

## DEVELOPMENTAL DISABILITY SERVICE AGREEMENT

This Agreement, entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between Sedgwick County, Kansas, acting as the State of Kansas appointed Community Developmental Disability Organization, referred to as "County" or "Sedgwick County Developmental Disability Organization" or "SCDDO," and, EmberHope, Inc., referred to as "the Community Service Provider" or "CSP" or "Contractor," to provide services to eligible persons in compliance with the Developmental Disabilities Reform Act, K.S.A. 39-1801 et seq., and its implementing regulations (collectively "the DD Reform Act").

**I. Purpose:** Through this agreement, the parties desire to set out their respective obligations as SCDDO and CSP regarding the services to be provided and the use of funds that are accessible as reimbursement for these services because of the contractual relationship between the parties. Consistent with K.S.A. 39-1809, however, nothing in this agreement constitutes an entitlement to services. This agreement is a sub-contract to the agreement entered into as provided in the DD Reform Act between the Kansas Department for Aging and Disability Services "KDADS" and SCDDO (the KDADS and SCDDO contract). As a sub-contract of the KDADS and SCDDO contract, this agreement conveys all requirements pertaining to funds utilization and service expectations to the CSP.

**II. Term:** This agreement shall apply to services provided on or after September 1, 2015. The agreement will remain in effect through August 31, 2016 unless terminated as provided within this agreement. This agreement may continue for a reasonable time after August 31, 2016, if both parties agree to continue operating under the terms of this agreement while they are actively negotiating terms of a new agreement.

**III. Termination:** CSP may terminate this agreement after giving SCDDO at least 90 days written notice or a mutually agreed upon time for successful transition to new services of all people served. SCDDO may terminate this agreement as provided in K.A.R. 30-64-22(f)(1-3). This agreement will be terminated automatically or may be amended by both parties if CSP fails to maintain any licenses, certifications, Medicaid Provider Agreements, or KanCare Managed Care Organization (MCO) contracts that may be required by law or regulation in order to provide the services that CSP is to deliver under this agreement.

**IV. Scope:** The CSP shall perform in a satisfactory and proper manner, as determined by SCDDO, the purpose, goals and objectives necessary to accomplish this contract as they are specified herein.

**V. Definitions and Incorporation of Appendices:** For the purpose of this agreement, the definitions and requirements in K.S.A. 39-1801 et seq., K.A.R. 30-63-01 et seq., K.A.R. 30-64-01 et seq. and KDADS and SCDDO Contract appendices and KDADS policies apply to both SCDDO and CSP and by reference are part of this agreement. Appendix A - General Contractual Provisions, Appendix B - Service Expectations, Appendix C - Community Service Capacity Assurance and Crisis Plan are attached hereto and are incorporated in this agreement.

**VI. Authorized Intellectual and Developmental Disability (I/DD) Services:** SCDDO hereby agrees the Community Service Provider is authorized to provide and request reimbursement directly from SCDDO, MCO or the Medicaid intermediary for the following program services:

AGENCY DIRECTED SERVICES:

Children's Residential Supports

IN WITNESS WHEREOF, SCDDO and the Community Service Provider have executed this agreement as of the day and year first above written.


SEDGWICK COUNTY, KANSAS

EmberHope, Inc.

\_\_\_\_\_  
Richard Ranzau, Chairman  
Sedgwick County Board of Commissioners

  
Shelley Duncan


SEDGWICK COUNTY DEVELOPMENTAL  
DISABILITY ORGANIZATION

  
\_\_\_\_\_  
DEE E. STAUDT, Director

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
KELLY B. ARNOLD, County Clerk

  
\_\_\_\_\_  
MICHAEL NORTH, Assistant County Counselor

DEVELOPMENTAL DISABILITY SERVICE AGREEMENT  
APPENDIX A - GENERAL CONTRACTUAL PROVISIONS

I. AUTHORITY TO CONTRACT

A. Affirmation of Legal Authority. Contractor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this contract, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may be required.

B. Required Documentation. Domestic corporations shall furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State.

II. ASSIGNMENT

Neither this contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

III. SUBCONTRACTING

None of the work or services covered by this contract shall be subcontracted without the prior written approval of County. All approved subcontracts must conform to applicable requirements set forth in this contract and in its appendices, exhibits and amendments, if any. For purposes of this agreement, work or services will be limited to the services defined in the current SCDDO/KDADS contract definitions, abbreviations, and related terms.

IV. INDEPENDENT CONTRACTOR RELATIONSHIP

It is agreed that the legal relationship between Contractor and County is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the services and performing the duties required by County hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Contractor, and employees of Contractor, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, and employees of Contractor, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Contractor.

V. PROHIBITION OF CONFLICTS OF INTEREST

A. Interest of Public Officials and Others. No officer or employee of County, no member of its governing body, and no other public official who exercises any functions or responsibilities in the

review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this contract which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of County or any member of its governing body or other public official have any interest, direct or indirect, in this contract or the proceeds thereof.

