all claims, demands, and causes of action of every kind and character arising out of, or in connection with, acts or omissions by KDADS under this Agreement. Such liability of the parties shall be as defined under the Kansas Tort Claims Act.

C. Business Associate expressly understands that KDADS makes no guarantee of accuracy regarding the information provided in performance of this Agreement. Information provided to Business Associate can only be as accurate as the information received by the KDADS. KDADS shall have no liability to any party if KDADS' software or data is unavailable, or is not correct in any respect. Business Associate shall have no liability for the improper payment or adjudication of a claim due to inaccurate information provided to Business Associate by KDADS.

D. Once Business Associate uses the information supplied by KDADS for the purposes described in each Underlying Agreement and has disposed of the information in a manner consistent with the terms of this Agreement, this Agreement shall expire as to that Underlying Agreement. Business Associate understands that additional requests for data will require reauthorization from KDADS. The obligations of this Agreement will survive the expiration or termination of this Agreement.

E. There is no third party beneficiary to this agreement between the Parties. This agreement is only intended to benefit the Parties to this agreement.

F. In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of HIPAA and 42 C.F.R. Part 2 (as may be expressly amended from time to time by the HHS or as a result of final interpretations by HHS, a court with applicable jurisdiction, or another regulatory agency with authority over the Parties), the provisions of HIPAA and 42 C.F.R. Part 2, as applicable, shall prevail.

G. Where provisions of this Agreement are different from those mandated by HIPAA and/or 42 C.F.R. Part 2, but are nonetheless permitted by HIPAA or 42 C.F.R. Part 2, the provisions of the Agreement shall control.

H. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the Privacy Rule, the Electronic Transactions Standards, or any other requirements under HIPAA or 42 C.F.R. Part 2.

I. This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this Agreement nor any rights or obligations hereunder may be assigned, in whole or in part by Business Associate, without the prior written consent of KDADS.

J. All PHI shall be and remain the exclusive property of KDADS. Business Associate agrees that it acquires no title or property rights whatsoever to the PHI as a result of this Agreement.

K. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

L. The Parties agree to cooperate and take such action as is necessary to amend this Agreement from time to time as is necessary for KDADS to comply with the requirements of HIPAA.

M. A reference in this Agreement to a section in the HIPAA regulations, the Security or Privacy Rule, or the Electronic Transactions Standards, 42 C.F.R. Part 2, or the HITECH ACT means the section as in effect or as amended.

N. This document, together with any written schedules, amendments and addenda, constitutes the entire agreement of the Parties and supersedes all prior oral and written agreement negotiations or understandings between them with respect to the matters provided for herein.

O. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas to the extent that the provisions of HIPAA, 42 C.F.R. Part 2, the Security or Privacy Rule, and/or the HITECH ACT and regulations promulgated thereunder do not preempt the laws of the State of Kansas. Should a pretrial be necessary, the Parties agree that the sole venue shall be the District Court of Shawnee County, Topeka, Kansas.

P. The Agreement (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the Parties hereto as if they were originals.

Q. The use of the masculine, feminine or neuter genders, and the use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word "person" or "party" shall mean and include any individual, trust, corporation, partnership or other entity.

R. The Parties acknowledge and understand that all of the provisions in the "Contractual Provisions Attachment," Form DA-146a (Rev. 06-12), that are applicable to the transaction contemplated by this Agreement, shall be incorporated into and made a part of this Agreement as if fully recited herein. A copy of DA-146a is attached hereto as Schedule 1 and its terms incorporated herein.

S. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

T. Each party has cooperated in the drafting and preparation of this Agreement. Hence, if any construction is to be made to this Agreement, the same shall not be construed for or against any party.

U. Time is of the essence in this Agreement.

V. Paragraph headings contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

**X. CONTACT PERSON**

The contact person for Business Associate is:

ComCare of Sedgwick County, Inc.  
Marilyn Cook, Executive Director  
635 North Main  
Wichita, KS 67203  
Telephone: 316-660-7655  
FAX: 316-383-7510  
E-mail: mcook@sedgwick.gov

The contact person for Business Associate in case of a Security Incident or Breach is:

ComCare of Sedgwick County, Inc.

Marilyn Cook, Executive Director  
635 North Main  
Wichita, KS 67203  
Telephone: 316-660-7655  
FAX: 316-383-7510  
E-mail: mcook@sedgwick.gov

The contact person for KDADS is:

Timothy E. Keck, Secretary  
Kansas Department for Aging & Disability Services  
503 South Kansas Ave.  
Topeka, KS 66603  
Telephone: (785) 296-4986

With a copy to:

KDADS Chief Counsel  
Kansas Department for Aging & Disability Services  
503 South Kansas Ave.  
Topeka, KS 66603  
Telephone: (785) 296-4986

## **XI. SIGNATURES**

Having agreed to the terms herein, the undersigned Parties hereby represent and warrant that they are authorized to enter into and execute this Agreement.

### **COMCARE OF SEDGWICK COUNTY, INC.**

By: \_\_\_\_\_  
Marilyn Cook, Executive Director

\_\_\_\_\_ Date

### **KANSAS DEPARTMENT FOR AGING AND DISABILITY SERVICES**

By: \_\_\_\_\_  
Timothy E. Keck, Secretary

\_\_\_\_\_ Date

**Approved As To Form**

  
Michael L. Fessinger  
Assistant County Counselor

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.