

**CARE PROGRAM CONTRACT
LEVEL I ASSESSMENTS**

THIS CARE PROGRAM CONTRACT (the "Contract") is made and entered into this ____ day of _____, 2012 by and between Sedgwick County, Kansas, (hereinafter referred to as the "County") and Gayle Cloud (hereinafter referred to as the "Contractor").

WITNESSETH

WHEREAS, the County, in its capacity as administrator and authorized agent for the Central Plains Area Agency on Aging (the "CPAAA"), has entered into a contract with the Kansas Department on Aging (the "KDOA") for the provision of certain customer assessment, referral and evaluation (CARE) services to residents of the CPAAA service area pursuant to K.S.A. §39-968 (hereinafter referred to as the "CARE Contract");

WHEREAS, the CARE Contract authorizes the County to subcontract the CARE assessment services to qualified private contractors;

WHEREAS, it is the intention of County to provide a Level I Care Assessment program for the purpose of customer assessment, referral and evaluation (hereinafter called "Level I Care Assessment" or "assessment") as required by the State of Kansas and the Kansas Department on Aging (KDOA);

WHEREAS, it is the intention of County to provide these services using qualified independent contractors;

WHEREAS, County intends to engage such professional contractors as are duly qualified and licensed as required by the State of Kansas, KDOA, and the CPAAA;

WHEREAS, County has been provided with the appropriate evidence of such qualifications of Contractor; and

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

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

ARTICLE 1: NATURE OF RELATIONSHIP

- 1.1 Contractual Relationship. It is understood and agreed that the legal relationship between Contractor and the County is contractual in nature.
- 1.2 Independent Contractor. County hereby engages and retains Contractor as an independent contractor and Contractor accepts said engagement and retention. No other relationship is intended to be created between the parties, and nothing herein shall be construed so as to give either party any rights as an agent, employee, joint venturer or partner with the other party. As an independent contractor, the Contractor and its employees will not be within the protection or coverage of the County's worker's compensation insurance (subject to the provisions of K.S.A. § 44-505). Further, neither Contractor nor any of its employees shall be entitled to receive any current or future benefits provided to employees of the County. The County shall not be responsible for withholding social security, unemployment compensation, or state or federal income tax from payments made by the County to Contractor.
- 1.4 Term. This Contract shall become a legal and binding agreement upon signature of same by both parties, but shall be effective as of July 1, 2012 (the "Effective Date"). The term of this Contract shall be for a period of one (1) year after the Effective Date. Notwithstanding the foregoing, the term of this Contract may continue on a month to month basis for a reasonable time after June 30, 2013 if: (A) both parties mutually agree to continue operating under the terms of this Contract while actively negotiating a contract for 2013-1014; and (B) funds are available for the 2013-1014 program year.
- 1.5 Professional Documentation. Contractor certifies that it is duly qualified and/or licensed to provide the services stated within this agreement, as required by the law of the State of Kansas, K.S.A. §39-968, KDOA policy and CPAAA policy. Contractor agrees to furnish County with a photocopy of his/her current professional license if a nurse or social worker or a 4-year college diploma or transcript from a university with a degree in gerontology, psychology, sociology or a related field. Contractor must provide proof of at least one years experience working with seniors. Contractor must document attendance in all CARE mandated trainings including in-service trainings.
- 1.6 Required Certifications. If Contractor is a corporation, Limited Liability Company or other entity that is officially organized in Kansas, it shall furnish evidence of good standing in the form of a certificate signed by the Kansas Secretary of State. If Contractor is not officially organized in Kansas, it shall furnish evidence of authority to transact business in Kansas, in the form of a certificate signed by the Kansas Secretary of State. The applicable certificate shall be provided to the County on or before the date this Contract is executed by Contractor.

ARTICLE 2: SCOPE OF SERVICES

- 2.1 Purpose. The purpose of this Contract is to extend to CARE program customers CARE Level I Pre-admission screening for customers of CPAAA seeking nursing home placement.
- 2.2 Contractor's Agreement. Contractor agrees to provide professional services to program customers of CPAAA as specified in CARE assessment program regulations and policies of KDOA.
- 2.3 CARE Program Level I Requirements.
- A. Contractor acknowledges and understands CARE program services under this Contract may only be provided to "Eligible CPAAA customers" which shall include those people who:
 - (i) are residents of the CPAAA service area; and
 - (ii) are seeking nursing home placement.
 - B. During the term of this Contract, Contractor shall attend meetings when reasonably requested by the County. Said meetings may cover topics relating to this Contract and Contractor's performance hereunder, including without limitation: (i) the development of more specific and accurate performance measures; (ii) ensuring efficient program operation; (iii) miscellaneous training; and (iv) facilitating CARE program customer well-being.
 - C. Contractor shall cooperate and work closely with case managers, hospitals, nursing homes and related community service agencies to ensure a smooth transition and the continued well-being of CARE program customers.
 - D. Referral of CARE program customers to other agencies, aging services, or adult protective services (APS), is encouraged to ensure maximum system coordination. Information regarding persons referred to other agencies shall be retained by Contractor and reported to the Care Coordinator.
 - E. Contractor shall be prepared to provide services to accommodate existing CARE program caseloads by July 1, 2012.