B. Interest of Contractor. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract or conflict with the prohibitions in 42 CFR 441.301.

C. Employee Conflicts. Situations in which 1) an employee of the County shall also be an employee of Contractor at time of agreement, 2) an employee of Contractor seeks additional/alternate employment with County during pendency of agreement, or 3) an employee of County seeks additional/alternate employment with Contractor during pendency of agreement, shall require written notice to the County at the addresses listed in Section XXI (Twenty-one) below. The County shall make every effort to assure that such employees do not have any authority to approve 1) grant funds, 2) agreements, or 3) affiliate status to the Contractor or Contractor's competitors.

D. Notice to Bidders. Requests for proposal or invitations for bid issued by Contractor to implement this contract will provide notice to prospective bidders that County's conflict of interest provision is applicable in that contractors who develop or draft specifications, requirements, statements of work and/or RFP's for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.

## VI. HANDICAPPED ACCESSIBILITY

A. Contractor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against persons with disabilities in employment services, participation and access to all programs receiving federal financial assistance. Contractor shall also comply with applicable requirements of the Americans With Disabilities Act (ADA) which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

## VII. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

In carrying out this contract, Contractor shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 *et seq.*

A. Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry;

B. in all solicitations or advertisements for employees, Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;

C. if contractor fails to comply with the manner in which Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Contractor shall be

deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;

D. if contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by the contracting agency; and

E. contractor shall include the provisions of subsections (A) through (D) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

## VIII. PERSONNEL

A. Qualified Personnel. Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this contract. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this contract.

B. Employee Conflict of Interest. Contractor will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

C. Contractor's Safeguard. The parties to this agreement recognize that entities or persons providing government-funded services to the public are the subject of public scrutiny. Consequently, by entering into this agreement Contractor assumes an affirmative and ongoing duty during the pendency of this contract to maintain compliance with requirements set forth in subsection (D) below. Such compliance requires the use of criminal or other legal background checks upon personnel or agents providing services pursuant to this agreement, or administering the funds conveyed under this agreement.

D. Participant Safeguard.

1. Contractor certifies that background checks will be maintained for all employees, subcontractors and individuals providing direct services (APS, CPS, KDHE – Abuse, Neglect and Exploitation, and KBI) and driving record checks for all individuals who transport clients consistent with KDADS policy.

2. Persons convicted of any felony, drug or drug-related offense, crime of falsehood or dishonesty, crime of moral turpitude or crime against another person during the ten-year period concluding on the date of execution of this contract or during the pendency of this contract, or any individual who is known by contractor to have had a conviction for or a prior employment history of abuse, neglect, or exploitation of children or vulnerable adults as defined in K.S.A. 39-1430 et seq. and K.A.R. 30-63-28 shall not be permitted to administer this contract or handle the funds conveyed under this contract.

3. Persons having been convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the five-year period concluding on the date of execution of this contract, or during the pendency of this contract, shall not be permitted to operate a vehicle in which a person served pursuant to this contract is

a passenger. For purposes of this section, "serious traffic offense" shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

4. Persons with convictions for crimes against persons, crimes of moral turpitude, including, but not limited to, sex offenses and crimes against persons, or any individual who is known by contractor to have had a prior conviction for or history of abuse, neglect or exploitation of children or vulnerable adults confirmed by any regulatory agency as defined in K.S.A. 39-1430 et seq. and K.A.R. 30-63-28 shall not be permitted to provide services or interact in any way with persons served pursuant to this contract. Exceptions to this requirement may be considered on a case-by-case basis and must be preapproved by the SCDDO Director; however, per KAR 30-63-28, no exceptions can be made for individuals known to have had a conviction for or a prior employment history of abuse, neglect or exploitation of children or vulnerable adults.

5. In addition to required background checks at the time of hire, contractor will maintain appropriate written policies and/or procedures sufficient to ensure employees continue to meet the standards required to provide direct service, this may include follow-up background checks or other method to meet the requirement. Contractor shall provide the SCDDO with copies of the policies and procedures related to staff background checks and ongoing compliance.

6. If a CSP does not have staff that provides direct services or otherwise feels the background check requirements should not apply to their business, an exception request must be submitted in writing to the SCDDO Director for review and approval. The exception request must specify why the background checks should not apply.

7. Any question concerning the interpretation of this subsection (D) and/or its application to an individual shall be referred to the SCDDO Director. Director's decision may be appealed per SCDDO policy; however employees who are the subject of the appeal may not perform job duties as outlined in this subsection until the appeal process has been concluded. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgment program in lieu of prosecution. Contractor shall not be held accountable for cases in which diversions or deferred judgments are not reflected in an individual's criminal record, or for expunged convictions, if CSP would have no other reasonable way of knowing of these acts.

8. It is understood that this contract may be revoked at the discretion of the County if the Contractor is in violation of Subsection (D). No penalty will be assessed to the County for revocation of this agreement in the event of a breach of any portion of Appendix A, Section VIII.

