

AGREEMENT
between
SEDGWICK COUNTY, KANSAS
and
KANSAS CHILDREN'S SERVICE LEAGUE
for
Healthy Families America Program Services

AGREEMENT

THIS AGREEMENT is made in Sedgwick County, Kansas, and entered into effective this 1st day of July, 2013, by and between the Sedgwick County on behalf of the Sedgwick County Health Department (hereinafter the "SCHD") and Kansas Children's Service League (hereinafter "KCSL").

WITNESSETH:

WHEREAS, the National Committee to Prevent Child Abuse (now known as Prevent Child Abuse America) and the Ronald McDonald House Charities formed the Healthy Families America Program to provide support and education to new parents at the time of their baby's birth and in the months and years thereafter; and

WHEREAS, the SCHD has contracted with the Kansas Department of Health and Environment (formerly Kansas Health Policy Authority) (hereinafter "KDHE") to provide Outreach, Prevention and Early Intervention Services; and

WHEREAS, the mission of KCSL is to protect and promote the well-being of children by strengthening the quality of their family life through provision of prevention, early intervention, treatment, advocacy, and placement services; and

WHEREAS, the SCHD desires to contract with KCSL for Healthy Families America home visitation services under the umbrella of SCHD's KDHE contract for Outreach, Prevention and Early Intervention Services; and

WHEREAS, KCSL desires to perform such responsibilities and services, subject to, and in accordance with, the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants hereinafter given, and for other good and valuable consideration, the parties hereto agree as follows:

WHEREAS, Federal Financial Participation (FFP) is available to pay a portion of the project costs, and;

NOW, THEREFORE, for and in consideration of their mutual promises, the parties hereby agree as follows:

I. FUNDING RESPONSIBILITIES:

- A. Funding:** KCSL shall identify certifiable, matching, non-federal funding sources in the amount of NTE \$170,000.00 which is fifty percent (50.0%) of the total contract amount of NTE \$340,000.00.

The following is language from the contract between KDHE and the SCHD specific to match funding: 42 CFR Section 433.54 clarifies what a bona fide provider donation is and how one may be used.

1. “42 CFR Section 433.54 Bona fide donations.

- (a) A bona fide donation means a provider-related donation, as defined in Sec. 433.52, made to the State or unit of local government, that has no direct or indirect relationship, as described in paragraph (b) of this Section, to Medicaid payments made to--
 - (1) The health care provider;
 - (2) Any related entity providing health care items and services; or
 - (3) Other providers furnishing the same class of items or services as the provider or entity.
- (b) Provider-related donations will be determined to have no direct or indirect relationship to Medicaid payments if those donations are not returned to the individual provider, the provider class, or related entity under a hold harmless provision or practice, as described in paragraph (c) of this section.
- (c) A hold harmless practice exists if any of the following applies:
 - (1) The State (or other unit of government) provides for a direct or indirect non-Medicaid payment to those providers or others making, or responsible for, the donation, and the payment amount is positively correlated to the donation. A positive correlation includes any positive relationship between these variables, even if not consistent over time.
 - (2) All or any portion of the Medicaid payment to the donor, provider class, or related entity, varies based only on the amount of the donation, including where Medicaid payment is conditional on receipt of the donation.
 - (3) The State (or other unit of government) receiving the donation provides for any direct or indirect payment, offset, or waiver such that the provision of that payment, offset, or waiver directly or indirectly guarantees to return any portion of the donation to the provider (or other parties responsible for the donation).
- (d) CMS will presume provider-related donations to be bona fide if the voluntary payments, including, but not limited to, gifts, contributions, presentations or awards, made by or on behalf of individual health care providers to the State, county, or any other unit of local government does not exceed--

- (1) \$5,000 per year in the case of an individual provider donation; or
- (2) \$50,000 per year in the case of a donation from any health care organizational entity.
- (e) To the extent that a donation presumed to be bona fide contains a hold harmless provision, as described in paragraph (c) of this section, it will not be considered a bona fide donation. When provider-related donations are not bona fide, CMS will deduct this amount from the State's medical assistance expenditures before calculating FFP. “

Bona fide donations must be given directly to KCSL from the donor and the donor and amount donated must be identified in the funding certification submitted quarterly by KCSL.