ARTICLE 3: PERFORMANCE STANDARDS CARE ASSESSMENT - LEVEL I

- 3.1 County Functions. The County shall pro-actively carry out a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation designed to lead to the development or enhancement of comprehensive and coordinated community-based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older and/or disabled persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.
- 3.2 Scope and Purpose of Level I CARE Assessment. Everyone entering or seeking entry to a nursing facility shall be assessed through the CARE program. The assessment is an evaluation of an individual's functional status to determine the need for long-term care services and to identify appropriate service options which meet these needs utilizing the CARE form. The purpose of the Level I CARE PASRR assessment is to prevent people with serious mental illness or mental retardation or a related condition from being placed in or remaining in Medicaid-certified nursing homes if they do not require nursing home care and to ensure that people with serious mental illness or mental retardation receive treatment and services in a care setting appropriate to their needs. The County shall provide the assessment forms to be used by the Contractor.
- 3.3. Contractor Responsibilities.
- A. Attend a Level I training offered by KDOA prior to being assigned to do any Level I CARE assessments.
 - B. Provide Level I CARE assessments in accordance with KDOA and County standards, procedures and time frames, and referral services in a timely manner.
 - C. Conduct culturally sensitive assessment, including the provision of, or arrangements for, assessments of non-English speaking individuals; assistive devices, interpreters, and adherence to all Americans with Disabilities Act provisions.
 - D. Personally evaluate each individual on a one-to-one basis or the assessment will be considered incomplete. Shall respect the individual's right to privacy and dignity.
 - E. Maintain customer confidentiality.
 - F. Collect and present accurate and complete data in a legible and usable format. Contractor will have access to the CPAAA copy machine if they choose.

- G. Have access to a fax machine and be able to hand-deliver the completed Level I CARE assessment to the County within the required time frame.
- H. Notify the facility and individual's guardian of the day and time of the assessment prior to conducting the assessment. If the individual's guardian cannot be present at that time and desires to be a part of the screening, the Contractor shall schedule another time to allow this to take place. The Contractor shall call the CARE Co-coordinator and notify them that the assessment has been put on hold at the request of the guardian. The Care Coordinator will then place the assessment on the exception report until such a time that the guardian can be present. Guardians must be given the opportunity to attend the evaluation or give verbal input prior to the Level I Care assessment or the assessment shall be considered incomplete.
- I. Use their clinical judgment, after interviewing the customer, guardian, family, and professional staff and reviewing the clinical records, to make a recommendation for the individual's appropriate placement and service needs.
- J. Be available to participate in any and all appeal hearings related to Level I CARE assessment when requested by the County, KDOA, or Department of Social and Rehabilitation Services (SRS).
- K. Maintain the highest level of courtesy, respect, and professionalism possible when serving as a Level I Contractor and/or making referrals.
- L. Ensure delivery of the completed Level I CARE assessment form, and when appropriate customer history and physical, and Release of Information to the Care Coordinator within five (5) working days after their receipt of the referral for a Level I CARE assessment. Information throughout the assessment must be consistent and substantiate the recommendation of the Contractor.
- M. Complete each question of the Level I CARE assessment form as instructed in the Level I instruction manual and shall initial and date any necessary corrections or additions to the original assessment pages and fax to the CARE Coordinator.
- N. Contact the community mental health center (CMHC) or community developmentally disabled organization (CDDO), if the customer is currently involved with a CMHC or CDDO, in order to document the agency's recommendation for their customer. The recommendations of the CMHC or CDDO must be taken into consideration when making a PASRR recommendation.
- O. Make referrals to the CMHC or CDDO when appropriate.

- P. Represent himself/herself and the Level I program as a positive component of the long-term care system.
- Q. Maintain reliable facsimile and telephone message capability at all times as necessary to communicate with the County and must be reachable within four (4) hours, Monday through Friday, to answer inquiries from KDOA.
- R. Maintain their copy of the CARE Level I assessment for the entire contract period.

3.4 Illegible Assessments. Assessments which are not legible by the County shall be considered incomplete and shall not be accepted. Such assessments shall not be eligible for reimbursement unless and until the Contractor provides the County with a readable copy. All penalties and time frames shall remain for late assessments.

3.5 Assessments With Deficiencies.

- A. An assessment shall be considered “completed with deficiencies” if the assessment has missing or conflicting information which is of such a nature that it does not impair or impede KDOA’s ability to make an informed determination.
- B. A “completed with deficiencies” assessment is one that was received by the County within the contractual time frames but was incomplete due to one or more of the following:
 - (i) The assessment document has not been accurately and thoroughly filled out; or
 - (ii) Information is missing or conflicting which is needed to support or substantiate the Contractor’s recommendations (for example and not by way of limitation: customer history and physical information, diagnostic documentation, or guardianship papers).
- C. Deficiencies shall be noted and the Contractor shall be provided verbal notice within one working day of the County’s receipt of an assessment.
- D. Payment shall not be made until such time as the County receives a complete assessment or acceptable documentation of effort to secure the missing information.

