

CONTRACT

**Kansas Department for Aging and
Disability Services**

and

**Sedgwick County Developmental Disability Organization, a
Community Developmental
Disability Organization**

Fiscal Year 2016

Table of Contents

I.	BASIC CONTRACT INFORMATION.....	1
II.	PARTIES TO THE CONTRACT	1
III.	DEFINITIONS.....	1
	A. Abuse.....	1
	B. ADL.....	1
	C. Affiliate	1
	D. Allocation Period	1
	E. BASIS	1
	F. Business Associates Agreement (“BA”).....	1
	G. Case Management	1
	H. CDDO	1
	I. CDDO Administration/CDDO Administrative Responsibilities	1
	J. Community Developmental Disabilities Organization (“CDDO”).....	1
	K. Complaint.....	2
	L. CDDO Performance Review Process.....	2
	M. CDDO Service Area.....	2
	N. Community Service Provider (“CSP”).....	2
	O. Competitive Employment	2
	P. Contract Year	2
	Q. Developmental Disability Profile (“DDP”).....	2
	R. Developmental Disabilities Reform Act (“DDRA”).....	2
	S. Developmental Disability (“DD”).....	2
	T. Employment Outcome	2
	U. Family	2
	V. Federal Financial Participation (“FFP”).....	2
	W. Formally Adopted KDADS’ Policies.....	3
	X. Fraud	3
	Y. Functional Assessment.....	3
	Z. Guardian.....	3
	AA. HCBS-IDD Program.....	3
	BB. HCBS-IDD Program Eligibility.....	3
	CC. HCBS-IDD Wait List.....	3
	DD. HIPAA	3
	EE. Home County	3
	FF. Intermediate Care Facility for Individuals with an Intellectual Disability (“ICF/ID”)....	4
	GG. Institutional Setting(s).....	4
	HH. Integrated Setting	4
	II. Intellectual Disability (“ID”)	4
	JJ. Intellectual Disability and/or Developmental Disability (“IDD”)	4
	KK. Kansas Assessment Management Information System (“KAMIS”)	4
	LL. New person	4
	MM. Person.....	4
	NN. Prior SYF	4
	OO. Protected Health Information (PHI)	4
	PP. Referral	4
	QQ. Right to Risk	4
	RR. Service Reduction	4

SS.	State Fiscal Year (“SFY”).....	5
TT.	State Aid	5
UU.	Stakeholder	5
VV.	Support Network.....	5
WW.	Waste	5
XX.	Working Healthy.....	5
YY.	Work Opportunities Reward-Kansans (“WORK”).....	5
IV.	REPRESENTATION AND WARRANTIES	5
A.	Controlling Provisions	5
B.	Criminal Provisions	5
C.	Accounting System	5
D.	Maintenance of Cost Records.	6
E.	Submission of Reports	6
F.	Data	6
G.	Rights and Remedies.....	6
H.	Federal, State and Local Taxes Contractor	6
I.	Debarment	6
J.	Lobbying.....	7
V.	REIMBURSEMENT/FUNDING	7
A.	Allocation.....	7
B.	State Aid	7
C.	CDDO Administration Allocation	8
D.	Special Projects: CDDO Administration	8
E.	Reimbursement/Payment	8
F.	Recoupment	9
VI.	ELIGIBILITY DETERMINATION AND FUNCTIONAL ASSESSMENT	10
A.	Functional Assessment.....	10
B.	Eligibility Determination	10
C.	Kansas Assessment and Management Information System (“KAMIS”).....	11
VII.	ACCESS TO SERVICES: CAPACITY, CRISIS AND PRIORITY SERVICES.....	11
A.	Access to Services.....	11
B.	Crisis/Imminent Risk of Crisis.....	11
C.	Capacity to Serve (Waiting List)	12
D.	Priority Service Situations	13
E.	Transition from Different Programs	14
VIII.	QUALITY ASSURANCE AND REVIEW	15
A.	CDDO Responsibilities.....	15
B.	Complaint Tracking	15
C.	Performance and Peer Review(s).....	16
D.	Quality Standards for Functional Assessments.....	17
E.	Licensure of Affiliates, i.e. Community Service Provider (“CSP”)	17

IX.	CONFLICT OF INTEREST	18
A.	Conflict of Interest	18
X.	STATEWIDE WORK GROUPS AND STAKEHOLDERS MEETING	18
A.	Statewide Group Meetings.....	18
B.	KDADS and CDDO Business Meetings.....	18
XI.	KDADS' STATUTORY AND/OR POLICY CHANGES	19
A.	Notice of KDADS' Policy Change	19
B.	Requirements Not Contained Herein	19
XII.	REPORTING REQUIREMENTS	19
A.	Administrative Reports	19
B.	State Aid Reports	20
C.	Special Requests by KDADS	20
D.	Special Requests by the CDDO	20
E.	Capacity	20
F.	3160 and 3161 forms	20
G.	Death reporting	20
H.	Complaint Tracking	20
XIII.	CONTRACT TERM, DEFAULT AND REMEDIES.....	21
A.	Term.....	21
B.	CDDO Default	21
C.	CDDO Failure to comply	21
D.	KDADS' Termination.....	21
XIV.	MISCELLANEOUS CONTRACT TERMS	21
A.	Modification.....	21
B.	Renegotiation Upon a Change in Law or Policy.....	21
C.	Changes in Funding	21
D.	KDADS' Monitoring and Audits.....	22
E.	Outside Audits	22
F.	Retention of and Access to Records	22
G.	Severability	22
H.	Force Majeure	22
I.	Waiver.....	23
J.	HIPAA Confidentiality and Privacy	23
K.	Entire Agreement	23
L.	Notices	23
M.	Captions	24
N.	Authorized to Enter into Contract.....	24
O.	Kansas Law Applies	24
P.	No Presumptions Based on Drafter.....	24
Q.	Assignment	24
R.	No Joint Venture.....	24
S.	Appeals and Legal Challenges by Any Third Party.....	24

T.	Electronic signatures	24
U.	Cooperation.....	24
V.	Conflicts.....	24
W.	Single State Agency.....	25
X.	Authorities Incorporated by Reference	25
Y.	DA-146a Form	25
APPENDIX A (DA-146-a Form).....		28

I. BASIC CONTRACT INFORMATION

The CDDO: Sedgwick County Developmental Disability Organization
Address: 615 North Main, Wichita, KS 67203
Federal Tax Identification Number: 48-69000798
Contract Year: 2016

II. PARTIES TO THE CONTRACT

This Contract is entered into by and among the Secretary of the Kansas Department of Health and Environment ("KDHE"), the Secretary of Kansas Department for Aging and Disability Services ("KDADS"), and Sedgwick County Developmental Disability Organization (hereinafter referred to as "the CDDO"). The use of the term "Parties" within this Contract means KDHE, KDADS and the CDDO collectively. KDHE is a party to this contract as the Single State Medicaid Agency, in that Medicaid provides a portion of Contract funding.