- B. Funding Certification:** During the contract year, on a quarterly basis, KCSL must submit to the SCHD (Attachment C - Certification of Non-Federal Match Form) that it has expended or will expend NTE \$42,500 (or one-quarter of their annual contract amount) as matching funds required to match the FFP for this contract and that both federal and matching funds have been or will be expended for the purposes specified herein. This form should be submitted to the SCHD for expenditures incurred in each calendar quarter (Ex: Jan-Mar, April-Jun, July-Sept, Oct-Dec).
- C. Hold Harmless:** KCSL agrees to protect, indemnify and hold SEDGWICK COUNTY, its officers, employees and agents free and harmless from and against any and all liabilities; claims and damages; loss of federal funds, as a result of a finding by the KDHE and/or federal government that the “certified match funds” provided by the SCHD on behalf of KCSL did not meet federal requirements; or to the loss of federal funds to any extent directly or indirectly, attributable to the negligence, error or omission in the performance of services rendered by KCSL, or any of its employees or agents, under this Agreement.

II. KCSL'S RESPONSIBILITIES:

- A. Program Development:** As required by KDHE, KCSL shall develop, implement and maintain Program elements to promote best practices in providing prevention/early intervention services to new parents. Program elements should include:
 - 1. Identify all families of at-risk infants from a targeted geographic area using reliable screening mechanisms.
 - 2. Provide intensive, long-term, home visitor support.
 - 3. Facilitate bonding between parent and infant.
 - 4. Empower parents to seek support services through available community resources.
 - 5. Promote healthy child development.
 - 6. Prevent child abuse and neglect among project children from birth to age 5 or as long as the child or children are in KCSL'S Program(s).
 - 7. Link the child to a pediatric medical facility, other community services, and to developmental resources, as needed.

8. Initiate services with new parents before birth or at birth.
9. Identify families who are most in need of services
10. Offer services voluntarily and use positive, persistent, outreach efforts to build family trust.
11. Offer services intensively (at least once a week) and over the long term (2-5 years), with well-defined criteria for increasing or decreasing frequency of services.
12. Ensure services are culturally appropriate and staff acknowledges, understands and respects the family's cultural differences. Staff and materials used shall reflect the cultural, linguistic, geographic, racial and ethnic diversity of the population served.
13. Ensure services are comprehensive, focusing on supporting the family as a whole (parent(s) and child or children).
14. Ensure services are provided by staff with caseloads limited and monitored, to assure that home or office visits provide an adequate amount of time for each family visit to meet their unique and varying needs and to plan for future activities.
15. At a minimum, all families shall be linked to a medical provider to assure optimal health and development (i.e., the Medicaid Early, Periodic Screening, Diagnosis and Treatment Program (EPSDT), timely immunizations, well-child care, etc.). Dependent upon the family's needs, they may also be linked to additional services such as financial, food and housing assistance programs; school readiness programs; child care and job training programs; family support centers, substance abuse treatment programs and domestic violence shelters as determined necessary by the Department.

B. Reports: KCSL will submit required quarterly data and narrative reports as well as match certification documents to the SCHD by the 10th of the month following the end of the reporting quarter so that the SCHD can make the KDHE reporting deadline of the 15th of that month. (See Quarterly Process Attachment)

As required by KDHE:

1. Service providers should receive intensive training specific to their role in order to understand the essential components of family assessment and visitation. This training must include, but is not limited to, the areas of:
 - (a) identifying at-risk families
 - (b) offering services and making referrals
 - (c) assisting with the application for Medicaid or CHIP services
 - (d) promoting use of preventive health care
 - (e) securing medical homes
 - (f) emphasizing the importance of immunizations and the EPSDT Program
 - (g) utilizing creative outreach efforts
 - (h) establishing and maintaining trust with families
 - (i) building upon family strengths
 - (j) developing an individual family support plan
 - (k) observing parent-child interactions
 - (l) determining the safety of the home
 - (m) managing crisis situations

2. Service providers should receive ongoing, effective supervision on a weekly basis so they are able to:
 - (a) develop realistic and effective plans to empower families to meet their objectives;
 - (b) understand why a family may not be making progress and how to work with that family more effectively;
 - (c) develop accurate assessment skills;
3. Home visitors should have a framework of education/experience which prepares them for handling the variety of situations they may encounter when working with at-risk families. All service providers should participate in basic training opportunities in order to effectively perform their job in the areas of cultural competency, substance abuse, reporting child abuse, domestic violence, drug exposed infants, and services in their community.

Failure of the Department to provide qualified staffing at the level required may result in termination of this contract.
4. Reports: The Department shall report to KDHE quarterly regarding the program success, with reports being due with the quarterly certification of funds and invoice requesting the draw-down and payment of Medicaid matching funds.

III. CONTRACT TERMS AND CONDITIONS:

- A. **Term:** The term of this contract shall begin July 1, 2013 through June 30, 2014 with three (3) additional one (1) year renewals, at the option of the parties hereto, and in written agreement of the parties.
- B. **Compensation:** The SCHD agrees to pay KCSL, and KCSL agrees to accept from SCHD, for services provided hereunder, a sum equal to the total amount provided by grant funds and donations held on behalf of KCSL and Medicaid matching funds from KDHE paid to the SCHD for KCSL, less an administrative fee of not more than 1.25% (\$4,250) of contract amount to be retained by the SCHD.

Total annual funding under this agreement shall not exceed \$340,000.00, said amount comprising KCSL's certified matching funds of NTE \$170,000.00 and the FFP amount of NTE \$170,000.00. In the event increased funding becomes available to KCSL, and KCSL wishes to expand the scope of services, KCSL shall notify SCHD in order that an amendment to the contract be prepared, if applicable.

Quarterly payments from the SCHD to KCSL shall be processed within two weeks of receiving the draw down from KDHE. In no event shall the payment exceed forty-five days from date of receipt.

- C. **Suspension/Termination:** Any of the parties hereto may terminate this agreement for any reason by giving written notice of the termination to the remaining parties at least 30 days prior to the date of termination stated in the written notice.

Further, it is understood and agreed that all obligations of SCHD, including continuance of payments hereunder, are contingent upon the availability and continued appropriation of county, state and federal funds, and in no event shall SCHD be liable for any payments

hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the county, state or federal sources for the purchase of services hereunder shall be reduced, terminated or shall not be continued at an aggregate level sufficient to allow for the purchase of the services specified hereunder for any reason whatsoever, SCHD shall notify KCSL of such reduction of funds available and shall be entitled to reduce the SCHD's commitment hereunder or to terminate the contract as it deems necessary.

D. Termination for Unavailability of Funds: It is understood and agreed by the SCHD and KCSL that all obligations of the SCHD, including continuance of payments hereunder, are contingent upon the availability and continued appropriation of county, state and federal funds, and in no event shall the SCHD be liable for any payments hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the county, state or federal sources for the purchase of services hereunder shall be reduced, terminated or shall not be continued at an aggregate level sufficient to allow for the purchase of the services specified hereunder for any reason whatsoever, the SCHD shall notify KCSL of such reduction of funds available and shall be entitled to reduce SCHD's commitment hereunder or to terminate the contract as it deems necessary.

E. Retention of and Access to Records: All records prepared pursuant to this agreement shall be retained and safeguarded for a six-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.

In the event that the terms of this agreement give rise to litigation, the parties shall retain all documents arising out of the litigation, for two years following termination of the litigation and any appeal thereof.