3.6 Incomplete Assessments.

- A. An assessment is considered “incomplete” when:
- (i) The information and/or documentation supplied are so insufficient or inconsistent that KDOA is unable to make a final determination;
 - (ii) The individual being assessed was not interviewed on a one-to-one basis, or observed if the individual had a condition that would be exasperated through conduction of a personal interview;
 - (iii) The legal guardian was not contacted prior to and given an opportunity to participate in the Level I assessment process prior to the assessment (as required by federal law). Assessments for which there is not sufficient documentation as to the Contractor’s effort toward such, shall be considered incomplete and shall not be accepted by the County and shall not be reimbursed;
 - (iv) If needed, the required IQ Psych Evaluation referral was not completed;
 - (v) The assessment was not legible, as outlined in section 3.4 of this Contract;
or
 - (vi) The Contractor does not meet the qualifications and credentialing process for the assessment type conducted.
- B. Incomplete assessments shall be noted and the Contractor shall be provided with verbal notice within one working day of the County’s receipt of an incomplete Level 1 CARE assessment. If appropriate, contractual penalties shall apply until such time that the County receives a complete assessment.

3.7 Penalties.

- A. Contractor agrees that if unable to complete the assessment and deliver to County within that stated time frame and the County has not approved the delay, the following penalties shall apply to each late assessment throughout the term of this Contract and any extensions thereto:
- (i) If the assessment or review is one consecutive day late, 10% of the fee shall be withheld;
 - (ii) If the assessment or review is two consecutive days late, 20% of the fee shall be withheld;

- (iii) If the assessment or review is three consecutive days late, 30% of the fee shall be withheld;
- (iv) If the assessment or review is four consecutive days late, 50% of the fee shall be withheld;
- (v) If the assessment or review is five consecutive days late, 75% of the fee shall be withheld;
- (vi) If the assessment or review is six or more consecutive days late, 100% of the fee shall be withheld.

3.8 Payment of Taxes and Insurance. The Contractor acknowledges and attests to working in the capacity of an independent contractor free from direction and control. As such, no payroll or employment taxes of any kind shall be withheld or paid by the County on the Contractor's behalf. The payroll and employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal employment income tax, and state income and unemployment insurance taxes. No workers' compensation insurance has been or shall be obtained by the County for the Contractor or the Contractor's employees. It shall be the responsibility of the Contractor to provide these protections.

3.9 Availability of Contractor.

A. The Contractor shall ensure that:

- (i) If KDOA reviews an assessment and determines that a consumer does not require nursing facility care or specialized services, the Contractor shall work with KDOA to determine other services to which a referral might be appropriate;
- (ii) The Contractor is accessible to County/KDOA for clarification and questions arising from the review of assessments;
- (iii) The Contractor must be reachable within a four (4) hour period from the time the initial call is placed. This may be through a paging or mobile system if necessary; and
- (iv) The Contractor shall be available to participate in appeal hearings and/or appeal investigations when requested or required by KDOA or SRS.

3.10 Contractor Training. KDOA, in cooperation with the County, shall develop and provide ongoing training to Level I Contractors. The Contractor shall be required to attend

training on the new State Level I assessment forms. KDOA will not accept assessments from Level I Contractors for whom KDOA does not have evidence of training required by this section.

- 3.11 Confidentiality of Information. The Contractor agrees to comply with all federal and state laws and regulations governing the safeguard of confidential patient/customer information. The Contractor shall not disclose any such information to any party other than the County or the State (SRS and Area Agency on Aging offices are agents of the State), without County and State's prior written authorization specifying that the information is releasable. For the purpose of this Contract, all information, records, data and data elements collected and maintained of the operation of the Contract and pertaining to persons referred to Contractor under this Contract shall be protected by Contractor from unauthorized disclosure.
- 3.12 Compliance. The Contractor assures full compliance with the regulations, policies and procedures of the County and KDOA. The Contractor agrees to become familiar with current policies and procedures that affect this Contract. The County agrees to send the Contractor notice of any pertinent policy or procedure which has either been changed or formulated subsequent to this Contract, and Contractor agrees to be subject to said policy or procedure.
- 3.13 Applicable Law. This Contract shall be governed by the laws of the State of Kansas and the policies and procedures of the county and KDOA for the CARE program in accordance with federal PASRR rules and regulations (Federal Register, November 30, 1992), Medicaid rules and regulations, K.S.A. 39-968, K.A.R. 26-9-1, CARE Program Policies and Procedures, and the Level I Contract between SRS and KDOA.

ARTICLE 4: COMPENSATION FROM COUNTY

4.1 Compensation.

- A. Subject to the provisions of this Contract, the County shall reimburse the Contractor for the provision of CARE program services to CARE program customers. For the year ending June 30, 2012 Contractor payment shall be authorized by CPAAA/Sedgwick County based upon the following rates per assessment:

- (i) SERVICE FEE RATE

- Level I CARE Assessment - \$ 35.00

- Mileage (includes all mileage) - Amount allowed by the IRS without tax consequences, \$0.555/mile as of the date of the contract, subject to change.