III. DEFINITIONS

Definitions of terms are as follows:

- A. Abuse is the reimbursement for health care services that are not medically necessary or that fail to meet accepted medical or business practices.
- B. ADL means Activities of Daily Living.
- C. Affiliate is as defined in K.S.A. 39-1803 (b): an entity or person that meets standards set out in rules and regulations adopted by the KDADS' secretary relating to the provision of services and that contracts with a CDDO.
- D. Allocation Period means July 1, 2015 through June 30, 2016.
- E. BASIS means Basic Assessment and Services Information System. The BASIS manual contains the instructions for the DDP.
- F. Business Associates Agreement ("BA") means the BA Agreement located on the KDADS' Provider Web site.
- G. Case Management Services which shall assist a person, who is not eligible for services under the State Plan or HCBS-IDD Program Targeted Case Management to identify, select, obtain, coordinate, and use both paid services and natural supports to enhance the person's independence, integration, and productivity consistent with the capabilities and preferences as outlined in their person-centered support plan.
- H. CDDO means generally a Community Developmental Disability Organization.
- I. CDDO Administration/CDDO Administrative Responsibilities mean those tasks and functions spelled out in the DDRA which are specific to the twenty-seven (27) Kansas CDDOs; functions which do not qualify as CSP activities.
- J. Community Developmental Disability Organization (CDDO) means any community intellectual and developmental disability facility organized pursuant to K.S.A. 19-4001

through 19-4015, established and operating on or after the effective date of K.A.R. 30-64-01 et seq.

- K. Complaint is any item taken through the dispute resolution process, grievance, or appealable action received by the CDDO or KDADS regarding a decision or action by the CDDO or Affiliate provider. The KDADS shall notify the CDDO of complaints received in order to allow the CDDO to follow up and report the outcome. If it is received verbally the CDDO shall provide reasonable accommodation to capture the complaint in writing for tracking purposes.
- L. CDDO Performance Review Process is a systemic evaluation process by which the Secretary shall assess the performance of each individual CDDO system. This process shall evaluate and report the degree to which it is effectively organized to fairly perform its statutory and regulatory responsibilities, especially in the assurance of informed choice for persons served and the management and mitigation of potential conflicts of interest.
- M. CDDO Service Area means the county(ies) of which a CDDO is designated pursuant to K.S.A. 19- 4001 et seq.
- N. Community Service Provider (CSP) is defined in K.S.A 39-1803 (e) as a CDDO or Affiliate thereof.
- O. Competitive employment means work (i) in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and (ii) for which a person is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by persons who are not disabled. *Kansas Rehabilitation Services Manual Reference: §361.5 (b) (11).*
- P. Contract Year means the period set forth in Article XIII of the Contract.
- Q. DDP means the Developmental Disability Profile.
- R. DDRA means the Developmental Disabilities Reform Act, K.S.A. 39-1801 through and including K.S.A. 39-1811 and Chapter 30, Articles 63 and 64 of the Kansas Administrative Regulations.
- S. Developmental Disability (DD) is defined in K.S.A. 39-1803 (f).
- T. Employment outcome means, with respect to a person, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in the Kansas Rehab. Services Manual §361.5(b) (11), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with a person's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- U. Family means any person immediately related to the beneficiary of services. Immediate related family members are: parents (including adoptive parents), grandparents, spouses, aunts, uncles, sisters, brothers, first cousins and any step-family relationships.

- V. FFP means Federal Financial Participation.
- W. Formally Adopted KDADS' Policies & Procedures ("Policies") means and includes all policies contained in the HCBS-IDD Program, and the BASIS Manual, and other policies developed through the KDADS' Policy Development Process. The KDADS shall provide notice of any proposed changes in KDADS' policies which affect the IDD community service system stakeholders, and shall provide timely advance written notice to the CDDOs as to changes in these policies.
- X. Fraud is the intentional misrepresentation that a person knows, or should know, to be false, or does not believe to be true, and makes, knowing the misrepresentation could result in some unauthorized benefit to himself or CDDO for purposes of reimbursement.
- Y. Functional Assessment means the tool used by a contracted entity to assess a person's level of functional ability and level of support needed to live in home and community based settings. In the context of this contract, functional assessment refers to the tool that determines eligibility for HCBS-IDD program services.
- Z. Guardian means an individual or corporation certified in accordance with state law, and amendments thereto, who or which is appointed by a court to act on behalf of a ward, and who or which is possessed of some or all of the powers and duties set out in state law, and amendments thereto. "Guardian" does not mean a "natural guardian" unless specified.
- AA. HCBS-IDD Program means Home and Community Based Services for individuals with IDD pursuant to a federally approved program, through a waiver category of Medicaid funding, which allows community based services that have been established by KDADS for persons who are otherwise eligible for ICF/ID services.
- BB. HCBS-IDD Program Eligibility means that an individual with IDD has been determined to meet all programmatic requirements for the HCBS-IDD Program, DDP score of 35 or more, as determined by KDADS, using functional assessment information submitted by a CDDO.
- CC. HCBS-IDD Wait List means a list of individuals with IDD who have been determined functionally eligible and meet program eligibility and who have a present identified need for program service and are waiting to receive such service subject to appropriations and funding capacity to serve. Individuals do not have to be financially eligible for Medicaid in order to be on the HCBS-IDD Wait List.
- DD. HIPAA means the Health Insurance Portability and Accountability Act including the HITECH Act amendments contained in the American Recovery and Reinvestment Act of 2009, and implementing federal regulations, as amended.
- EE. Home County means, and pursuant to K.A.R. 30-64-01, the following list shall be utilized to establish a "home county" for persons. The list is in priority order.
1. The county of residence of a family member of the person with I/DD;
 2. Then the county of residence of the person's guardian; or,
 3. The county in which the person is living.

The “home county” of children who are in custody is the county in which the child’s Medicaid case was opened.

- FF. ICF/ID means a private or public intermediate care facility for individuals with an intellectual disability, as defined below, and public facilities were previously referred to as a state mental retardation hospital.
- GG. Institutional Setting(s) means and includes institutions that are a State Mental Health Hospital, an ICF/ID, Youth Residential Center II or a Psychiatric Residential Treatment Facility (PRTF).
- HH. Integrated setting means, with respect to an employment outcome, a setting typically found in the community in which applicants or eligible persons interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible persons, to the same extent that non-disabled individuals in comparable positions interact with other persons. Kansas Rehab. Services Manual Reference: §361.5 (b) (33) (ii).
- II. Intellectual Disability (ID) replaces the current definition of mental retardation as defined in K.S.A. 39-1803(h).
- JJ. IDD means intellectual disability and/or developmental disability.
- KK. KAMIS is Kansas Assessment Management Information System.
- LL. New person means an individual eligible to receive services funded through this Contract, but who is currently not receiving services as requested.
- MM. Person means an individual eligible to receive services funded through this Contract. When referring to a person who is making decisions or reporting achievement of outcomes, person shall mean the person, and/or the person's support network as defined in K.A.R. 30-63-01.
- NN. Prior SFY means the State Fiscal Year immediately preceding the State Fiscal Year covered by this Contract.
- OO. Protected Health Information (PHI) shall have the meaning set forth in HIPAA.
- PP. Referral is defined for the purposes of accessing services in the IDD system as the process by which the CDDO provides to a person requesting or currently receiving services, information regarding all of the affiliated CSPs in the CDDO region who provide the services that the person is requesting.
- QQ. Right to Risk is a principle that requires service systems to deliver services in such a way that the person served is not overprotected and thereby not unnecessarily limited in his or her opportunities for normal life experiences.
- RR. Service Reduction means a reduction in service that includes voluntary or involuntary reduction in the number of hours of paid support provided to someone receiving family support services or a reduction in the number of days of day services or residential

- services.
- SS. SFY means the official State Fiscal Year for the State of Kansas.
- TT. State Aid means those funds distributed exclusively pursuant to K.S.A. 65-4411 et seq. and K.A.R. 30-22-31 et seq.
- UU. Stakeholder means any person with a disability, or any individual or entity with an interest in the lives of persons with IDD.
- VV. Support Network means one or more individuals selected by a person or by the person and the guardian, if one has been appointed, to provide assistance and guidance to that person in understanding issues, making plans for the future, or making complex decisions. Such individuals share a personal relationship with the person such that they are considered central to or interested parties to the planning of community services and supports for that person.
- WW. Waste is the unintentional misuse of funds through gross negligence or reckless disregard that results in unnecessary cost or consumption of health care resources. This can include incorrect coding or billing.
- XX. Working Healthy, the Kansas Medicaid Buy In program administered by the Kansas Department of Health and Environment, offers people who are working or interested in working the opportunity to maintain their Medicaid coverage, pay a reasonable premium in lieu of a client obligation or spend down, earn higher income, and have higher savings and retirement accounts.
- YY. Work Opportunities Reward-Kansans (WORK) is a State Plan benefit package designed for Working Healthy participants who need personal services in order to live and work in the community. WORK provides a monthly allocation to purchase personal services, assistive technology and Independent Living Counseling services.