F. Independent Contractor Status: At all times pertinent to this agreement KCSL shall perform as and hold the status of independent Contractors and at no time be deemed employees of the SCHD. SCHD and KCSL shall have sole discretion in directing the conduct, activities, and duties performed by their respective employees pursuant to this agreement.

SCHD and KCSL shall take appropriate measures to ensure that their personnel who perform services are adequately covered by any and all employer related taxes and insurance in accordance with applicable law.

G. Confidentiality: KCSL may have access to private or confidential data maintained by county or State to the extent necessary to carry out its responsibilities under this contract. KCSL must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. KCSL 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 contract shall be disseminated by either party except as

the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. KCSL must agree to return any or all data furnished by the county or State promptly at the request of county or State in whatever form it is maintained by KCSL. On the termination or expiration of this contract, KCSL will not use any of such data or any material derived from the data for any purpose and, where so instructed by county or State, will destroy or render it unreadable.

KCSL shall not disclose Private Health Information to the SCHD.

- H. Attachments:** The provisions found in Contractual Provisions Attachments B (Program Report), C (Certification Form), D (Sample Invoice), and Appendix A, all of which are attached hereto, incorporated into this contract, and made a part thereof. Also, KCSL is considered a Business Associate of SCHD. Accordingly, the attached HIPAA Rules Business Associate Addendum is hereby incorporated into this contract and made a part thereof.
- I. Modifications:** Modification or amendment to this agreement shall be in writing and executed with the same formality as the original.

IN WITNESS HEREOF, the parties hereby execute this agreement on the day and year identified by the signatures below.

SEDGWICK COUNTY

James B. Skelton
Chairman, 5th District
Board of County Commission

Date

KANSAS CHILDREN’S SERVICE LEAGUE

Dona Booe
President/CEO
Kansas Children’s Service League

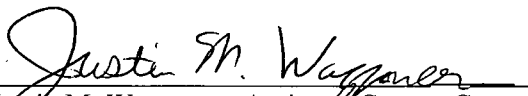
Date

ATTEST:

Kelly B. Arnold, County Clerk

Date

Approved as to form:



Justin M. Waggoner, Assistant County Counselor

Outreach, Prevention and Early Intervention Services

KDHE2014-012

SEDGWICK COUNTY HEALTH DEPARTMENT QUARTERLY REPORT

(Count parent and child as one unit unless indicated otherwise)

	Q1 2013	Q2 2013	Q3 2014	Q4-2014	YTD
New participants					
Total new participants					0
Total prenatal referrals					0
Total referrals at birth					0
Total referrals at discharge					0
Total of pregnant teens					0
Total of post delivery teens					0
Total of home visits					0
Total enrolled in Medicaid at 1st contact					0
Total of applicants in Medicaid program					0
Total participating in family planning, if applicable					0
Total with private health insurance					0

	Q1 2013	Q2 2013	Q3 2014	Q4-2014	YTD
Teen Pregnancy					
Total of pregnant teens in program					0
Total of teen mother's in program					0
Total of teen mother's with more than 1 child					0
Total of pregnant teens receiving prenatal care					0
Total of teen mother's on Medicaid					0
Total of teen applicants for Medicaid					0
Total with private health insurance					0
Total participating in family planning, if applicable					0

	Q1 2013	Q2 2013	Q3 2014	Q4-2014	YTD
Overall Program Participation					
Total enrolled in program					0
Total enrolled in Medicaid					0
Total children in Medicaid's Early, Periodic Screening, Diagnosis and Treatment Program (EPSDT)					0
Total of home visits					0
Total actively utilizing program services					0
Total number-unresponsive to outreach effort					0
Total number completing program through age 2					
Total number completing program through age 3					
Total number completing program through age 5					0
Total number dropping out of program or inactive for 3 or more months					0
Total with private health insurance					0
Total-Drug/Alcohol abuse history					0
Total-Daily tobacco use					0