- B. Reimbursement to Contractor is based on Contractor's rate for eligible units of service. Under no circumstances will Contractor be eligible for more than 100% of the total service unit cost.
- C. Established assessment rate equals one unit of service. A unit includes direct service to the customer in the customer's place of residence, or at a location as requested by customer, customer's family, hospital or primary care facility. All billing, training, supervisory and related costs chargeable to the program are factored into the market rate.
- D. No special charges for overtime, holidays, weekends, etc., are allowable under this contract.
- E. "Other" program income shall not be collected for this service.

4.2 Billing Procedures.

- A. Contractor agrees that billings and payments under this Contract shall be processed in accordance with established budgeting, purchasing and accounting procedures of the County. Notwithstanding the foregoing, Contractor's bills to the County for CARE program services provided must be submitted on the "Monthly Report of Service Provided ("KDOA 801A") and received by the County no later than the tenth (10th) day of the month following the month in which CARE program services have been provided. Payments shall be made within a reasonable time after receipt of the KDOA 801A provided all necessary information has been accurately provided in a timely manner.
- B. Billing shall be supported with documentation required by County including, but not necessarily limited to, that documentation described in Paragraph 8.1 below.
- C. Payments shall be made to Contractor only for items and CARE program services specifically authorized by this Contract. County reserves the right to disallow payment or reimbursement for any item or service billed by Contractor if County believes that such item or service was not provided to support the Contract purpose or was not authorized by the Contract.
- D. Contractor must provide to County the documentation required pursuant to this Contract prior to any disbursements being made by the County to Contractor.
- E. Payments shall be mailed to Contractor's address as set forth in Paragraph 16.2 below.

4.3 Billing Adjustments.

A. Adjustments to billings shall be processed as follows:

- (i) Any KDOA 801A received after the twentieth (20th) day of the month will be processed and paid with the following month's billing report.
- (ii) Corrections to a previous KDOA 801A must be received by the County within sixty (60) days following the month in which the applicable CARE program services were provided. The corrections must be submitted as handwritten changes on the original incorrect form. All incorrect information should be crossed out. The summary report must also be corrected and all necessary documents must be submitted to CPAAA/County. In addition, Contractor must provide the following information to obtain payment for unreported units of CARE program services: (i) the number of units; (ii) the appropriate unit rate; (iii) the program; (iv) and the service provided.
- (iii) Regardless of when discovered, overpayments made by the County to Contractor shall be compensated for by making appropriate adjustments to the Contractor's next payment.
- (iv) Billings and/or corrected billings made more than sixty (60) days after the close of a fiscal program year shall not be paid to the Contractor.

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

4.5 Services not Performed. Contractor shall not be entitled to receive payments for any CARE program services Contractor is failing or has failed to perform.

ARTICLE 5: APPEALS & AUDITS

5.1 Notice of Action-Including Notice of Appeal Rights. Unless otherwise provided for by regulation, appeals of any action proposed or taken by the KDOA, the County/CPAAA (including any of their assessors or employees), the Contractor (including any of its employees) or any other subcontractors shall be carried out pursuant to K.A.R. 26-4-1 *et seq.* and the KDOA Field Services Manual. The County/CPAAA shall give persons or entities (including CARE program customers, Contractor or other subcontractors) directly affected by any County action timely notice of action pursuant to K.A.R. 26-4-1. Said notice of action shall include notice of the right to appeal the action. Similarly, Contractor shall give CARE program customers directly affected by any Contractor

action timely notice of action pursuant to K.A.R. 26-4-1, and every notice of action shall notify CARE program customers of their appeal rights.

5.2 Internal Review & Corrective Action. The CPAAA shall provide an internal review process to hear and consider claims, complaints, or disputes involving actions by the County/CPAAA, Contractor and other subcontractors.

5.3 Appeals of Internal Review Decisions.

- A. If a decision rendered pursuant to Paragraph 5.2 that involves Contractor is appealed, the KDOA shall internally review the action of Contractor to determine whether or not the action proposed or taken was correct and appropriate and whether or not the action should be defended through the appeal. The KDOA shall have the authority and discretion, at any point during the appeal process, to determine the action proposed or taken was incorrect or inappropriate and to take any corrective action the KDOA deems appropriate to resolve the issues on appeal. The Contractor shall take any corrective action directed by the KDOA that the KDOA deems necessary after considering the issues involved in an appeal. Nothing in Paragraph 5.3 shall affect the Contractor's right to appeal the corrective action directed by the KDOA.
- B. The KDOA and the Contractor shall have separate roles during the appeals process. The KDOA shall be responsible for presenting the case in defense of the action being appealed and the Contractor shall be responsible for assisting the KDOA by:
 - (i) supplying the KDOA with the testimony and documentation that the KDOA deems necessary to defend the appeal;
 - (ii) providing the KDOA with access to witnesses under the Contractor's control;
 - (iii) providing the KDOA with documents (and copies of documents) in the Contractor's control or possession; and
 - (iv) requiring fact or expert witnesses who are subject to Contractor's control to appear and testify at the appeal hearings.
- C. Subject to the Contractor's appeal rights, the Contractor shall be bound by and shall comply with the final order, decision, or judgment issued in any appeal by the presiding officer, a hearing panel, the Secretary of Aging, the Shawnee County District Court, or the Kansas appellate court with final jurisdiction in the same manner as if the Contractor had appeared and defended the action which was appealed.