IV. REPRESENTATION AND WARRANTIES

- A. Controlling Provisions. In the event there is an alleged conflict among the terms of this Contract (including any appendix or other document referenced herein), the Parties agree that the following provisions shall govern in the following order: (1) Applicable federal/state of Kansas statutes and/or regulations; (2) HCBS-I/DD Waiver; (3) DA 146a; (4) Modifications to Contract; (5) the executed Contract; and (6) The KDADS' policies and procedures.
- B. Criminal Provisions. By entering into this Contract, the CDDO represents and warrants that it has not been convicted for any criminal offenses that indicate a lack of integrity or honesty. Crimes indicating a lack of integrity or honesty include but are not limited to the following: any conviction of federal, state or local laws for embezzlement; theft; forgery; bribery; falsification or destruction of records; receiving stolen property; racketeering; and violation of antitrust laws. Any conviction(s) incident to obtaining or attempting to obtain or performing a public or private contract, subcontract, grant or subgrant; or conviction or any other offense which impacts the performance and/or responsibility of a contractor, subcontractor, grantee, or sub grantee are also considered offenses which lack of integrity and honesty.

- C. Accounting System. The CDDO's Accounting System shall meet generally accepted accounting principles, as amended.
- D. Maintenance of Cost Records. The CDDO shall maintain books, records, and other documents in such a manner so as to readily identify them directly with the delivery of services outlined in the Contract.
- E. Submission of Reports. The CDDO shall submit any required reports in accordance with the Contract. Failure to report required data could result in the delay and/or loss of funds.
- F. Data. The KDADS represents and warrants that technical data issued to the CDDO for use in performing professional services under this Contract shall be current, accurate, complete, and adequate upon the KDADS' knowledge, information and belief. The CDDO shall notify the KDADS' Help Desk as soon as possible upon discovering any data deficiency. The KDADS' Technical Representative shall take prompt and reasonable action to reconcile or remedy the data deficiency(ies). The CDDO may access their respective consumers' information through applicable KDADS' information systems as related to the Contract. The CDDO 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 authorized by statute, either during the period of the Contract or thereafter. The CDDO must agree to return any or all data furnished by KDADS promptly at the request of KDADS in whatever forms it is maintained by the CDDO. On the termination or expiration of this Contract, the CDDO shall not use any such data or any material derived from the data for any purpose and, where so instructed by KDADS, shall destroy or render it unreadable.
- G. Rights and Remedies. If this Contract is terminated pursuant to K.A.R. 30-64-20, KDADS, in addition to any other rights provided for in this Contract, may require the CDDO to transfer title and deliver to KDADS in the manner and extent directed, any completed materials (including, but not limited to, eligibility documents and assessments,). The KDADS shall be obligated only for those services actually provided prior to the date of termination. However, in the event of termination, the CDDO shall receive payment pro-rated for that portion of the Contract period services were provided to KDADS subject to any offset by KDADS for actual damages including loss of federal matching funds. The rights and remedies of the Parties provided for in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.
- H. Federal, State and Local Taxes Contractor. The KDADS makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the CDDO.
- I. Debarment. The CDDO represents and warrants that it is not a "debarred" entity. As part of the Code of Federal Regulations (45 C.F.R. Part 76), all governmental entities receiving funding from the Federal Government must participate in a government-wide system for non-procurement debarment and suspension. A person or entity that is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. The Secretary of KDADS is authorized to impose debarment. Before any person or entity

enters into an agreement, grant, or contract with KDADS, the "Excluded Parties Lists" (located at the web site www.sam.gov shall be researched for potential debarred persons or entities.

- J. Lobbying. No appropriated funds may be expended by the recipient of a grant which includes federal funding to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of the Legislature or an employee of a member of the Legislature in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. The Secretary of KDADS is authorized to require reviews of the CDDO audit and financial reporting policies to ensure appropriate oversight of agency funding allocated to the CDDO. This includes, but is not limited to, independent audit requirements; KDADS audit processes and CDDO Administrative funding reporting. Notwithstanding the foregoing, this provision is not intended to restrict the CDDO's ability to belong to any professional association, including, but not limited to, training and contract negotiations.

V. **REIMBURSEMENT/FUNDING**

- A. Allocation. The purpose of the funding allocation methodologies set forth herein is to equitably distribute the State Aid funds and CDDO Administration funds appropriated by the Kansas Legislature for SFY. Application of these methodologies shall not result in an allocation of funds in excess of the KDADS' CDDO budget appropriation.
- B. State Aid. State Aid Allocations are made consistent with K.S.A. 65-4411 et seq. and K.A.R. 30-22-31 and 32.
1. "Hold Harmless." The first \$5,216,286 in State Aid is distributed in amounts equal to what each CDDO received in SFY 1986.
 2. "Excess of Hold Harmless" State Aid amounts in excess of \$5,216,286 are distributed based on the number of persons served in adult day and residential services as follows:
 - a. The total number of persons served in adult day and residential as of January 1, 2002, for each CDDO service area as listed.
 - b. The number of persons whose adult day and residential services are funded through general funds - Community and Family Services and Supports - as of the last transmission date for April, 2005, are subtracted from the total number of persons listed above.
 - c. The remaining number is converted to program units by adding the number of persons served in adult day to the number served in residential services.
 - d. The amount in excess of \$5,216,286 is divided by the number of program units.

- e. The amount per program unit is multiplied by the number of program units determined to be provided in each CDDO service area.
- 3. The “Hold Harmless” is added to the “Excess of Hold Harmless” resulting in the final State Aid allocation.
- 4. State Aid Priority Services: As defined in KDADS Taxonomy.
 - a. Transportation;
 - b. Children’s Services;
 - c. Direct Service Provision;
 - d. Funding for non-Medicaid eligible case management;
 - e. Flex Funding: Costs for services provided to individuals with IDD that are not paid for by other sources. Examples include but are not limited to dental procedures, home modifications, wheel chairs, assistive technology, etc.; and
 - f. Emergent Need: Unpredictable consumer-specified need.

C. CDDO Administration Allocation.

- 1. To determine a per-person amount, the total amount allocated for CDDO Administration is divided by the unduplicated number in state data system, currently KAMIS, statewide, less persons residing in a public ICF/ID as of May, 2013. The CDDO administration for each CDDO area is established by multiplying this per person amount by the number of persons listed in state data system for that CDDO area.
- 2. If additional HCBS-IDD funding for individuals not currently receiving HCBS-IDD services is made available for the fiscal year 2016, 2.4 percent of the SGF funding will go to CDDO administration along with the corresponding administrative Federal share and will be allocated per Section V, Part C.