	Q1 2013	Q2 2013	Q3 2014	Q4-2014	YTD
Child Wellness					
Total of children served/enrolled -Ex: 12/20					0
Total of families w/children receiving primary care					0
Total of families with children following immunization schedule					0
Total of individuals enrolled in CHIP					0
Total of individuals with private health insurance					0

Summary/Comments:

KDHE/DHCF
Effective Date 04/02/2013

Attachment C
Certification of Non-Federal Match Form
(To be used to certify Medicaid Matching Funds for Contract# KDHE2014-012)

INSTRUCTIONS: Complete items 1 through 4 below, sign and date, and return the form to the address at the top of the second page. Please refer to your Invoice - Total Program Expenditures for this Quarter section when completing this form.

COUNTY: _____

Federal Employer Identification Number: _____

QUARTER: _____ (MO/YY – MO/YY)

1. TOTAL FUNDS ALLOWABLE*: _____

~~*Note: This amount should come from the Quarterly Invoice and MUST equal the Total Expenses submitted for the Quarter~~

2. TOTAL MEDICAID EXPENDITURES: _____
(Amount Expended - FEDERAL SHARE ONLY)

3. NON FEDERAL MATCH REQUIRED = (#1 – #2) _____
(Certified Funds that the County must identify in #4 below)

4. NON FEDERAL MATCH FUNDS provided by County. Designate the source and amount of funds in your County budget that you are using to match the federal funds received from Medicaid. The total amount of the certified funds that you identify *must* equal the amount shown in item #3 above.

SOURCE AMOUNT

_____ \$ _____

_____ \$ _____

_____ \$ _____

I, on behalf of the Board of County Commissioners of Sedgwick County, Kansas, certify that, to the best of my knowledge, the Non-Federal Match identified in #3 above, for the Quarter ending _____ represents funds expended or to be expended by the Sedgwick County Health Department for Outreach, Prevention and Early Intervention Services. The amount expended or to be expended is from the sources identified and is eligible for federal match and does not duplicate any Federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation. The funds sought from federal financial participation and the certified funds expended or to be expended as the non-federal match requirement have been or will be expended for Medicaid activities related to the delivery or coordination of outreach, screening, diagnosis, treatment, intervention or other program services, and I certify that to the best of my knowledge the Sedgwick County Health Department has records on file documenting that there were allowable paid claims for these services that were actually delivered to program beneficiaries during the quarter.

CERTIFICATION OF FUNDS BY THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OR OTHER AUTHORIZED ELECTED OFFICIAL OR EMPLOYEE OF THE COUNTY:

Signature _____ Name (Printed): _____ Date: _____
Chairperson of the Board of County Commissioners
Or other authorized elected official or employee of the County whose title is: _____

KDHE/DHCF
Effective Date 04/02/2013

RETURN THIS COMPLETED FORM TO:
Kansas Department of Health and Environment
Division of Health Care Finance
Attention: Contracts Unit/Christi Waugh
900 SE Jackson St., Room 900-N
Topeka, KS 66612

The County hereby requests that the Kansas Department of Health and Environment, Division of Health Care Finance (KDHE/DHCF) draw down and distribute to the County, on behalf of the Sedgwick County Health Department the amount identified in paragraph 2., on the preceding page, for Program related services that are eligible for reimbursement by the federal share only of the Medicaid allowed amount. The County is responsible for "matching" the federal payment with certifiable funds already in their budgets. This involves identifying the certifiable funds in the County budget being designated to match the federal Medicaid payment received by the County. Certifiable funds include, but are not limited to, taxes levied and received by the County, fees, bona fide donations, and other funds received by the County from non-federal sources (generally, although there may be exceptions) that are not already used for other federal financial participation (FFP) funds.

The County must certify the availability of the matching non-federal share of service expenditures, using this form. This form should be submitted to KDHE/DHCF for expenditures incurred in a calendar quarter (Ex: Jan-Mar, April-Jun, July-Sept, Oct-Dec).