## IX. COMPLIANCE WITH APPLICABLE LAWS, SERVICE STANDARDS AND PROCEDURES

A. Controlling Provisions. In the event there is an alleged conflict among the terms of this contract (including any appendix or other document referenced herein), the Parties agree that the following provisions shall govern in the following order: (1) Applicable federal/state statutes and/or regulations; (2) HCBS-I/DD Waiver rules and regulations; (3) KDADS' policies and procedures; (4) SCDDO policies and procedures; (5) Modifications to the contract; and (6) the executed contract.

B. Service Standards and Procedures. The CSP will comply with K.S.A. 65-4411 et seq., K.S.A. 19-4001 et seq., K.S.A. 39-7,100, K.S.A., 39-1801 et seq., and K.A.R. 30-64-01 et seq. All services provided as a result of this agreement that require licensure must be licensed in accordance with K.A.R. 30-63-01 et seq., or other appropriate license, law or regulation. The CSP must comply with all official policies and procedures of SCDDO, the KanCare managed care organizations and KDADS.

C. Governing Law. This contract shall be interpreted under and governed by the laws of the State of Kansas.

D. Compliance with Law. Contractor shall comply with all applicable local, state and federal laws and regulations, in carrying out this contract, regardless of whether those legal requirements are specifically referenced in this agreement.

E. Access to Meetings. Contractor agrees to grant access to County to meetings of its managing board or committee during that time when matters involving use of County grant funds are discussed, if requested by County.

F. Administrative Activities. The CSP must cooperate with all SCDDO administrative activities including, but not limited to service access, application, eligibility determination and referral, third party eligibility determination reviews, gatekeeping, dispute resolution, council of community members, quality assurance, quality enhancement, funding management and management of the data collection system.

The CSP must take appropriate action, where applicable, to assist SCDDO to comply with performance outcome measures identified in the current KDADS/SCDDO annual contract.

## X. RECORDS, REPORTS AND INSPECTION

A. Documentation of Costs. All costs incurred by Contractor for which Contractor purports to be entitled to reimbursement shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible to both parties to this agreement.

B. Maintenance of Records. Except as otherwise authorized by County, Contractor shall retain such documentation for a period of three (3) years after receipt of the final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitates maintenance of records beyond this three (3) year period.

C. Reports. During the term of this contract, Contractor shall furnish to County, in such form, as County may require, such statements, records, reports, data and information as County requests pertaining to matters covered by this contract. County will withhold payments to Contractor if Contractor fails to provide all required reports in a timely and accurate manner, until such time as all reports are furnished to County. Incomplete reports may be considered a breach of this contract.

1. The CSP must supply accurate information on any and all complaints where the CSP offered or resolved the issue via their dispute resolution process. A complaint is any item taken through the dispute resolution process, grievance or an appealable action. Information on complaints must be provided at least quarterly within the timeframe identified by the SCDDO.

2. The CSP must supply accurate special reports or information to SCDDO or KDADS or its designees within reasonable requested time frames. CSP is hereby notified many requests for information are regularly made as a result of regulatory or legislative demands placed on KDADS and SCDDO. As such, requests will be identified as to source of request and/or informational need.

3. The CSP must comply with provisions of K.S.A. 39-1401 et seq., K.S.A. 39-1430 et seq., and K.A.R. 30-63-28. All agents of the CSP providing services as a result of this agreement must immediately report any incidents of suspected abuse, neglect or exploitation directly to the appropriate official body responsible for investigating such incidents including, but not limited to, SCDDO, Kansas Department for Children and Families Adult or Child Protective Services and Law Enforcement. The person's legal guardian, if one has been appointed, must also be notified unless such notification is likely to cause harm to the person served. Any notification that occurs more than one business day after the incident is identified by the CSP will be considered out of compliance with this requirement.

4. If requested, the CSP must inform individuals receiving services, their families and legal guardians of the outcome of the review including the licensing status of the CSP and procedures for accessing any public documents related to the review. The CSP must make this information available to the person in a printed copy or other form that may be required due to a person's disability at no charge.

D. Independent Audit. Any CSP which receives \$500,000 or more through this contract or combination of contracts with Sedgwick County must submit an independent auditor's report annually; the only exception is if the CSP is a licensed FMS provider, then financial audits are required to be submitted on a time frame consistent with the State of Kansas requirements (currently every three years). Contractor's receiving less than \$500,000 annually are required to submit: a Statement of Financial Position (Balance Sheet), Statement of Activities (Profit & Loss Statement) and a Statement of Cash Flows. Audits and/or financial statements must be submitted no later than nine (9) months following its respective fiscal year end. The independent auditor must:

1. Report any findings where contract funds were spent for non-allowable costs, in accordance with OMB Circulars A-87 and A-102 if governmental entities or OMB Circulars A-110 and A-122 if not-for-profit entities. For the for-profit entities, KDADS will designate the applicable non-allowable cost criteria from OMB Circulars A-87, A-102, A-110, and A-122.