D. Special Projects: CDDO Administration.

An additional amount, over and above the amount available for CDDO Administration, is added to CDDOs with the added responsibilities they undertake related to a public Intermediate Care Facility for individuals with an intellectual disability (ICF/IDs) and other special projects. Any special projects shall be listed individually, in this appendix. All public ICF functional assessments shall be entered into the KAMIS system.

- 1. TARC - \$16,000.00 public ICF/ID Responsibilities; and
- 2. CLASS - \$16,000.00 public ICF/ID Responsibilities.

E. Reimbursement/Payment. Payment to the CDDO shall be made according to the process below.

1. State Aid. Payments, State Aid shall be paid in four (4) quarterly payments: July, October, January, and April of the Contract Year.
2. CDDO Administration. A quarterly payment of federal and SGF for CDDO administration shall be paid in July, October, and January of the Contract Year. A fourth quarterly payment shall be made after receipt of the CDDO's third quarter administrative cost report showing that expenditures reported are equal to or greater than the amount of payments. If the CDDO's administration expenditures are less than the amount of payments for the first three quarters, KDADS shall contact the CDDO and may reduce the fourth quarterly payment. Any CDDO administration payments due to the CDDO as a result of a prior period adjustment shall be due within forty-five (45) days of the end of the SFY.

AGREEMENT FUNDING			
	State General Funds	Federal Financial Participation	All Funds
State Aid	\$1,043,410.00	0.00	\$1,043,410.00
CDDO Administration	\$876,908.00	\$669,940.00	\$1,546,848.00
State Hospital BASIS	\$0.00	0.00	\$0.00
Total Award	\$1,920,318.00	\$669,940.00	\$2,590,258.00

3. Functional Assessment Reimbursement. The KDADS shall reimburse the CDDO \$90 per completed and entered assessments for people who are eligible for Medicaid. The CDDO has seven (7) calendar days from the date of completion to enter the data from the assessment into the KDADS' data management system. Payment for completed and entered assessments shall be distributed by the twentieth (20th) of the month following the date of assessment if entered by the 10th of the month following the date of the assessment (i.e. If the functional assessment is completed by January 31st and entered by February 10th, payment shall be sent by February 20th).

F. Recoupment.

1. Recoupment. The KDADS may recoup from payments due the CDDO, including but not limited to, for unexpended State Aid, CDDO Administration Funds and inaccurate functional assessments (as described in #4 below). In the case of recoupment, either the CDDO shall remit the amount due by check or money order made payable to the KDADS, or, by express mutual consent of the Parties, KDADS shall reduce the next contract year's payments by an amount equal to the amount of the proposed recoupment.

2. Recoupment Process. In the event of a recoupment, KDADS shall provide written notice of the proposed recoupment, which shall include the factual basis and appeal rights with the Office of Administrative Hearings.
3. Recoupment Appeal Rights. If the CDDO appeals the proposed recoupment prior to the deadline contained in the KDADS' notice, KDADS would not recoup until the entry of an Initial Order by the Office of Administrative Hearings, assuming such Order allows the recoupment to proceed. The Parties consent to the jurisdiction of the Office of Administrative Hearings, Topeka, Kansas, to resolve such dispute.
4. Inaccurate or Incomplete Functional Assessments. KDADS shall review completion of functional assessments as entered into KAMIS to determine compliance with this contract and related KDADS policies for functional assessments. If during quality assurance reviews, including reassessment utilizing the functional tool to ensure the tool was applied appropriately, KDADS identifies an assessment was applied inaccurately, completed by an assessor who was not qualified to conduct a functional assessment, or the assessment was submitted but is incomplete or fails to address all required elements, KDADS may recoup the previous payment for that functional assessment.

VI. ELIGIBILITY DETERMINATION AND FUNCTIONAL ASSESSMENT

- A. Functional Assessment. All functional assessments shall be performed by CDDO staff or by an entity that has entered into an agreement with the CDDO to perform functional assessments and who does not provide any direct services (including case management) to a person served.
- B. Eligibility Determination.
 1. The CDDO shall, directly or by subcontract, serve as a single point of entry to IDD Services and provide information, referral and explanation of available services and service providers for individuals with intellectual and developmental disabilities (IDD), including non-Medicaid community based options. Upon an initial assessment and annually, the CDDO shall collect a signed statement providing evidence that the person has been provided comprehensive options counseling. The CDDO shall submit the executed statement electronically to KDADS within (7) calendar days of completion of the BASIS assessment. The CDDO shall make best efforts to assure the person understands that no guarantee of services or providers is being made. Clear language shall be included in the statement regarding this fact. The details of the electronic submission and contents of the counseling and statement shall be clarified in KDADS' policy. The CDDO shall include language in their Affiliate Agreements with their affiliated TCMs that the TCM shall coordinate with the MCOs to jointly develop and review the plan of care.
 2. Upon completion of IDD eligibility determination, the CDDO shall complete a functional assessment for individuals with a qualifying intellectual or developmental disability using the tools and processes of the functional assessment tool. This assessment shall be initiated within five (5) calendar days

and completed within thirty (30) calendar days from the date of written notification following determination of eligibility for the HCBS-IDD Program services, pending CMS Approval.

- a. The CDDO shall complete the functional assessment and/or reassessment annually or as required by the end of the person's birth month and no sooner than two (2) months prior to the person's birth month. For the purpose of service delivery and development of the appropriate integrated service plan, the functional assessment should be made in accordance with the above deadlines of the birth month to avoid interruption of services.
 - b. The CDDO shall enter the data from the assessment and reassessment into the KDADS' data management system (currently known as "KAMIS") and utilize the information system for collecting and updating data related to an individual with IDD being served by the IDD Program.
 - c. All functional assessments shall be entered into KAMIS within seven (7) calendar days of completion of the assessment. Failure to submit assessments timely in KAMIS may delay development of the Integrated Service Plan and impact the delivery of services to the participant.
- C. Kansas Assessment and Management Information System ("KAMIS"). Changes or enhancements to KAMIS, if at all possible, may be developed by the KDADS. Notice of changes and/or enhancements shall be provided in advance to the CDDO. If required, the KDADS shall offer on-line training to assist the CDDO in acclimating to any such change. KDADS will use CDDO representatives to test changes and provide feedback on upgrades and enhancements prior to implementation. The parties acknowledge current KAMIS system limitations and will exercise best efforts to utilize the system to satisfy obligations under this Contract.

VII. ACCESS TO SERVICES: CAPACITY, CRISIS AND PRIORITY SERVICES

- A. Access to Services. Access to new or additional services for HCBS-IDD Program services shall be limited to one of the following:
1. Crisis/imminent risk of crisis;
 2. Funding capacity to serve (waiting list);
 3. Transition from different programs; or
 4. Other priority situations.
- B. Crisis/Imminent Risk of Crisis.
1. Persons who are in crisis or at imminent risk of crisis and whose needs can only be met through services available through the HCBS-IDD Program are those persons who:
 - a. Require protection from confirmed abuse, neglect, or exploitation or

written documentation of pending action for same; or

- b. Are at significant, imminent risk of serious harm to self or others.