D. To the extent permitted by law, the Contractor shall retain the right to appeal, pursuant to the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601 *et seq.*), any final order or decision rendered at the administrative agency level which adversely affects the Contractor's interests and which the KDOA decides not to appeal. The Contractor shall be responsible for presenting its own case on appeal and the KDOA shall be responsible for assisting the Contractor by: (i) providing copies of documents, including a copy of the agency record for use at the District Court level; and (ii) if the District Court orders additional discovery, by making employees available to testify as witnesses. The KDOA has the right to take whatever action is necessary to protect its interests while the Contractor makes its appeal.

5.4 Audits by State or Federal Agencies. The Contractor shall assist the County/CPAAA and the KDOA in any audit or review of the CARE program which might be performed by the Kansas Division of Legislative Post Audit or by any other local, state or federal agency by making persons or entities, documents, and copies of documents subject to the Contractor's control available for the auditors or their representatives.

ARTICLE 6: CONTRACTOR'S PERSONNEL

6.1 Qualified Personnel. Contractor has, or shall secure at its own expense, personnel who are fully qualified in accordance with all applicable state and federal laws to provide the CARE program services described in Paragraphs 2.3. Such personnel shall not be County employees or have any other contractual relationship with County. All of Contractor's personnel engaged, directly or indirectly, in the provision of CARE program services shall meet the requirements of this Contract, all applicable federal laws, and all applicable laws of the State of Kansas.

6.2 Minimum Wages. Contractor shall comply with the minimum wage and maximum hour provisions of the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*).

6.3 Employee Conflict of Interest. Contractor shall establish written safeguards to prevent its employees from using their position with Contractor for a purpose that is, or gives rise to the perception that it is, motivated by a desire for private gain for themselves or others (particularly those with whom they have family, business, or other ties).

6.4 Employee Background Checks. Contractor acknowledges and understands that entities or persons providing government-funded services to the public are subject to public scrutiny. During the term of this Contract and at all times when Contractor is providing CARE program services hereunder, Contractor shall assume an affirmative and ongoing obligation to comply with the KDOA Field Service Manual requirements relating to background checks and to ensure the restrictions in Subparagraph 6.5(A)-(C) are adhered

to. This will require the use of criminal or other legal background checks upon all employees, agents, independent contractors and other personnel who provide services pursuant to this Contract, or administer the funds conveyed under this Contract. Contractors utilizing very large numbers of volunteers may be permitted, at the sole discretion of the County, to use optional methods for ensuring the protection of the persons served pursuant to this Contract.

6.5 Participant Safeguards.

- A. Persons convicted of the following types of crimes during the consecutive ten (10) year period immediately preceding the execution of this Contract or, at any time during the pendency of this Contract, are restricted as follows:
- (i) persons convicted of any felony, drug or drug-related offense, crime of falsehood or dishonesty, or crime against another person are prohibited from performing CARE program services, administering this Contract, or handling any funds conveyed hereunder;
 - (ii) persons convicted of any crimes of moral turpitude, including without limitation, sex offenses and crimes against children are prohibited from performing CARE program services or otherwise interacting in any way with persons served pursuant to this Contract; and
 - (iii) persons convicted of a serious driving offense, including without limitation, driving under the influence of alcohol or a controlled substance, are prohibited from operating a vehicle in which a person served pursuant to this Contract is a passenger. For purposes of this section, "serious traffic offense" shall not include any offense deemed a "traffic infraction" under K.S.A. §§ 8-2116 and 8-2118.
- B. The terms "convicted" and "conviction" shall include: (i) convictions from any federal, state, local, military, or other court of competent jurisdiction; (ii) nolo contendere ("no contest") pleas; and (iii) being placed into a diversion or deferred judgment program in lieu of prosecution.
- C. Any issues concerning the interpretation of Paragraph 6.5 or its application to an individual shall be referred to the Director of Department of Aging. The Director's decision shall be final for purposes of compliance with this Contract.

6.6 Contractor's Training. Contractor shall demonstrate to CPAAA\County personnel how each person providing CARE program services will be trained, and their skills maintained and improved. The training provided shall include, at a minimum, training and instruction on legal and proper behavior and conduct towards CARE program

customers, their family members and their property while in CARE program customers' homes. If not previously done, Contractor's proposed training curriculum shall be submitted to County/CPAAA in writing (including a short summary of the content to be covered in each training session) within thirty (30) days of Contract execution. County/CPAAA shall forward the training program to the KDOA. Upon receiving KDOA approval of Contractor's staff training curriculum, Contractor shall implement the staff training program, as approved by the KDOA. CPAAA\County staff may monitor such training and offer technical assistance when necessary. Contractor's classes shall be taught by qualified health care professionals using texts, articles, videos, discussions and related instructional techniques. Contractor shall notify CPAAA\County of planned schedules for these sessions, and shall comply with training plans/in-services submitted to CPAAA\County.