2. Monitor the requirements listed above and be completed within nine months from the close of the CSP's fiscal year. The audit must include any management letters provided by the independent auditor. SCDDO will not release management letters to the public, subject to County's compliance with the Kansas Open Records Act.

3. Mail or e-mail one (1) copy of the independent audit to SCDDO and one (1) copy to each of the KDADS offices listed:

Sedgwick County Developmental Disability Organization  
615 N. Main  
Wichita, KS 67203  
E-mail: [DHHSReports@sedgwick.gov](mailto:DHHSReports@sedgwick.gov)

KDADS Audit Services



Financial Audit Unit  
New England Building  
503 S. Kansas Ave.  
Topeka, KS 66603-3404

KDADS Adm. Program Support  
New England Building  
503 S. Kansas Ave.  
Topeka, KS 66603-3404

E. Availability of Records. Contractor agrees to make any and all of its records, books, papers, documents and data available to County, or the authorized representative of a State agency with statutory oversight authority, for the purpose of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies and transcriptions at any time during the terms of this contract and for a three-year period following final payment under the terms of this contract. Contractor gives KDADS, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to its grant of funds.

F. Confidentiality. Both parties will comply with the provisions of State of Kansas and federal regulations in regard to confidentiality of eligible participant records. The CSP must respect the privacy of persons and families and restrict use of confidential information to purposes necessary in carrying out the conditions of this agreement. At the time of admission and annually thereafter, the CSP must notify persons served that SCDDO and its representatives may review the services provided and any individual or agency records which pertain to those services in consideration for funds received in this agreement.

G. Certificate of Tax Clearance. Annually Contractor shall provide County with a certificate of tax clearance from the State of Kansas certifying Contractor has paid all state taxes. For all new contracts, the statement of tax clearance must be provided before contract initiation and cover a sufficient range of time as to cover the beginning date of the contract term. Tax Clearance Certificates can be obtained online at: <https://www.kdor.org/TaxClearance/Self/Start.aspx>

H. Debarment/Suspension. Contractor acknowledges that as part of the Code of Federal Regulations (45 C.F.R. Part 76) a person or entity that is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been placed on the Excluded Parties List and any federal funding received or to be received by Sedgwick County in relation to this Agreement prohibits Sedgwick County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended, the Contractor shall notify Sedgwick County in writing of such determination within five (5) business days as set forth in the Notice provision in this Agreement. Sedgwick County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended and to notify County within the same five (5) business days, and with the County reserving the same right to terminate for breach as set forth herein. Contractor and SCDDO will research [www.sam.gov](http://www.sam.gov) for potential debarred persons or entities.

## XI. INSURANCE REQUIREMENTS

Contractor shall annually provide a certificate of insurance in the contracting entity's name to verify liability and auto insurance in the minimum amount of \$500,000. Contractor shall annually provide certificate of workers compensation coverage. Sedgwick County shall be listed as an additional insured on the general liability and auto coverage policies, and the certificate should provide for at least a 10-day written notice of cancellation. Contractors who employ licensed professionals must have professional liability coverage. If contractor transports clients during services provided for under this agreement, evidence of auto insurance on the certificate is required. Contractor shall also annually provide evidence of professional liability insurance, as appropriate. The certificate should be submitted to the Assistant Director of SCDDO or designee and shall be filed with the affiliate agreement. All potential claims must be reported to SCDDO.

## XII. LICENSES AND PERMITS

Contractor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this contract. Contractor shall notify County immediately if any required license, permit, bond or insurance is canceled, suspended or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by County, in its discretion.

## XIII. MINIMUM INFORMATION TECHNOLOGY REQUIREMENTS

SCDDO uses Relias Learning's on-line training system to deliver training to CSPs to enhance the quality of services delivered to persons served and ensure timely communication regarding changes in organizational policies and practices. The CSP shall use a reasonably current operating system and web browser following W3C standards.

### System Requirements:

- Internet connectivity, broadband recommended
- CPU 1GHz or higher recommended
- 512 MB RAM or higher recommended
- Screen resolution of at least 1024 x 768. Lower resolutions may be used but may require scrolling to view course material.
- If using trusted sites feature in certain browsers, the following may be helpful to add but is not a requirement to use the application (.essentiallearning.com; .essentiallearning.net)
- JavaScript and VB script must be enabled
- Browsers must accept cookies from Relias Learning and allow pop-ups

### Security

- No Active X components are required
- Firewalls must allow HTTP traffic on port 80. Some videos require MMS traffic on ports 554 and 1755. By default, these ports are open on most terminals.
- CSP designated staff will receive e-mail directly from SCDDO staff via the Relias Learning application. The outgoing mail will come from noreply@essentiallearning.com. The essentiallearning.com domain will need to be allowed by your mail server and anti-spam software.