2. Procedures for Crisis.

- a. New Persons. When persons who are not receiving HCBS-IDD program services present themselves to the CDDO as being in crisis, the CDDO shall make appropriate referrals to other available community services. If the CDDO determines that it does not have the resources to support the person in crisis, it shall work with KDADS, other CDDOs, and the MCO, if applicable, to secure crisis services.
 - i. If after all natural and community supports have been explored and exhausted the person is still determined to be in crisis, the CDDO shall provide a recommendation to KDADS for access to HCBS-IDD Program services.
 - ii. Documentation of all attempts to find other resources shall be maintained by the entity making the request and provided to the CDDO prior to the person being approved for crisis funding.
 - iii. If the CDDO determines that an individual does not meet the crisis threshold, written notification, including appeal rights should be sent to the individual, guardian, and Targeted Case Manager "TCM". Notice to the MCO, if applicable, would be appropriate to help the MCO determine other supports.
- b. If the CDDO approves the crisis request, such documentation shall be provided to the KDADS. The KDADS shall grant or deny such request for services. If the crisis request is denied, the KDADS shall prepare and submit to the individual allegedly in crisis a Notice of Action ("NOA") containing appropriate appeal rights.

C. Capacity to Serve (Waiting List).

- 1. The KDADS shall maintain a single statewide HCBS-IDD wait list for individuals with IDD who have been determined to meet the HCBS-IDD Program level of care criteria and HCBS-IDD Program eligibility and who are waiting to receive any available service under the HCBS-IDD Program subject to appropriations and the HCBS-IDD Program's funding capacity to serve an individual waiting for services.
- 2. The KDADS shall provide CDDOs with access to the waiting list, at least on a semi-annual basis, for individuals with IDD in the CDDO area they serve that indicates the individual's position on that list.
- 3. For persons moving from one CDDO area to another, the individual shall retain their place on the waiting list.
- 4. The KDADS shall notify individuals when they are being offered HCBS services

based on new allocations. The KDADS shall also notify the MCO and the CDDO.

5. If an individual being offered services on the wait list declines services or does not respond to an offer of service within 30 days and after the CDDO has made reasonable attempts to contact the individual, the next person on the statewide HCBS-IDD wait list may be offered services. At the end of the response period, KDADS will notify the CDDOs, by email, those individuals who decline or fail to send a response regarding services.

D. Priority Service Situations.

1. Priority services may be provided, utilizing the procedure as set forth in Section VII, B.2, to individuals in the following situations: MCOs and CDDOs shall notify each other when they become aware of an individual fitting one of these situations:
 - a. To persons in the custody of the Department of Children and Families may access new or additional HCBS-IDD Program services for the purpose of addressing support needs related specifically to the person's I/DD. However, to prevent duplication, access to the HCBS-IDD program shall not be granted if the child's only need for services is related to supervision or other supports provided by the foster parent. The CDDO shall collaboratively work with the responsible child placing agency and the MCO to assure that the health and welfare needs of the person are met.
 - b. Persons who have been determined to be at imminent risk of coming into the custody of the Department of Children and Families may access new HCBS-IDD Program services for the purpose of addressing support needs related specifically to the person's IDD to assure the person avoids custody.
 - c. Persons under the age of 18 transitioning from custody, as well as persons transitioning out of custody at age 18 or thereafter, may access HCBS-IDD Program services in an amount sufficient to provide for disability-related support needs of the person. The CDDO and MCOs shall review the situation and determine how the health and welfare needs of the person shall be met. The KDADS acknowledges that the transition to children or adult services may transcend fiscal years.
2. Procedure for priority services access.
 - a. New Persons (not receiving HCBS-IDD Program funded services). When persons in one of these situations present themselves to the CDDO and requests services the CDDO shall review need for IDD services and shall provide a recommendation to KDADS for access to HCBS-IDD Program services.
 - b. Persons currently receiving HCBS Program funded services. When persons who are currently receiving at least one HCBS-IDD program

service that is funded by Medicaid present themselves to the CDDO as being in a priority service situation with a need for HCBS-IDD services, the CDDO shall notify the individual's MCO.

3. For persons who are listed on the statewide HCBS-IDD wait list for HCBS-IDD Program services, referred to Vocational Rehabilitation Services ("VRS") for employment services, which is designed to help individuals with disabilities achieve employment and self-sufficiency and links employers with qualified and productive persons to meet their work force needs, may receive access to limited HCBS-IDD Program services.
 - a. CDDO shall ensure that the individual has been referred to VRS and have VRS successfully closed services because the individual is competitively employed and the individual shall have access to HCBS-IDD Supported Employment services needed to successfully maintain their employment, not to exceed the actual level of disability-related support needed to maintain their job.
4. For all other access to new HCBS-IDD Program services shall be limited to those persons who are offered HCBS-IDD Program services pursuant to either the statewide HCBS-IDD wait list or crisis criteria.

E. Transition from Different Programs.

1. Transition from other Home and Community Based Services.
 - a. Persons who have lost other funding due to the termination of Technology Assisted, Autism or Traumatic Brain Injury program services may have access to HCBS-IDD Program services if they meet HCBS-IDD program eligibility.
 - b. CDDOs and MCOs shall notify each other when they become aware that an individual shall lose their funding due to the termination of Technology Assisted, Autism or Traumatic Brain Injury program services and work jointly to ensure that the individual has timely access to HCBS-IDD program services.
2. Transition from Institutions.
 - a. For persons transferring from an Institutional Setting during this State fiscal year, MCOs and CDDOs shall notify each other when they become aware of an individual in an institutional setting is transitioning into the community.
 - b. For persons transitioning to community-based services from an Institutional Setting that is either closing or reducing its bed capacity, negotiated rate(s) different from those provided may be allowed by MCOs. Pursuant to K.S.A. 39-1806 (a)(I), such rate(s) shall cover the actual cost(s) of services approved for the person as set out in the person's plan for transfer from the Institutional Setting.

- c. CDDO shall work with the MCO to help the individual or individuals choose a HCBS-IDD Program provider in or near their preferred community to allow for transfer from an institutional setting to assist the MCO in network adequacy and access to home and community based services for this population.
- d. Persons who are transitioning to community services from a Youth Residential Center II or a Psychiatric Residential Treatment Facility (PRTF) and who previously accessed HCBS-IDD Program services are eligible to have such HCBS-IDD Program services reinstated in an amount that addresses the current disability-related support needs.
- e. For persons who are transitioning from an institutional setting, the CDDO shall work with the Money Follows the Person Program Manager and the individual's MCO, if applicable, to identify possible MFP participants and assist individuals living in a qualifying institutional setting as an Intermediate Care Facility for Individuals with Intellectual/Developmental Disabilities (ICF-IDD).

VIII. QUALITY ASSURANCE AND REVIEW

- A. CDDO Responsibilities. The CDDO shall participate in and cooperate by providing required resources for the CDDO Performance Review process(es) developed by the KDADS' and the Strategic Plan Oversight Committee.
- B. Complaint Tracking.
 1. CDDO's shall timely complete a quarterly complaint tracking form for KDADS to ensure that all complaints are adequately addressed.
 2. In the event that a CDDO receives a written or oral complaint that meets the definition of complaint described herein the CDDO shall document the complaint on the "CDDO Quarterly Complaint Tracking" Form.
 3. Reasonable accommodations shall be provided to allow verbal complaints, which shall thereafter be converted to a written format.
 4. The "CDDO Quarterly Complaint Tracking" Form shall track the date complaint received; name of complainant, complaint category (See #5), complainant issue, status of the issue, how the issue was resolved, and date issue was resolved. A written response shall be provided to the complainant.
 5. Complaint Tracking Categories:
 - Affiliation
 - BASIS (functional assessment)
 - CDDO Quality Assurance Process
 - Consumer Complaint regarding Provider
 - Consumer Crisis
 - Eligibility Determination

- Exceptions
- Other Funding Issues
- Other Concerns
- Dispute Resolution Process, offered and/or pursued

C. Performance and Peer Review(s). In addition to the duties and activities related to CDDO responsibilities, the CDDO shall participate in the CDDO Performance Review.