Procedure for Completing the Certification Form

1. **Total Medicaid Allowable** - All costs that Medicaid will allow as certifiable Medicaid expenditures. This amount is shown in the quarterly invoice as "Total Expense" and should be equal to the total in that column.
2. **Total Medicaid Expenses** - The amount of expenses reimbursable by federal funds received or to be received in support of the Medicaid program. This amount is shown in the invoice as "Medicaid Expenses" and should be equal to the total in that column.
3. **Non-Federal Match Required** – These are the matching funds that the County must identify. The amount is shown in the invoice as "County Expenses" and should be equal to the total in that column.
4. **Non-Federal Match Funds** – Designate the source and the amount of funds in your County budget that you are using to match the federal funds received by Medicaid. This amount should be equal to the amount in #3.
5. **The Chairman of the County's Board of County Commissioners or other authorized elected official or employee of the County** must sign and date this form, certifying the accuracy and completeness of the amounts listed.
6. **The County's Budget Officer or other authorized officer or employee of the County** must sign and date the Quarterly Invoice.

**ATTACHMENT D
SAMPLE INVOICE**

for the
Sedgwick County Contract# KDHE2014-012
3rd Quarter, Year One: 01/01/14 - 3/31/14

PERSONNEL

Name	Title	% FTE	Quarterly			Year-to-Date		
			Medicaid Expense (1)	County Expense	Total Expense	Medicaid Expense (1)	County Expense	Total Expense
Smith, John	Project Director	0.50	0	6,200	6,200	0	18,600	18,600
Jones, Joanne	Nurse	1.00	7,200	7,200	14,400	21,600	21,600	43,200
Williams, Tony	Social Worker	1.00	6,600	6,600	13,200	19,800	19,800	39,600
			13,800	20,000	33,800	41,400	60,000	101,400
TRAVEL	In-state		2,500	0	2,500	5,000	0	5,000
SUPPLIES	Project Supplies		1,250	0	1,250	2,500	0	2,500
OTHER	Toll-Free Telephone		750	0	750	2,250	0	2,250
	Communications		750	0	750	3,200	0	3,200
	Photocopying		70	0	70	4,160	0	4,160
	Postage		880	0	880	1,490	0	1,490
				2,450	0	2,450	11,100	0
TOTAL COST			20,000	20,000	40,000	60,000	60,000	120,000

I, _____ Name _____, do hereby certify that the amounts shown as Medicaid and County Expenses for the quarter 01/01/14 through 3/31/2014 were or will be incurred and expended by Sedgwick County for the purposes required by the Outreach & Prevention Contract # KDHE2014-012. I further certify that the amounts shown as County Expenses were or will be paid for using certified matching funds provided by Sedgwick County and hereby request that the Kansas Department of Health and Environment draw down the federal funds required to reimburse Sedgwick County for the Medicaid funding participation in this Program.

Signature of the County Budget Officer
or other Authorized Elected Official or Employee
For the County of: _____
Title: _____
Date: _____

Date

(1) We are asking for reimbursement of the Quarterly amount expended as shown in the column marked Medicaid Expense.

Bill To: Kansas Department of Health & Environment
Division of Health Care Finance
Attn: Contracts Unit/Christi Waugh
900 SW Jackson St., Room 900-N
Topeka, KS 66612

APPENDIX A- GENERAL CONTRACTUAL PROVISIONS

1. 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 (Kansas) corporations shall 1) furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Foreign (non-Kansas) corporations shall furnish evidence of authority to transact business in Kansas, in the form of a Certificate signed by the Kansas Secretary of State; and 2) a copy of the Corporation Resolution evidencing the authority to sign the Contract Documents, executed by the Corporation's Secretary or Assistant Secretary.

2. RELATIONSHIP of PARTIES.

It is agreed that the legal relationship between Provider and County is of a contractual nature. Both parties assert and believe that Provider is acting as an independent contractor in providing the services and performing the duties required by County hereunder. Provider is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Provider, and employees of Provider, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Provider, and employees of Provider, 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 Provider.