### Advanced Internet Explorer Options

- If using Internet Explorer 7.0 or above make sure the following options are set if they have been modified (these are all default options in IE7 and many cannot be modified in IE8 and above):
- Disable Script Debugging, Script Error Notifications and page transitions.
- Enable automatic image resizing, play animations in web pages, sound in web pages, videos in web pages, show image downloaded placeholders, show pictures, image dithering, allow active content to run in files on my computer, and empty temporary internet files folder when browser is closed.

#### Additional Software

- Adobe's Flash plug-in must be installed for most courses, preferably version 8 or higher. This is not a hard requirement although it is highly recommended.

\*Exemptions may be approved for limited license providers. Such requests should be made in writing and sent to the attention of the SCDDO Director for review and approval.

#### XIV. ABUSE, FRAUD or WASTE

CSP's and their employees will report to SCDDO upon discovery any suspected or identified abuse, fraud or waste related to funds as identified in this contract. The SCDDO provides "Our Workplace" as one means CSP's and their employees may report potential agency financial abuse, fraud or waste. Our Workplace may be accessed via the internet at [www.OurWorkplace.com](http://www.OurWorkplace.com) (ID SCDDO615) or via phone at (316) 660-1115. Additionally, CSP's agree to ensure their employees are educated on abuse, fraud and waste, and have a means to report suspected incidents of abuse, fraud or waste. Training on abuse, fraud and waste is available through SCDDO's online training system, Relias.

#### XV. FUNDING

A. Reduction in Funding. In the event aggregate funding provided to SCDDO from county, state and/or federal sources is reduced, or in any way insufficient to fund this agreement, the obligations of both SCDDO and the CSP must thereupon be reduced on a pro rata basis, renegotiated or terminated, provided that any termination of this agreement must be without prejudice to any obligations or liabilities of the parties accrued prior to the termination.

B. Inability to Perform Contract. It is further understood and agreed that in the event Contractor's rate of progress on this contract is leading to under spending of granted funds due to inability to provide services at planned levels, County may decrease the total compensation and reimbursement to be paid hereunder or withdraw from the agreement.

C. Cash Basis and Budget Laws. The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

XVI. REIMBURSEMENT

A. HCBS-I/DD Program Services

Reimbursement through the HCBS-I/DD Program Services can be accessed only when the CSP has a current signed affiliation agreement with SCDDO for the requested services, and KDADS and the client’s MCO has granted Prior Authorization pursuant to the Plan of Care.

The CSP must bill the appropriate MCO or fiscal intermediary for all reimbursable services. The CSP must provide SCDDO with information pertaining to Medicaid billing when requested.

HCBS-I/DD Program Service funding units are those which are approved through the prior authorization process pursuant to the plan of care managed by KDADS and contracted MCO.

B. State Aid Funding

State Aid funds are distributed to SCDDO exclusively pursuant to K.S.A. 65-4411 et seq. and K.A.R. 30-22-31 et seq. State Aid funds are allocated at the discretion of SCDDO and may be used for KDADS approved priority services; transportation, children services, direct services and case management as defined by KDADS service taxonomy. SCDDO may include additional services to be funded with State Aid if underutilized funds are available. State Aid funds are not portable to areas outside of Sedgwick County.

The CSP will invoice SCDDO per policy.

C. Recoupment

SCDDO may recoup from payments due to CSP for unexpended State Aid or if services were not provided as originally invoiced. In the case of recoupment, either the CSP shall remit the amount due by check payable to SCDDO or, by express mutual consent, SCDDO shall reduce the next payment due to CSP by an amount equal to the proposed recoupment. In the event of a recoupment, SCDDO shall provide written notice to CSP of the proposed recoupment, which shall include the factual basis and appeal rights to the SCDDO Director.

Funding Units:

Service	Cap	Unit Cost
Adult Day	15 minute unit, max 32 units per day, not to exceed 100 units per week	\$1.55
Residential	1 unit = 1 day, 365 units per year	\$37.00
Financial Management Services	1 unit per month	\$115.00
Attendant/Respite Care - Agency Directed	15 minute unit, Cap determined by authorized funding plan	\$3.06
Attendant/Respite Care - Self Directed	15 minute unit, Cap determined by authorized funding plan	\$2.64
Supported Employment	15 minute unit	\$3.06

D. Targeted Case Management Services

Targeted Case Management Services are reimbursable directly through Medicaid only when the appropriate MCO contract is in place.

E. County Mill Levy Fund

County Mill Levy funds are distributed at the discretion of SCDDO as described in Appendix C - Community Service Capacity Assurance and Crisis Plan. These funds are not portable to areas outside of Sedgwick County.

F. Additional Funds

SCDDO may issue Request for Proposals (RFPs) which are designated for programs and services.

G. Pre-disbursement Requirements.

Contractor must provide to County the documentation required pursuant to the payment guidelines prior to any disbursements being made by County to Contractor.