ARTICLE 7: FUNDING

- 7.1 Reprogramming of Funds. It is understood and agreed that in the event the amount of funds County actually receives from the KDOA and/or County mill levy (as applicable) is less than anticipated, or in the event that no funds are available to the County for funding this Contract, County may decrease the total compensation and reimbursement to be paid hereunder or may terminate or suspend the Contract without liability.
- 7.2. Inability to Perform Contract. It is understood and agreed that in the event Contractor's rate of progress on this Contract is leading to under spending due to inability to provide CARE program services at planned levels, County may decrease the total compensation and reimbursement to be paid hereunder or terminate the Contract without any further liability.
- 7.3. Cash Basis and Budget Laws. The right of the County to enter into this Contract is subject to the provisions of the Cash Basis Law (K.S.A. §§10-1112 and 10-1113), the Budget Law (K.S.A. § 79-2935), and other laws of the State of Kansas. This Contract shall be construed and interpreted in such a manner as to ensure the County shall at all times remain in conformity with such laws. Further, the County reserves the right to unilaterally sever, modify, or terminate this Contract at any time if, in the opinion of its legal counsel, the Contract may be deemed to violate the terms of any laws of the State of Kansas.
- 7.4.1 Open Meetings. By accepting public funding from County, or funding administered by County, Contractor agrees that all administrative meetings at which the management or distribution of such funding is a topic will be open to County Officials and/or employees of the CPAAA/County.

ARTICLE 8: RECORDS, REPORTS, PROCEDURES & INSPECTIONS.

- 8.1 Documentation of Costs. All costs incurred by Contractor for which Contractor purports to be entitled to reimbursement shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation (hereinafter collectively referred to as "Expense Information") evidencing in proper detail the nature and propriety of the costs charged to the County.
- 8.2 Availability of Accounting Information.
- A. Contractor shall clearly identify and make readily accessible to the County:
 - (i) all expense information; and
 - (ii) any other checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract.
 - B. The information listed in Subparagraphs 8.2(A)(i) and (ii) is collectively referred to as "Accounting Information").
- 8.3 Audit. If Contractor receives funds, contracts and/or grants from the KDOA and/or the County/CPAAA totaling Twenty-Five Thousand dollars (\$25,000.00) or more, it shall provide for an annual independent audit in accordance with KDOA regulations and policies. If any portion of the funds received are via grant, the audit shall be performed in accordance with K.A.R. 26-2-9. If all funds are received via contract, the audit shall be performed in accordance with the provisions of the contract. The audit shall cover Contractor's Accounting Information and other financial records that apply to this Contract only. A copy of the audit shall be provided to County within twenty (20) days after receipt thereof. The audit shall be conducted within thirty (30) days after Contractor's fiscal year end.
- 8.4 Reports.
- A. 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 (hereinafter collectively referred to as "Reports") pertaining to matters covered by this Contract as County requests. Payments to Contractor may be withheld by County if Contractor fails to provide all required Reports in a timely, complete and accurate manner. Any payments withheld pursuant to this Paragraph 8.4 shall be submitted to Contractor when all requested Reports are furnished to County in an acceptable form. All records and information used in preparation of Reports are subject to review by County to ensure the accuracy and validity of the information reported.

- B. Without limiting the foregoing Contractor shall report the following information to County on a monthly basis no later than the tenth (10th) day of the month following the month in which CARE program services were provided:
 - (i) an unduplicated count of CARE program customers served; and
 - (ii) such other data necessary to evaluate the CARE program's effectiveness and efficiency.

8.5 Access to Records.

- A. At any time Contractor shall make any and all of its Accounting Information and other records, books, papers, documents and data available to County (or an authorized representative of a State agency with statutory oversight authority) for the purposes of:
 - (i) assisting in litigation or pending litigation; or
 - (ii) any audits or examinations reasonably deemed necessary by the County.
- B. The County shall be entitled to make excerpts, copies and transcriptions of any of the foregoing information.

ARTICLE 9: CONFLICTS OF INTEREST

- 9.1 Interest of Contractor. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of CARE program services pursuant to this Contract.
- 9.2 Interest of Public Officials and Others. No officer or employee of the County or any member of its governing body or other public official shall have any interest, direct or indirect, in this Contract or the proceeds hereof.
- 9.3 Employment Conflicts.
 - A. Contractor shall submit written notice to the County in the event:
 - (i) an employee of the County shall also be an employee of Contractor at time this Contract is executed;
 - (ii) an employee of Contractor seeks additional/alternate employment with County during the term of this Contract;

(iii) an employee of the County seeks additional/alternate employment with Contractor during the term of this Contract.

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

9.4 Advisory Council Members. If any Contractor staff or board members serve on any County advisory councils, they shall not be present during nor participate in any discussion (inside or outside of the advisory council's meeting) relating to the CARE program and may not vote in person or by proxy on any matter related to, affecting or affected by the CARE program.

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

ARTICLE 10: ASSIGNMENT & SUBCONTRACTING.

10.1 Assignment. Neither this Contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by Contractor without the prior written consent of the County. This Contract is binding upon and fully enforceable against the successors and assigns of Contractor, whether consented to or not.