3. 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. Such personnel shall not be employees of or have any other contractual relationship with County. 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. Minimum Wages. Contractor will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

C. Employee Conflict of Interest. Contractor shall 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.

D. 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 E below. Such compliance requires the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this agreement, or administering the funds conveyed under this agreement.

E. Participant Safeguard. Contractor certifies that:

1) 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 provider to have had a prior employment history of abuse, neglect or exploitation of children or vulnerable adults, shall not be permitted to administer this contract or handle the funds conveyed under this contract;

2) Persons with convictions for crimes against persons, for crimes of moral turpitude, including, but not limited to, sex offenses and crimes against children, or any individual who is known by provider to have had a prior employment history of abuse, neglect or exploitation of children or vulnerable adults, shall not be permitted to provide services or interact in any way with persons served pursuant to this contract; and

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) Any question concerning the interpretation of this subsection E and/or its application to an individual shall be referred to the Director of the Agency administering the funding of this agreement for the County. The Director's decision shall be final for purposes of compliance with this contract. 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. Provider 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 Provider would have no other reasonable way of knowing of these acts.

F. It is understood that this contract may be revoked at the discretion of the County if Contractor is in violation of Subsection E.

No penalty shall be assessed to the County for revocation of this agreement in the event of a breach of any portion of Appendix A, Section 3.

4. 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.

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 Twenty (20) 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.

5. FUNDING.

A. Reprogramming of Funds. It is understood and agreed that in the event the amount of funds County actually receives from the County mill levy is less than anticipated, County may decrease the total compensation and reimbursement to be paid hereunder.

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 underspending 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.

D. Non-Supplanting Existing Funds. Contractor assures that grant funds made available under County mill levy grants and administered under this contract will not be used to supplant existing funds or other funding sources, but will be used to increase the amounts of those other funding sources.

E. Unexpended funds. It is agreed by Contractor and County that upon termination or expiration of the contract, any unexpended funds shall be returned to County.

6. 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, necessitate 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. Payments to Contractor will be withheld by County 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.

D. Audit. Contractor shall provide for an annual independent audit of its financial records and shall provide a copy of said audit to County, upon request. If not otherwise required by law to perform an audit and upon approval by County, Contractor may provide a copy of a financial balance sheet developed by a reputable accountant/accounting firm instead of a formal audit.

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 (3) year period following final payment under the terms of this contract.

F. Contractor's Purchasing Procedure. Contractor certifies that it does not practice any form of discrimination based on race, ethnic origin, gender or religion or disability in its purchasing procedures. Contractor agrees to make available a written description of its purchasing procedures if requested by County.

G. Confidentiality. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

7. METHOD OF BILLING AND PAYMENT.

A. Billing Procedures. Contractor agrees that billings and payments under this contract shall be processed in accordance with established

budgeting, purchasing and accounting procedures of Sedgwick County, Kansas. Subject to the maximum amount of compensation prescribed on Page 1, Section 3 of this contract, payment shall be made after the receipt of billing, and the amount of payment shall not exceed the maximum amount allowed by this contract.

B. Support Documentation. Billing shall be supported with documentation required by County including, but not necessarily limited to, that documentation described in Section Six (6) above.

C. Reimbursement Restrictions. Payments shall be made to Contractor only for items and services provided to support the contract purpose when such items and services are specifically authorized by this agreement. County reserves the right to disallow reimbursement for any item or service billed by Contractor if County believes that such item or service was not provided to support the contract purpose or was not authorized by the contract.

D. Pre-disbursement Requirements. Contractor must provide to County the documentation required pursuant to this contract prior to any disbursements being made by County to Contractor.

E. Mailing Address. Payments shall be mailed to Contractor's address as listed in paragraph 20 below.

8. PARTICIPANT INPUT.

Contractor 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.