H. Mailing Address.

Unless other arrangements are made, payments shall be mailed to Contractor's address as follows:

EmberHope, Inc.  
Shelley Duncan  
4505 E. 47th St. S.  
Wichita, Ks 67210

## XVII. ENFORCEMENT AND DISPUTE RESOLUTION

A. Inaccurate or Incomplete Functional Assessment Data

CSP understands and agrees that it is subject to a financial penalty if the data provided by CSP results in an inaccurate or incomplete functional assessment and a recoupment is levied against SCDDO by KDADS. The financial penalty shall be equal to the amount of the recoupment levied against SCDDO if CSP data was the only reason for the inaccurate/incomplete finding; the penalty amount shall be prorated if CSP data was not the only reason for the finding. SCDDO will not penalize CSP if the reason for the recoupment results from an error on the part of the SCDDO.

B. Contract Compliance

Should the CSP fail to maintain compliance with this agreement or any state or Federal Statute or Regulation incorporated by reference, the CSP shall be informed in writing of any and all deficiencies of the CSP in the provision of services, or in any other way failing to comply with this agreement. The CSP shall have thirty (30) days--or less time if the health and safety of persons served may warrant--to address with a corrective plan or resolve any deficiency as specified in the official notification. Should the CSP fail in this responsibility, SCDDO may take any or all of the following actions:

1. Place the Contractor on probationary status for a specified amount of time during which it is expected the Contractor will take immediate action to correct the deficiencies. During the probationary period the Contractor may not accept new referrals.

2. Impose penalties in an amount not to exceed \$125.00 per day for each violation from the specified date forward until the CSP complies.
  3. Suspend all or part of the payments provided for in the SCDDO-CSP affiliation agreement;
  4. Implement any action allowed by the current SCDDO-CSP affiliation agreement.
  5. Terminate the SCDDO-CSP affiliation agreement.
- C. Preferred resolution of disputes will take place informally between the parties involved. In the event such informal resolution is not successful, the CSP, SCDDO, or KDADS may require participation in dispute resolution utilizing an independent professional mediator chosen mutually by the parties. The parties will share equally in the costs of the dispute resolution.
- D. After utilizing dispute resolution, the CSP may file an appeal with the Office of Administrative Hearings, Department of Administration.
- E. Any CSP that loses its license to provide services will no longer be provided funds identified in this agreement for services and must cooperate with SCDDO in assisting the transition of persons to alternative service CSPs until all service needs are met.

#### XVIII. TERMINATION OF CONTRACT

Termination for Cause. If Contractor shall fail to fulfill in a timely and proper manner its obligations under this contract, or if Contractor shall violate any of the terms, covenants, conditions, or stipulations of this contract, County shall thereupon have the right to terminate this contract by promptly giving written notice to Contractor of such termination and specifying the reasons for the termination and the effective date thereof. A breach shall include, but not be limited to, failure to comply with any or all items contained in this contract and any appendices, exhibits or amendments thereto, if any.

In the event of termination, copies of such information prepared by Contractor to carry out this contract, including data, studies, surveys, records, and reports shall, at the option of County, be made available to the County within 10 working days. Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Contractor shall not be relieved of liability to County by virtue of any breach of this contract by Contractor and County may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due County from Contractor are determined.

Should any term of this contract be declared by a court of competent jurisdiction to be invalid or unenforceable, the balance of all independent terms of this contract must be preserved unaffected, deemed valid and enforceable, and remain in full force and effect.

#### XIX. INDEMNIFICATION AGREEMENT

Both parties hereby expressly agree and covenant that they will hold and save harmless and indemnify the other party, its officers, agents, servants and employees from liability of any nature or kind connected with the

work to be performed hereunder arising out of any act or omission of such party or of any employee or agent of that party to the degree such indemnification is allowed by law.

**XX. AMENDMENTS TO AGREEMENT**

To provide necessary flexibility for the most effective execution of this contract, whenever both County and Contractor mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract. SCDDO and the Sedgwick County Board of Commissioners must approve any change that affects contract objectives or the scope of services to be provided.

Any alterations to this agreement will only be valid when they have been reduced to writing, duly signed and attached to the original of this agreement. This agreement shall be subject to renegotiation upon changes in federal or state laws or regulations to conform to any changes caused by amendments or revisions to those laws or regulations. Any change which affects contract objectives must be approved by SCDDO and the Sedgwick County Board of Commissioners.

**XXI. NOTIFICATION**

Notifications required pursuant to this contract shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

County:

Sedgwick County Developmental Disability Organization  
Attn: Director  
615 N. Main  
Wichita, KS 67203  
PHONE (316) 660-7630  
FAX (316) 660-4894

The Office of the County Counselor  
Attn: Contract Notification  
Sedgwick County Courthouse  
525 North Main, Suite 359  
Wichita, KS 67203-3790

Contractor:

EmberHope, Inc.  
Shelley Duncan  
4505 E. 47th St. S.  
Wichita, Ks 67210

DEVELOPMENTAL DISABILITY SERVICE AGREEMENT  
APPENDIX B - SERVICE EXPECTATIONS

I. CONTINUITY OF SERVICE

Unless limitations in program capacity have previously been reported to the SCDDO Director in writing and an exception to service access has been approved by SCDDO, CSPs must serve persons for whom funding is available through this agreement. The CSP must offer and/or provide services consistent with the following requirements:

A. The CSP must provide services to new persons which are sufficient to meet their person-centered plan pursuant to K.A.R. 30-63-21.