1. Performance Reviews

- a. CDDO Performance Reviews shall be conducted once every two years on all CDDOs in the State of Kansas.
- b. Performance Reviews shall consist of both desk review and onsite review of quality assurance and performance measures as defined by state statute and regulation, the HCBS-IDD CMS-approved waiver and KDADS quality assurance policies.
- c. The CDDO shall cooperate with the performance review team by providing access to any records, documents or other information as requested by the review team regarding or relating to the execution and/or performance of this Contract.
- d. Additionally, the KDADS or its designee, reserves the right to audit CDDO records for compliance regarding complaints, deficiencies and identified areas of compliance related to CDDO administration, including federal financial participation standards and quarterly quality assurance review of functional assessments.
- e. If findings are noted, KDADS shall provide written notice to the CDDO, providing it ten (10) business days to propose a remediation plan.

2. CDDO Peer Review

- a. If findings are noted during a performance review, the KDADS or CDDO may request to convene a peer review process to discuss any findings in accordance with the Peer Review Policy (to be developed).
- b. The findings of the Peer Review team will be final unless KDADS or CDDO contest the findings in accordance with the Peer Review Policy or as allowed under state law.
- c. Results of either a performance review or peer review shall not be made available or posted publicly until final determination.

3. The KDADS and CDDOs will jointly develop standard review policies and procedures, including review tools, reporting tools, and notifications that ensure a consistent implementation of the review process. This includes a Performance Review and Peer Review Policy.

D. Quality Standards for Functional Assessments. The CDDO is expected to meet the following quality assurance standards for functional assessments and report annually (calendar year) on the following:

1. KDADS and CDDOs shall jointly develop and revise policies and procedures around the functional assessment training that includes the following:
 - a. Training curriculum and online modality for training and scoring assessments;
 - b. Develop functional assessment training protocols and trainers;
 - c. Create policy and process for regular retraining of functional assessors consistent with the assessment tool; and
 - d. Conduct a quantitative analysis of the current system to develop procedures and continuous quality improvement.
2. In addition, the CDDO is expected to meet the following quality assurance standards for functional assessments and report annually (calendar year) on the following:
 - a. 100% of functional assessors have completed required trainings within 30 days of employment and at least annually;
 - b. CDDO training, verification and internal quality assurance practices to ensure quality outcomes and consistent application of the scoring and screening of individuals; and
 - c. CDDO policies, procedures and protocols related to grievances and appeals of a functional assessment or -related dispute that includes timeframes and guidelines for review.

E. Licensure of Affiliates, i.e., Community Service Provider ("CSP").

1. Notification of Licensure. The KDADS shall provide notification to the CDDO, within thirty (30) calendar days, of KDADS' receipt of any application for any new licensure or for re-licensure of any Community Service Provider seeking to operate within the CDDO's service area, and shall seek the information, documentation, and cooperation of the CDDO related to a provider's affiliation, qualifications, capabilities, and current standing of the applicant as part of the review of a licensee during the application or reapplication process.
2. Affiliate Agreement with the CDDO. If the KDADS grants a person/entity's application for licensure (new or renewal), the CDDO shall enter into an Affiliate Agreement unless one of the following exceptions apply: (1) If the provider refuses to accept a reimbursement rate for services to be provided that is at least equal to that established by the Secretary to apply the CDDO, or as agreed to in the affiliation agreement with the CDDO, (2) if the provider has established a pattern of failing or refusing to abide by the services area procedures established by the CDDO according to K.A.R. 30-64-21, or failing to comply with its

affiliation agreement with the CDDO; (3) if the CDDO demonstrates to the satisfaction of the Secretary that being required to enter into an affiliating agreement would seriously jeopardize the CDDO's ability to fulfill its responsibilities either under these regulations or pursuant to its contract with the Secretary. (K.A.R. 30-64-22, as amended) Additionally, CDDOs should have an affiliate agreement for all service providers, including services provided by an entity associated with or connected to the CDDO. If however, an internal division, department, or section of the CDDO provides I/DD services, the CDDO shall comply with the terms of its standard "Affiliate Agreement" as if the same were set forth in full herein.

IX. CONFLICT OF INTEREST

A. Conflict of Interest.

1. The CDDO shall at all times herein strictly comply with 42 CFR 441.301, as amended.
2. Specifically, a CDDO owned/operated Affiliate may not provide direct services to a person if the person has a Court Appointed Guardian and such Guardian is a CDDO employee, a CDDO owned/operated Affiliate employee or a Guardian who has a contractual relationship (personal or through an entity) with the CDDO or its Affiliate. Unless such Guardian has completed one of the following:
 - a. File a Motion with the Probate Court disclosing all aspects of the conflict seeking a ruling thereon for the Probate Judge; or
 - b. File a Motion with the Probate Court seeking the appointment of a substitute Guardian who does not have the conflicted relationship with the CDDO; or
 - c. Designate a representative to direct the services of a person the guardian represents and provides paid supports to, when a conflict of interest exists.

X. STATEWIDE GROUP MEETINGS, BUSINESS MEETINGS, AND STAKEHOLDER MEETINGS

- A. Statewide Group Meetings. Community Services Initiatives may meet on an as needed basis. Any party may request a meeting with reasonable notice to all Parties on a date, at a time and in a place mutually agreed upon by the Parties.
- B. KDADS and CDDO Business Meetings. In addition, CDDOs and KDADS will meet face to face, with teleconference capability made available, not less than four times per year. Meetings will be held in August, October, January, and April at a location arranged by KDADS. The purpose of the KDADS/CDDO meetings will be to discuss CDDO Operational activities with CDDO and KDADS leadership. Due to the regularly occurring business meetings, the Statewide Funding Committee and Statewide Quality Oversight Committee will cease. Agendas for these meetings will be developed jointly

by representatives of the parties and distributed at least seven (7) days in advance of each meeting. KDADS and each of the CDDOs will rotate responsibility for the taking of minutes of these meetings, and KDADS will post the minutes of each of these meetings on KDADS's website within fourteen (14) days after receipt of those minutes and as they are approved by KDADS. The KDADS may, at its option, conduct Stakeholder Meetings on the same day as the KDADS/CDDO Business Meetings.

