

# AGREEMENT TO PROVIDE AFTER HOURS MENTAL HEALTH EMERGENCY SERVICES

by and between:

**SEDGWICK COUNTY, KANSAS**

**and**

**SOUTH CENTRAL MENTAL HEALTH COUNSELING CENTER, INC.**

This Agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Sedgwick County, Kansas ("County") and South Central Mental Health Counseling Center, Inc., a Community Mental Health Center ("South Central").

WITNESSETH:

**WHEREAS**, South Central desires to make available certain mental health services to residents of Butler County; and

**WHEREAS**, COMCARE has the administrative capability and professional expertise to provide such mental health services; and

**WHEREAS**, South Central desires to retain COMCARE to provide such mental health services.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

**1. Purpose and Scope of Work.** County will provide to South Central professional inpatient pre-admission after hours tele-video screening services ("the Services") on an as-needed basis for residents of Butler County.

**2. Term.** The initial term of this Agreement shall be for one (1) year, commencing on January 1, 2016. The Agreement may continue for a reasonable time after December 31, 2016, if both parties agree to continue operating under the same terms of this Agreement while they are actively developing a new agreement.

**3. Incorporation of Documents.** Appendix A (Contractual Provisions Attachment) and Appendix B (Scope of Work) are attached hereto and are made a part hereof as if fully set forth herein.

**[remainder of this page intentionally left blank]**

## General Terms and Conditions

1. **Contractual Relationship.** It is agreed that the legal relationship between South Central and County is of a contractual nature. Both parties assert and believe that County is acting as an independent contractor in providing the goods and services and performing the duties requested hereunder.

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

3. **Compensation.** South Central agrees to pay and County agrees to accept as compensation for goods and services provided pursuant to this Agreement the following fees:

Service	Rate
Administrative Fee	\$800.00 per month
Inpatient State Hospital Screen	\$315.00 per screen
Face to Face Tele-video and/or Emergent Services	\$2.00 per minute (will not exceed \$180.00 for any single day)

Communication made pursuant to this Agreement may be with residents requiring services or members of their families, South Central staff, law enforcement officers, hospital personnel, or other community professionals.

These fees include all of County's time, labor and equipment, travel, and all other expenses associated with the provision of goods, equipment and/or services, and shall be the sole compensation rendered to County hereunder.

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

**County:** Sedgwick County COMCARE  
Attn: Contract Notification  
934 N. Water  
Wichita, KS 67203

and

Sedgwick County Counselors Office  
Attn: Contract Notification  
Sedgwick County Courthouse  
525 N. Main, Suite 359  
Wichita, Kansas 67203-3790

**South Central:** South Central Mental Health Counseling Center, Inc.  
Attn: Dan Rice, Ph.D., Executive Director  
520 E. Augusta Ave.  
Augusta, KS 67010

**5. Termination.**

A. **Termination for Cause.** In the event of any breach of the terms or conditions of this Agreement by South Central, or in the event of any proceedings by or against South Central in bankruptcy or insolvency or for appointment of receiver or trustee or any general assignment for the benefit of creditors, County may, in addition to any other remedy provided it by law or in equity or other right reserved to it elsewhere in this Agreement, without any liability to South Central on account thereof, by written notice, terminate immediately all or any part of this Agreement, procure the goods, equipment and/or services provided for herein elsewhere, on such terms and under such conditions as are reasonable in the sole discretion of County, and South Central shall be liable to pay to County any excess cost or other damages caused by South Central as a result thereof.

B. **Termination for Convenience.** County shall have the right to terminate this Agreement for convenience in whole, or from time to time, in part, upon thirty (30) days' written notice.

**6. Hold Harmless.** South Central shall indemnify County and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of South Central's negligence and/or willful, wanton or reckless conduct in the provision of goods and equipment or performance of services under this Agreement. This indemnification shall not be affected by other portions of the Agreement relating to insurance requirements.