B. New persons, including those selecting a new CSP through a provider change, must be served within an average of sixty (60) days from when CSP is notified it has been selected to provide services. Individuals who are referred to CSP to access services made necessary by an identified crisis or per the SCDDO's Community Crisis Plan are not subject to the 60-day average and should be provided the best available service option immediately to insure the individual's safety. The CSP will report to SCDDO any crisis placement that cannot be initiated within one week following referral for services so that other necessary courses of action can be explored.

The CSP must provide continuity of service for persons who choose to continue services and who move from one CDDO to another or from one CSP to another. Funds must be portable except when a person no longer needs services and/or voluntarily withdraws from services with no immediate foreseeable need for services.

C. Service Reduction.

The CSP must reach agreement with SCDDO a minimum of 90 days prior to implementation if it seeks to reduce or discontinue services affecting two or more clients. All planned reductions in service must be communicated in writing and/or represented in an amended affiliation agreement.

1. Should the CSP determine services funded pursuant to allocations in this agreement exceed the amount the person needs, the CSP should reduce the person's services either voluntarily or involuntarily. However, the CSP cannot reduce services involuntarily until the CSP:

- a. Has cooperated with SCDDO to establish procedures to determine when it is appropriate to reduce services to a person and then implements those procedures;
- b. Uses the Person Centered Planning pursuant to K.A.R. 30-63-21 to determine if reduced services will meet the person's needs;
- c. Identifies specifically how much service the person needs;
- d. Provides its determination in writing to the person or, if the person has a guardian, the person's guardian, at least 15 days before the reduction occurs; and
- e. Informs the person of the opportunity to have the determination reviewed through the dispute resolution process including final review by the Office of Administrative Hearings, Department of Administration. A request for dispute resolution must be filed within thirty (30) calendar days from the notice of the final determination of the reduction of services. No reduction of services will occur until the dispute resolution process and administrative hearings process have been completed.



D. Service Termination.

The CSP must notify SCDDO, the person served, the person's guardian, if one has been appointed, and a family member, if appropriate, at least 30 calendar days prior to the CSP permanently discharging a person receiving services funded through this agreement. A person cannot be terminated from services unless at least one of the following occurs:

1. The Secretary of KDADS determines a person to be inappropriate for community services based on a finding that the person presents a clear and present danger to self or others in the community;
2. A person who has available private funding fails to abide by a written service agreement with the CSP which specifies payment of any amount with private funding;
3. A person refuses to apply for Medicaid benefits;
4. All funding for the person allocated in this agreement is discontinued;
5. or the person voluntarily withdraws from services.

E. Placement of Persons Residing in State Mental Retardation Hospitals, State Mental Health Hospitals, or Private Intermediate Care Facilities that are Closing or Reducing Bed Capacity.

The CSP must develop support plans and funding requests for all persons who have chosen the CSP as a service provider, who are residing in state mental retardation and mental health hospitals and seeking community placement in the SCDDO service area within 120 days of the date the person becomes known to the CSP. KDADS will evaluate the support plans and funding requests, discuss them with SCDDO and CSP, and finalize support plans and funding requests that are agreeable to KDADS, SCDDO and the CSP. Once the funding plan has been approved, the CSP must serve or arrange to serve all persons for whom approval is provided. This provision does not include persons determined inappropriate for community services pursuant to K.A.R. 30-64-25.

F. Outreach and Transition Planning.

The CSP must cooperate with and assist SCDDO with outreach and transition planning procedures which identify, through the data collection system, the number of new persons who are likely to need services and what services they may likely need in the future. This activity may include: providing case management to persons anticipating services from the CSP, attendance at Individual Education Plan ("IEP") meetings and attendance at transition planning meetings.

II. **QUALITY ASSURANCE AND QUALITY ENHANCEMENT.**

The CSP must cooperate and assist SCDDO within specified timelines to ensure compliance with quality oversight requirements of K.A.R. 30-64-26 and K.A.R. 30-64-27.

The CSP will register with KDADS Adverse Incident Reporting (AIR) system. Each CSP will report critical incidents to SCDDO QA staff per SCDDO policy including abuse, neglect, and exploitation (ANE) reports, hospitalizations, police involvement, deaths of persons served, and others as defined by KDADS.

The CSP will comply with the Quality Assurance Committee expectations as established by SCDDO policy.

Each CSP will develop and submit a continuity of operations plan to include a list of emergency contacts.

### III. PARTICIPANT INPUT

Contractors providing licensed services shall provide persons receiving services funded pursuant to this contract with an opportunity to assess and evaluate the program at least once during the contract term, unless such requirements are more specifically addressed elsewhere in this agreement or by statute.