XI. KDADS' STATUTORY AND/OR POLICY CHANGES

- A. Notice of KDADS' Policy Change. The KDADS shall post new or revised policies for review for thirty (30) days on the KDADS' website prior to implementation. Upon posting, KDADS shall allow for the submission of written comments by the CDDO and other stakeholders prior to adoption of said policy addition or change. All such submitted comments shall be posted on the KDADS' website for public review. The KDADS shall make reasonable attempts to notify impacted providers/contractors when new or revised policies are posted for comment. The process of notification is as follows:
1. Prior to the commencement of the 30 day comment period, KDADS shall email a copy of the draft proposed policy (related to CDDO functions) to all CDDOs and allow for a 10 day review period. CDDOs shall select representatives to consolidate all feedback from the CDDOs.
 2. KDADS shall post new or revised draft policies on the Listserv with the link to where the policy is located on the KDADS website.
 3. KDADS shall notify all providers during provider conference call of any new or revised policies that are pending for comment.
 4. KDADS shall post in the monthly HCBS bulletin any new or revised policies and the link to where the policy is located on the KDADS website.
- B. Requirements Not Contained Herein. The Parties acknowledge that changes in KDADS' policy and/or procedure impacting the subject matter of this Contract may occur during the term of this Contract. Any and all such changes to existing policies and/or procedures and any proposed implementation of new policies and/or procedures are subject to the notification provisions of this Contract. With regard to the same, the Parties agree to work in good faith using common sense and good business practice to implement such policies and/or procedures. If the policies and/or procedures proposed to be changed or newly implemented would constitute substantial, material, or economic change, the Parties agree to re-negotiate in good faith the provisions of this Contract solely regarding implementation of such new or changed policies or procedures.

XII. REPORTING REQUIREMENTS

- A. Administrative Reports. The CDDO shall: (i) track and report CDDO administrative costs using a format developed by KDADS and (ii) submit such report to KDADS Fiscal and Information Services Commission within twenty (20) days following the end of each SFY quarter (i.e., the first such report shall be due October 20th).

- B. State Aid Reports. The CDDO shall submit quarterly and annual State Aid program reports per K.A.R. 30-22-32 (7)(g), using an electronic format developed by the KDADS. Reports are due to KDADS Fiscal and Information Services Commission the 20th of the month following the end of the quarter. Each State Aid program report shall incorporate the total expenditure, number of persons served, units provided, and number of providers for each defined priority service per the KDADS taxonomy.
- C. Special Requests by KDADS. Subject to the requirements of HIPAA, with respect to requests by KDADS for special reports or information not otherwise required by law or by this Contract, the CDDO shall provide the report or information within a reasonable time frame following its receipt of the request. All requests by KDADS for information and/or reports shall identify the source of the request, the reason for the request. All requests made by KDADS to CSPs for information, shall be copied to the CDDO.
- D. Special Requests by the CDDO. Subject to the requirements of HIPAA, KDADS shall honor information requests from the CDDO if the information or data is available through current KDADS resources. If the information or data being requested is not available, KDADS shall notify the CDDO and discuss possible options for obtaining requested information. Responses from KDADS shall be given within a reasonable timeframe.
- E. Capacity.
1. Capacity Building.
 - a. CDDOs agree to report capacity using the KDADS' template. The report shall be due annually on March 31st.
 - b. The Parties agree to cooperate in a proactive manner as needed to address systemic gaps.
 - c. The KDADS and individual CDDOs shall cooperate on specific capacity issues related to the respective CDDOs if or when either Party identifies the need.
- F. 3160 and 3161 Forms. The Parties acknowledge the importance of maintaining up-to-date information in the State's data system.
1. The KDADS shall complete the 3160 forms.
 2. The 3161 shall be completed by the CDDO if it becomes aware of a change in individual's circumstances. A copy of this form shall be sent to DCF, the MCO and the TCM.
- G. Death Reporting. When a person in services passes away, the CDDO shall complete and submit KDADS' Notification Form and shall input such information in KAMIS as "deceased."
- H. Complaint Tracking. The CDDO shall track all complaints and grievances as required herein. The CDDO shall submit to KDADS a quarterly report as related to complaints. (See also Section VIII.B.)

XIII. CONTRACT TERM, DEFAULT AND REMEDIES

- A. Term. Unless modified or terminated pursuant to the terms provided herein the term of this Contract shall be from July 1, 2015, through June 30, 2016.
- B. CDDO Default. The CDDO shall be in default of this Contract if it fails to strictly abide by any term or provision herein, time being of the essence.
- C. CDDO Failure to Comply. Upon an event of default, or if the KDADS finds that the CDDO has failed to comply with the requests, standards or rules established by the DDRA or other provision of law, the KDADS may, at its sole option, utilize the remedies set forth in K.S.A. 39-1807, as amended, including mediation and the entry of a consent order providing the CDDO an opportunity to cure. In the event the issue is not cured, the KDADS shall provide the CDDO written notice providing the opportunity for hearing.
- D. KDADS' Termination. Notwithstanding any provision herein, the KDADS, with or without advance written notice including the opportunity to cure may terminate this Contract due to fraud or to protect public funds. By way of example and not of limitation, examples may include, but are not limited to: embezzlement, Medicaid fraud, fraudulent billing statements or any other action or in-action relating or pertaining to the fiscal integrity of this Contract or the IDD Medicaid waiver program in Kansas.

XIV. MISCELLANEOUS CONTRACT TERMS

- A. Modification. Except as otherwise expressly provided for in this Article, any proposed modification to this Contract must:
 - 1. Be made in writing and signed by both of the Parties; and
 - 2. Have a mutually agreed upon effective date.
- B. Renegotiation upon a Change in Law or Policy. Upon the request of either of the Parties, this Contract may be subject to renegotiation based upon any material changes in, or implementation of, any changes made to any State or Federal statutes or regulations, or in any Policies.
- C. Changes in Funding.
 - 1. Renegotiation. The State of Kansas' current financial situation makes it impossible for KDADS or any other State agency to make firm, unalterable financial commitments. If KDADS reasonably determines that a change in funding requires a modification of this Contract, KDADS reserves the right to require a renegotiation of the terms and conditions of this Contract with the CDDO, and the CDDO agrees to reasonably negotiate with KDADS in that regard. Likewise, if the CDDO reasonably determines there is a need to modify this Contract, due to a change in funding, after the execution of this contract, the CDDO reserves the right to require a renegotiation of the terms and conditions of this Contract with KDADS, and KDADS agrees to reasonably negotiate with the CDDO in that regard.

2. KDADS Funding Reduction. If KDADS is subject to a formal funding reduction by action of the Governor (budget, allotment or otherwise) or by enactments of the Legislature, KDADS may alter the allocation made to the CDDO in order to meet those funding reductions. In such a case, KDADS shall provide to the CDDO written notice of any such alterations at least thirty (30) days in advance of those alterations becoming effective. If such a budget reduction, allotment or the like occurs, the Parties acknowledge and agree that the KDADS is not required to use other budgeted and appropriated state general funds to fund this Contract. In the event this occurs, the parties will work together regarding such reduction, pursuant to Section XI.B of the Contract.
- D. The KDADS' Monitoring and Audits. All services and/or funding that are provided pursuant to the terms of this Contract may, at any time, be audited, monitored or evaluated by the KDADS. Funds allocated pursuant to this Contract are subject to the KDADS' Independent audits which shall be carried out in accordance with CDDO Independent Audit Policy, and the KDADS' Recipient Monitoring Policy, as amended.
- E. Outside Audits. In the event that an audit of this Contract is conducted by either the KDADS, CMS and/or the Legislative Division of Post Audit, neither of the Parties shall prohibit or prevent the auditing entity from accessing information regarding the execution and/or performance of this Contract and shall at all times cooperate with such auditing authority. This provision shall not be construed so as to prevent either Party from taking legally permissible steps to protect against the production or dissemination of confidential or privileged information held by that or either Party and sought in connection with any such audit, or otherwise.
- F. Retention of and Access to Records. During the term of this Contract and for the six-year period following the completion or termination of this Contract, each Party shall retain and safeguard this Contract and all books, documents, and records pertaining to its performance of this Contract, including those necessary to certify the nature and extent of the costs incurred by the other Party in performing this Contract. In addition, the Parties shall, during the same six-year period, upon written request, make available to the other Party or to an independent auditor retained by the other party or to the Secretary of Health & Human Services, the U.S. Comptroller General, the Auditor of the Kansas Legislative Division of Post Audit, or their designees, this Contract and all books, documents and records pertaining to the performance of this Contract, including those necessary to certify the nature and extent of the costs incurred by the other Party in performing this Contract. Each party shall bear the costs and expense of storing its own records and of retrieving and producing its own records for any governmental entity. In addition, the Parties shall retain all documents related to matters involved in litigation for at least two (2) years following the termination of litigation, including all appeals, even if doing so requires retention of records for more than 6 years beyond the completion or termination of this Contract.
- G. Severability. If any provision of this Contract is determined by a Court of competent jurisdiction to be invalid or unenforceable to any extent, then the balance of all other independent terms of this Contract shall not be affected, and each such provision of this Contract may be enforced to the fullest extent permitted by law.
- H. Force Majeure. The CDDO shall not be liable for failure to perform under this Contract if such failure arises out of causes beyond the control of the CDDO. Such causes may