**7. Liability Insurance.** South Central agrees to maintain the following minimum limits of insurance coverage throughout the term of this Agreement:

<b>Worker's Compensation</b> Applicable State Statutory Employer's Liability	
<b>Employer's Liability Insurance:</b>	\$500,000.00
<b>South Central's Liability Insurance:</b> Form of insurance shall be by a Comprehensive General Liability and Comprehensive Automobile Liability	
<b>Bodily Injury:</b> Each occurrence Aggregate	 \$500,000.00 \$500,000.00
<b>Property Damage:</b> Each occurrence Aggregate	 \$500,000.00 \$500,000.00
<b>Personal Injury:</b> Each person aggregate General aggregate	 \$500,000.00 \$500,000.00

<b>Automobile Liability – Owned, Non-Owned, and Hired:</b>	
Bodily injury each person	\$500,000.00
Bodily injury each occurrence	\$500,000.00

Liability insurance coverage indicated above must be considered as primary and not as excess insurance. South Central shall furnish a certificate evidencing such coverage, with County listed as an additional insured, except for professional liability, workers' compensation and employer's liability. Certificate shall be provided with bid/proposal submittals. Certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited, or restricted until thirty (30) days after County receives written notice of such change. All insurance must be with an insurance company with a minimum BEST rating of A-VIII and licensed to do business in the State of Kansas. It is the responsibilities of South Central to require that any and all approved subcontractor's meet the minimum insurance requirements. South Central shall obtain the above referenced certificate(s) of insurance, and in accordance with this Agreement, provide copies of such certificates to County.

**8. Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.

**9. Assignment.** Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

**10. Amendments.** Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

**11. Subcontracting.** None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of County.

**12. Severability Clause.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

**13. Waiver.** Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by County shall not constitute a waiver.

**14. Force Majeure.** County shall not be held liable if the failure to perform under this Agreement arises out of causes beyond the control of County. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by County's employees, and freight embargoes.

**15. Order of Preference.** Any conflict to the provisions of this Agreement and the documents incorporated by reference shall be determined by the following priority order:

- a. Sedgwick County Contractual Provisions Attachment

- b. Written modifications and addenda to the executed Agreement
- c. This Agreement document
- d. South Central's written response to the RFP (if applicable)
- e. The RFP (if applicable)

**16. Environmental Protection.** South Central shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. South Central shall report any violations to the applicable governmental agency. A violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

**17. Nondiscrimination and Workplace Safety.** South Central agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

**18. Retention of Records.** Unless otherwise specified in this Agreement, South Central agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of expiration or termination of this Agreement.

Matters involving litigation shall be kept for one (1) year following termination of litigation, including all appeals, if the litigation exceeds five (5) years.

**19. Ownership of Data.** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by South Central in relation to this Agreement shall be owned by County and shall be handed over and/or returned to County upon the expiration or termination of this Agreement. South Central shall not release any such materials without written approval of the County.

**20. Intellectual Property Rights.** As applicable, all original software, software code, and/or intellectual property developed or created by County in relation to this Agreement shall remain the sole property of the County. South Central shall surrender all original written materials, including, but not limited to any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, and any and all intellectual property to County upon the expiration or termination of this Agreement.

**[remainder of this page intentionally left blank]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SEDGWICK COUNTY, KANSAS

SOUTH CENTRAL MENTAL HEALTH  
COUNSELING CETNER, INC.

\_\_\_\_\_  
James M. Howell, Chairman  
Commissioner, Fifth District

                      
Dan Rice, Ph.D.  
Executive Director

APPROVED AS TO FORM ONLY:

ATTESTED TO:

                      
Misha C. Jacob-Warren  
Assistant County Counselor

\_\_\_\_\_  
Kelly B. Arnold  
County Clerk

## SEDGWICK COUNTY 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, which is attached hereto, are hereby incorporated in this Agreement and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the Agreement 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 Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (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 for in the Agreement, except that such notice shall not be required prior to ninety (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 to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption.  
  
County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County 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.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.
11. **Confidentiality:** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
12. **Cash Basis and Budget Laws:** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the



County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** 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 and 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 Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (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 this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.
15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.



## **APPENDIX B**

### **Scope of Services**

It is the purpose of this Agreement that County, by and through its COMCARE department, provides tele-video inpatient preadmission screening for after hour's emergency mental health services for residents of Butler County. The services shall be provided via tele-video at COMCARE's Crisis location, 635 N. Main, Wichita, Kansas.