10.2 Subcontracting. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of County. All approved subcontracts shall conform to the applicable requirements set forth in this Contract including any and all appendices and amendments, if any. Notwithstanding the County's consent to any subcontracting, Contractor shall remain fully responsible for all obligations of this Contract.

ARTICLE 11: PUBLICATION OF CONTRACT RESULTS.

11.1 Contract Related Publications. If this Contract results in a book or other material that may be copyrighted, the author is free to copyright the work. However, the County hereby reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all such copyrighted material and all material which can be copyrighted.

- 11.2. Documentation of Originality or Source. All published material and written reports submitted under this Contract or in conjunction with any third party agreements under this Contract will be originally developed material unless specifically provided for otherwise. Material not originally developed that is included in reports shall have the source identified either in the body of the report or in a footnote (regardless of whether the material is verbatim or in an extensive paraphrase format). All published material and written reports shall give notice that funds were provided by a grant from the County.

ARTICLE 12: EQUAL OPPORTUNITY & AFFIRMATIVE ACTION.

12.1 Discrimination Prohibited.

- (A) In carrying out this Contract, Contractor shall not discriminate against any person on the basis of race, ancestry, national origin, color, sex, disability, age, or religion and shall comport its performances with all pertinent provisions set out in all applicable Federal and State anti-discrimination acts and associated regulations, all as amended, including, but not limited to:
- (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.* and 45 C.F.R. Part 80);
 - (ii) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.* and 29 C.F.R. Parts 1602, 1604, 1605, and 1606);
 - (iii) the Age Discrimination in Employment Act (29 U.S.C. 621 *et seq.* and 29 C.F.R. Part 1625);
 - (iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.* and 45 C.F.R. Parts 90 and 91);
 - (v) the Americans with Disabilities Act ("ADA") (42 U.S.C. 12101 *et seq.*, 28 C.F.R. Parts 35 and 36, and 29 C.F.R. Parts 1602, 1627, and 1630);
 - (vi) the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.* and 45 C.F.R. Parts 84 and 85);
 - (vii) the Kansas Acts Against Discrimination (K.S.A. 44-1001 *et seq.* and K.A.R. Articles 21-30, 21-31, 21-32, 21-33, 21-34, 21-50, and 21-70); and
 - (viii) the Kansas Discrimination in Employment Act (K.S.A. 44-1110 *et seq.* (including the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 *et seq.* and K.A.R. Article 21-80)).

12.2 Non-Compliance.

- (A) Contractor shall be deemed to be in default of this Contract and it may be immediately canceled, terminated or suspended, in whole or in part, by the County if Contractor violates the applicable provisions of any of the acts, regulations or policies cited in Paragraph 12.1. Furthermore,

- (i) The Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;
- (ii) In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission
- (iii) If the Contractor fails to comply with the manner in which the Contractor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the 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;
- (iv) If the 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, the 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.

12.3 Flow Through of Requirements. Contractor shall include the provisions of **Paragraphs 12.2** in all of Contractor's subcontracts and purchase orders in order to ensure such provisions are binding upon Contractor's subcontractors.

12.4 Exempt Contractors.

- (A) The provisions of this Article 12 (with the exception of those provisions relating to the ADA) are recommended but not enforceable against Contractor if:
 - (i) Contractor employs fewer than four (4) employees at all times during the term of this Contract; or
 - (ii) all of Contractor's contracts with the County cumulatively total Five Thousand (\$5,000.00) or less during the fiscal year of the County pursuant to K.S.A. 44-1030(c).

ARTICLE 13: SUSPENSION & TERMINATION

13.1 Suspension of Services. County may, in its sole discretion, indefinitely suspend Contractor's performance of CARE program services pursuant to this Contract by

providing two (2) days notice to Contractor. Contractor shall resume performance of services within three (3) days after receipt of notice from the County.

13.2 Termination in Specific Circumstances. In addition to the other provisions of the Contract authorizing termination in specific situations, the Contract may be terminated as specified in Paragraphs 13.3 and 13.4 below.

13.3 Termination for Cause.

A. Contractor shall be deemed to have materially breached this Contract, and the County shall be entitled to terminate the Contract by providing written notice to the Contractor if Contractor:

- (i) fails to fulfill in a timely and proper manner any of its obligations under this Contract (and fails to cure such default within five (5) days after receipt of written notice);
- (ii) violates any of the terms, covenants, representations, warranties, conditions, or stipulations of this Contract;
- (iii) authorizes the winding up or reorganization of Contractor;
- (iv) makes a general assignment for the benefit of creditors; or
- (v) appoints a receiver.

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

13.4 Termination for Convenience.

A. Either party may terminate this Contract, in whole or in part, without stating any reason therefore by providing thirty (30) days written notice to the other party. To be effective, a partial termination shall be assented to in writing by the non-terminating party. Notwithstanding the foregoing, a refusal by a non-terminating

party to assent to partial termination shall in no way limit the other party's right to unilaterally terminate the entire Contract.

- B. If the County terminates for convenience, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. If the Contract is terminated by either party pursuant to this Paragraph 13.4, the Contractor shall be paid for work satisfactorily completed prior to the effective date of termination, provided the provisions of Paragraph 4.2 have been complied with by Contractor.