include, but are not limited to, acts of nature, fires, quarantine, strikes, other than by the CDDO's own employees, and freight embargoes.

I. Waiver. The waiver by any Party of a breach of any of the provisions of this Contract shall not operate or be construed as necessitating a waiver of any subsequent breach.

J. HIPAA, Confidentiality and Privacy.

1. Business Associate Agreement. The CDDO agrees to execute the most current version of the KDADS' Business Associate Agreement not later than forty-five (45) business days following the execution of this Contract; provided, however, if the CDDO has already executed the KDADS' most recent version, it shall be deemed in compliance with this sub-section. The KDADS is a covered entity under HIPAA, and is therefore obligated to obtain reasonable assurances from the CDDO that the CDDO and its affiliated service providers shall not use or disclose any KDADS provided PHI in any way or manner that KDADS could not, nor in any way or manner unnecessary to the proper management or administration of the CDDO. The CDDO agrees to adopt and maintain in force appropriate confidentiality policies, procedures and protections for as long as the CDDO has any KDADS provided PHI in its possession.

2. Privacy Protections. The CDDO agrees to comply with all applicable security provisions under HIPAA concerning the storing of this PHI in any format, and agrees to institute and maintain appropriate safeguards to protect the physical security of, and to prevent any unauthorized access to this PHI, and upon request shall furnish to KDADS a written description of those safeguards. The CDDO agrees to allow authorized representatives of KDADS access to the premises where this PHI is in the possession of the CDDO. The Parties hereby agree to comply with the privacy provisions of HIPAA, kept for the purposes of inspecting those physical security arrangements.

3. Safeguards. The CDDO agrees to institute and maintain all appropriate administrative, technical, procedural and other physical safeguards necessary to protect this PHI from any unauthorized access or use by any persons or in any manner, and applicable at any location or place where any activities or services are performed or conducted by the CDDO pursuant to this Contract, and upon request shall furnish to KDADS a written copy of the policies and procedures adopted by the CDDO in compliance with these requirements.

K. Entire Agreement. This Contract embodies the entire understanding between the Parties.

L. Notices. All formal notices required to be given as provided for within this Contract shall be made in writing and:

1. Personally delivered;
2. Faxed or E-mailed, with a written copy thereof sent in follow-up as otherwise provided for herein, unless acknowledge as received;
3. Sent by United States Mail, postage prepaid, certified or registered with return receipt requested; or

4. Sent by any nationally recognized overnight courier service, and properly addressed to the appropriate official or officer of the addressed Party at that Party's principal business office.
- M. Captions. The headings or captions in this Contract are for convenience only and do not necessarily indicate an exclusive inclusion of all terms related to a given or identified subject as may be addressed within that section of this Contract.
- N. Authorized to Enter into Contract. Each of the Parties hereto represents and warrants that it is authorized to enter into this Contract.
- O. Kansas Law Applies. The laws of the State of Kansas (irrespective of choice of law principles) shall govern the validity of this Contract, the construction of its terms and the interpretation of the rights and duties of the Parties. Any action brought to enforce, construe, or interpret this Contract (including but not limited to any mediation or arbitration) must be commenced and maintained exclusively in Shawnee County, Kansas.
- P. No Presumptions Based on Drafter. No provision of this Contract shall be interpreted for or against any Party hereto on the basis that such Party was the principle draftsman of such provision, and no presumption or burden of proof shall arise disfavoring or favoring any Party by virtue of the authorship of any of the provisions of this Contract.
- Q. Assignment. No Party may assign this Contract without the other Party's prior written approval, and any attempted assignment without such approval shall be null and void. This Contract is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
- R. No Joint Venture. Neither Party has the power or authority to bind the other. The Parties to this Contract are independent contractors and nothing in this Contract shall be construed as creating any relationship such as a partnership, joint venture, or principal-agent.
- S. Appeals and Legal Challenges by any Third Party. The CDDO shall at all times and manner cooperate with KDADS in any administrative fair hearing or other legal proceeding involving any claim made by any third party against KDADS and asserting or involving any action or failure to act attributed to the CDDO in furtherance of the community based services HCBS-IDD program or of this Contract.
- T. Electronic Signatures. This Contract (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the Parties hereto as if they were originals.
- U. Cooperation. The Parties agree to fully cooperate with each other in the performance of this Contract and amendments to which the Parties mutually agree.
- V. Conflicts. To the extent any provision of this Contract (including any exhibit, attachment, appendix, or other document referenced herein) is inconsistent with or contrary to any provision of State law, the relevant provision of State law shall be utilized to resolve any dispute under this Contract. Any effort, however, shall be made to resolve

such conflict in a harmonious manner.

- W. Single State Agency. Nothing in this Contract is intended by the Parties to be, or to be construed or deemed to be, an unauthorized delegation of authority by the Single State Medicaid Agency (KDHE) prohibited by 42 U.S.C. 1396a or 42 C.F.R. Part 431, Subpart A. The Parties acknowledge that the Single State Medicaid Agency retains its full supervisory authority as the single state agency for administration of the Medicaid State plan. By executing this Contract, the Parties acknowledge the intended use of Medicaid funds to pay for Contractor's services and further acknowledge that the Single State Medicaid Agency's assistance shall be necessary in order to draw down FFP to pay for Contractor's services.
- X. Authorities Incorporated by Reference. The Parties agree that the following authorities shall be incorporated by this reference as if set forth in full herein:
1. Applicable federal or State of Kansas statutes and/or regulations;
 2. HCBS-I/DD Waiver; and
 3. KDADS' Policies and Procedures.
- Y. DA-146a Form. Attached hereto as Appendix A is a copy of the DA-146a form. The Parties agree to abide by its terms as if it were set forth in full herein.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their respective officials or officers, who are each duly authorized to do so as of the date of execution.

KANSAS DEPARTMENT FOR AGING AND
DISABILITY SERVICES

Kari M. Bruffett, Secretary

Date

KANSAS DEPARTMENT OF HEALTH AND
ENVIRONMENT

Susan Mosier, PhD., Secretary

Date

SEDGWICK COUNTY DEVELOPMENTAL
DISABILITY ORGANIZATION

CDDO Authorized Signature

Date

APPROVED AS TO FORM:



CONTRACTUAL PROVISIONS ATTACHMENT

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

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

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State shall pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability:** No provision of this contract shall be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision shall be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Appendix A

DA-146a Form