#### **1. INPATIENT PREADMISSION SCREENING**

A. COMCARE agrees to provide professional inpatient preadmission tele-video screening services during the hours of 5:00 pm to 8:00 am weekdays, weekends and holidays for Butler County residents. South Central expressly agrees to pay a \$800.00 monthly fee to COMCARE for the administrative, equipment, and staffing costs associated with the services being provided under this agreement. South Central agrees to reimburse COMCARE \$315.00 per state hospital screen completed. Services to be reimbursed include all consultation and communication by tele-video with regard to residents of Butler County requesting or requiring mental health emergency services. Such consultation may be with residents requiring service, members of their family, South Central staff, law enforcement officers, hospital personnel, or other community professionals. South Central also agrees to reimburse COMCARE \$2.00 per minute for time spent by COMCARE Master Level Mental Health Professionals in providing face-to-face tele-video or telephone emergency services to Butler County residents when there is no third party insurance available for reimbursement. Fees charged for face to face tele-video interventions provided by COMCARE will not exceed a total of 90 minutes (\$180.00) per intervention on any single day.

B. South Central expressly understands and agrees it will be responsible for providing all inpatient preadmission screens called in prior to 5:00 pm or after 8:00 am weekdays for Butler County residents.

C. South Central shall notify COMCARE electronically or by fax of its holiday schedule at least two (2) weeks before the scheduled holiday.

D. South Central expressly understands and agrees to pay for patient transportation costs to hospitals and other facilities as established by South Central's written transportation protocol and as scheduled by COMCARE. South Central agrees that COMCARE is not responsible for providing and/or for paying for transportation services for non-Sedgwick County residents.

E. South Central agrees to provide an emergency contact name and phone number for COMCARE staff in case COMCARE is unable to reach South Central's on-call staff. South Central shall also provide COMCARE with the contact information for its on-call physician.

#### **2. AFTER HOURS MENTAL HEALTH EMERGENCY SERVICES**

A. COMCARE agrees to provide after-hours tele-video emergency mental health services during the hours of 5:00 pm to 8:00 am on weekdays, weekends and holidays for Butler County residents.

B. These services shall include:

a. Crisis intervention, counseling, and consultation to South Central clients, or residents of Butler County;

b. Consultation to South Central professional staff members;

c. Consultation and referral to professional caregivers, law enforcement agencies, and other service organizations regarding mental health emergency situations.

C. COMCARE agrees that services provided under this Agreement shall be provided by Master Level Mental Health Professionals. Any services involving face-to-face tele-video contact with South Central clients and/or residents of Butler County will be provided by a COMCARE Master Level Mental Health Professional.

D. South Central agrees to make available to COMCARE the names and method of contacting designated South Central staff members who shall make themselves available after hours for consultation, face-to-face intervention, and screening assessments on behalf of South Central clients or other residents of Butler County. In addition, South Central agrees to make available to COMCARE information concerning procedures for hospitalizing residents of Butler County, including contact information for physicians responsible for authorizing any necessary hospital admissions.

E. COMCARE shall maintain a record of each tele-video contact provided including client identifying information (if possible), date and time of tele-video contact, identified problem, intervention given, disposition, and length of time involved with tele-video session. COMCARE shall provide a written summary of such information to South Central on a monthly basis.

F. South Central agrees to provide COMCARE current information regarding agencies, organizations, and other community resources serving Butler County necessary to effectively provide mental health emergency services. This information shall be placed in the community resource database by South Central staff prior to commencement of after-hours services and updated as changes occur.

G. South Central agrees to provide COMCARE "client alerts" on any client who may be at risk or clients requiring special instructions per South Central staff.

H. COMCARE will be responsible for all internal equipment expense necessary to provide after-hours tele-video coverage for South Central. South Central understands and agrees that COMCARE may use its existing tele-video equipment, recognizing it may not have law enforcement tracing ability.

I. Payment for services provided by COMCARE shall be made by South Central upon receipt of monthly itemized statements submitted by COMCARE. Payment shall be made within thirty (30) days of the receipt of such statements.