#### A. State Aid Taxonomy.

State Aid funds will be distributed at the discretion of SCDDO and may be used for KDADS approved priority services; transportation, children's services, direct services and case management and as defined by KDADS service taxonomy. SCDDO may use State Aid to fund identified community needs through programs such as family support, incidental consumer supports, one time funds, and flex funds. State Aid funds are not portable to areas outside of Sedgwick County.

### IV. I/DD CONSUMER SERVICES

In addition to state regulations and local policy, the following expectations apply to the specific services for which this affiliate agreement is valid:

#### A. Residential Services.

1. The CSP must ensure coordination exists for transportation. The CSP is not bound to provide the transportation, but rather to assure that affordable transportation is made available to the person served.
2. The CSP must maintain water temperature control in all locations where services are provided. Such controls will regulate water temperatures from exceeding 120 degrees Fahrenheit so that persons do not receive burns or burn-related injuries. Such equipment will be in operation prior to services being provided in any location. The type of control used will be determined by the assessment conducted as part of the person-centered planning process as described in K.A.R. 30-63-21.
3. In sites that are not owned or leased by the CSP and the person/guardian refuses to allow the CSP to install water temperature controls, a risk assessment will be submitted to SCDDO at the time of the person/guardian's initial refusal and annually.
4. Rent or room and board cost for housing which is owned or leased by the CSP must not exceed fair market rates consistent with guidelines used by the Sedgwick County Housing Department. Persons may not reside in property owned by any employee of the CSP without prior written consent of SCDDO.
5. Direct service professionals and/or their supervisors will have access to Relias Learning and be expected to complete training as assigned.

B. Day Services.

1. The CSP must ensure coordination exists for transportation. The CSP is not bound to provide the transportation, but rather to assure that affordable transportation is made available to the person served.
2. Maintain U.S. Department of Labor certificate authorizing special minimum wage rates, if applicable.
3. Day programming should have age appropriate, meaningful activity that includes community integration activities.
4. Direct service professionals and/or their supervisors will have access to Relias Learning and be expected to complete training as assigned

C. Targeted Case Management (TCM).

1. CSP will coordinate care with representatives of the KanCare MCOs including joint participation in the development and review of integrated service plans.
2. Provide updated functional assessment and services information as required throughout the year and verify accuracy at a minimum of once per month.
3. Each Targeted Case Manager employed by the CSP will abide by the TCM Rules of Conduct.
4. Each CSP will ensure that case managers complete training standards and comply with requirements established by the state and/or SCDDO.
5. TCMs and their supervisors will have access to Relias Learning and be expected to complete training as assigned.
6. TCMs may not provide any direct service for any CSP and must attest annually to the SCDDO that they are in compliance with this requirement.
7. The CSP will coordinate the Behavior Management Committee review process for all individuals on their caseload for whom such review is necessary.
8. In the continuity of operation plan the CSP will ensure that TCM services are accessible at all times.
9. The CSP will communicate, cooperate and make information available to the assigned child welfare provider as requested.
10. The CSP will advise SCDDO, upon discovery of any child residential placement in a KDHE licensed or approved resource home which involves more than two children who are not related by blood or marriage to the resource family.
11. The CSP must ensure all persons receiving services and supports through funds described in this agreement are residents of Kansas.
12. All person centered support plans (PCSP) will incorporate an employment first focus without regard to the significance of their disabilities. Other service options may be considered

when certain circumstances exist (e.g., the person makes an informed choice not to take part in community employment after receiving sufficient information and having sufficient community experience, or barriers exist to the person participating in community employment and all documented efforts cannot eliminate those barriers). If any option other than community employment is pursued, the process taken to obtain informed choice must be documented in the PCSP.

13. CSP will inform persons waiting for services and legal guardians of applicable selection procedures and of the person's position on the waiting list based on information provided by SCDDO or State of Kansas.

D. Assistive Services and/or Home Modification Services.

1. The CSP will complete quality work which meets specifications of the bid process.
2. The CSP agrees not to begin work until notice is received from SCDDO that prior authorization of funding has occurred.
3. The CSP will not bill for services until the project has been completed and approved by SCDDO or designee.

E. Self-directed in home support providers (Financial Management Service (FMS), Personal Assistant Service, Overnight Respite, Sleep Cycle Support, Specialized Medical).

1. To provide FMS services the CSP must have an approved KDADS Provider Agreement.

F. Agency-directed in-home support providers (Supportive Home Care, Overnight Respite, Sleep Cycle Support, and Specialized Medical Services).

1. The CSP will be considered the employer of record.
2. The CSP will provide services as outlined on the MR-10 Supportive Home Care schedule which includes providing a back-up plan as needed.

G. Children's Residential.

The CSP will assure that no more than two children supported through this contract or other Medicaid funding, and who are not related by blood or marriage to the resource family, can be living in a resource home without specific authorization by SCDDO and KDADS. Any request for authorization must be made prior to a third child being placed in the home.