9. LICENSES, PERMITS AND INSURANCE.

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.

10. INSURANCE REQUIREMENTS

Contractor shall annually provide a certificate of insurance to verify liability insurance. Sedgwick County shall be listed as an additional insured on the general liability policy, and the certificate should provide for at least a 10 day written notice of cancellation. 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.

11. EPA APPROVED BUILDING.

Contractor will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the contract are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the contract is under consideration for such listing by the EPA.

12. ACCESSIBILITY.

Contractor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons 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), as amended, 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.

13. ASSIGNMENT.

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

14. 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.

15. PUBLICATION OF CONTRACT RESULTS.

A. Copyright. If this contract results in a book or other material which may be copyrighted, the author is free to copyright the work. County reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material which can be copyrighted.

B. Documentation of originality or source. All published material and written reports submitted under this contract or in conjunction with the third party agreement under this contract will be originally developed material unless specifically provided for otherwise. Material not originally developed included in reports will have the source identified either in the body of the report or in a footnote, whether the material is in a verbatim or extensive paraphrase format. All published material and written reports shall give notice that funds were provided by a grant from County.

16. COMPLIANCE WITH APPLICABLE LAWS, SERVICE STANDARDS AND REQUIRED PROCEDURES.

A. Service Standards and Procedures. Contractor shall perform the services set forth in this contract in compliance with applicable standards and procedures specified in the parties' agreement.

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

C. 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.

D. 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.

17. 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 Kansas Human Rights Commission.

C. If Contractor fails to comply the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by County.

D. If Contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights 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 County.

E. Contractor shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

F. The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the County cumulatively total \$5,000.00 or less during the fiscal year of the County pursuant to K.S.A. 44-1031(c).

18. TERMINATION OF CONTRACT.

A. 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, such information prepared by Contractor to carry out this contract, including data, studies, surveys, records, drawings, maps and reports shall, at the option of County, become the property of the County and be immediately turned over to the County. 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.

B. Termination of Contract on Other Grounds. Except for paragraph A above, this contract may be terminated in whole or in part by either party, upon thirty (30) days written notice to the other party, stating the reasons(s) for the termination and the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto. When this contract is terminated, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. County shall allow full credit to Contractor for the grant share of the non-cancelable obligations properly incurred by Contractor prior to termination. Whether this contract is canceled by County or Contractor as provided herein, Contractor shall be paid for work satisfactorily completed, so long as the provisions applicable to Billing and Payment have been met by Contractor.

19. 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.

20. 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 Health Department
Attn: Contract Notification
1900 E. 9th St.
Wichita, KS 67214

and

Sedgwick County Counselor's Office
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790

Contractor: Kansas Children's Service League
Attn: Cornelia Stevens
1356 N. Custer
Wichita, KS 67203

21. 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.

22. 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. The statement of tax clearance must be provided before contract renewal/initiation and be dated no more than 30 days prior to beginning date of the contract term.

23. Debarment/Suspension. Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the Excluded Parties List System (EPLS) 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 System (EPLS) 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 under the EPLS, 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 under EPLS 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.

HIPAA RULES

BUSINESS ASSOCIATE ADDENDUM

DEFINITIONS

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

Specific definitions:

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

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

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

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

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

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

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

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

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

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

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

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

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

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

PERMITTED USES AND DISCLOSURES BY ASSOCIATE

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

SPECIFIC USE AND DISCLOSURE PROVISIONS

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

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

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

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

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

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

OBLIGATIONS OF COVERED ENTITY

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

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

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

PERMISSIBLE REQUESTS BY COVERED ENTITY

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

TERM

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

MISCELLANEOUS

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

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

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

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

SECURITY RULE REQUIREMENTS

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

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

TERMINATION

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

EFFECT OF TERMINATION

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

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

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

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

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

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

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

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

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

NOTIFICATION OF BREACH

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

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

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

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

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

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

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

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

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

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