ARTICLE 14: INDEMNIFICATION

14.1 Indemnification.

- A. Contractor shall indemnify, defend and hold harmless the County and its commissioners, officers, employees, agents, legal representatives, successors and assigns (collectively referred to as the "Indemnified Parties") from and against all losses, costs, claims, damages, expenses and liabilities, including without limitation attorneys' fees, (collectively referred to as the "Liabilities") to the extent:
 - (i) attributable, directly or indirectly, to the Contractor's failure to perform any of its obligations under this Contract;
 - (ii) attributable, directly or indirectly, to Contractor's violation of any of the terms, covenants, representations, warranties, conditions, or stipulations contained in this Contract; or
 - (iii) caused or alleged to be caused, in whole or in part, by the negligence or intentional misconduct of Contractor (or any of its directors, officers, members, agents, subcontractors or anyone else for whose acts the Contractor may be liable) regardless of whether or not such Liabilities are caused in part by one or more of the Indemnified Parties.

ARTICLE 15: NOTICES

- 15.1 Notice Requirements. Any formal notice required or permitted under this Contract shall be deemed sufficiently given if said notice is personally delivered, sent by registered or certified mail (return receipt requested) or sent by means of telefacsimile or telecopier, to the party to whom said notice is to be given. Notices delivered in person or sent via telefacsimile or telecopier shall be deemed to be served effective as of the date the notice is delivered or sent, as applicable. Notices sent by registered or certified mail (return

receipt requested) shall be deemed to be served seventy-two (72) hours after the date said notice is postmarked to the addressee, postage prepaid.

- 15.2 Notice Information: Until changed by written notice given by one party to the other, the addresses and numbers of the parties shall be as follows:

If to County:

Sedgwick County Department on Aging
Attn: Director
West River Plaza
2622 W. Central Ave.
Wichita, KS 67203
FAX (316) 660-1936

If to Contractor:

Gayle Cloud
8500 E. 44th St. S.
Derby, KS 67037

AND

Sedgwick County Counselor's Office
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790
FAX (316) 383-7007

ARTICLE 16: MISCELLANEOUS

- 16.1 Publicity. Contractor shall not publicize in any manner whatsoever the CARE program services to be performed under this Contract or Contractor's participation in the CARE program without prior written consent of County. The KDOA's support of the CARE program services and shall be conspicuously acknowledged in all publicity releases.
- 16.2 Applicable Law. This Contract shall be governed by, interpreted and construed in accordance with the laws of the State of Kansas, without regard to its conflict of law provisions.
- 16.3 Waiver. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Contract or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

- 16.4 Descriptive Headings. The descriptive headings of the provisions of this Contract are formulated and used for convenience only and shall not be deemed to affect the meaning and construction of any such provision.
- 16.5 Attorneys' Fees. In any action or proceeding, arising out of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees.
- 16.6 Amendments. This Agreement may not be amended unless such amendment is in writing and signed by both parties hereto.
- 16.7 Survivorship. Notwithstanding the termination of this Contract, Contractor's obligations with respect to Article 5 ("Appeals & Audits"), Article 8 ("Records, Reports, Procedures & Inspections"), Article 11 ("Publication of Contract Results"), Article 14 ("Indemnification"), and Article 16 ("Miscellaneous") and any other terms and conditions which by their nature should survive termination, shall survive the termination of this Contract.
- 16.8 Invalidity. In the event that any provision in this Contract shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.
- 16.9 Phraseology. In this Contract, the singular includes the plural, the plural includes the singular and any gender includes the other gender.
- 16.10 Incorporation of Appendices. Any appendices attached hereto are incorporated by reference are a part of this Contract to the same extent as if fully set forth herein.
- 16.11 Authorities Incorporated by Reference. The parties shall be bound by those provisions and requirements which are applicable and relevant to the CARE program and contained in the following authorities which are incorporated into, and made a part of, this Contract by this reference: (A) all State of Kansas regulations, policies and procedures pertaining to the CARE program (whether adopted before or during the term of this Contract); (B) Kansas Department of Administration Form DA-146a (Rev. 9-93) attached hereto as Appendix A; and (C) the KDOA Field Services Manual. The Contractor is responsible for reviewing the contents of the foregoing authorities and shall be obligated to perform in accordance with their terms whether or not the Contractor has obtained or reviewed a copy of the authorities.
- 16.12 Merger: This Contract and the documents incorporated by reference constitute the entire agreement between the parties with respect to their relationship as it relates to the

16.12 *Merger*: This Contract and the documents incorporated by reference constitute the entire agreement between the parties with respect to their relationship as it relates to the provision of CARE program services. There are no verbal understandings, agreements, representations or warranties between the parties that are not expressly set forth herein. This Contract supersedes all prior agreements and understandings between the parties, both written and oral.

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

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

Tim R. Norton, Chairman
Sedgwick County Board of County Commissioners
2nd District

Gayle Cloud R.N.

Gayle Cloud
8500 E. 44th St. S.
Derby, KS 67037

Date: _____

Date: 4-30-12

ATTEST:

Kelly Arnold, County Clerk

APPROVED AS TO FORM:

Bill Raymond

Bill Raymond,
Assistant County Counselor