

STATE OF KANSAS  
Kansas Department for Aging  
And Disability Services  
AND  
Central Plains AAA

**SENIOR CARE ACT AGREEMENT:**

This Senior Care Act Agreement (the "Agreement") is made effective this 1st day of July, 2016 by and between the Secretary of the Kansas Department for Aging and Disability Services ("KDADS") and Central Plains AAA ("CONTRACTOR"), all of whom may hereinafter be referred collectively to as the "Parties."

WHEREAS, pursuant to K.S.A. 75-5928 et seq., the KDADS is services authorized to establish a program of in-home services for residents of Kansas 60 years of age or older called the Senior Care Act (SCA); and

WHEREAS, Contractor wishes to provide services to eligible persons under the SCA; and

WHEREAS, it has been determined by KDADS that it is in the best interests of KDADS and the State of Kansas for Contractor to provide such services.

NOW, THEREFORE, pursuant to the terms and conditions set forth herein, and for good and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, KDADS and Contractor agree as follows:

1. Contractor's Duties. Attached hereto and incorporated herein as Appendix A is a document entitled Scope of Work ("Scope of Work").
2. Compensation. In addition to the "advance" payment noted in the Scope of Work, the total amount payable under this Agreement shall be contained in the Information Memorandum ("IM") for the respective fiscal year. Once KDADS budget is finalized the IM shall be sent to the Contractor under separate cover. Contractor shall enter the plan of care services into the KAMIS database. Assuming approval, KDADS shall pay such services within thirty (30) days of the original billing date.
3. Term of Agreement. The term of this Agreement shall commence on 07/01/2016 and shall end on 06/30/2017, unless terminated earlier pursuant to the provisions herein.
4. Agreement Termination, Default and Remedies.
  - a. Any party may terminate this Agreement, other than as specified herein below, by giving written notice of the termination at least 20 calendar days prior to the date of termination stated in the written notice.
  - b. KDADS may terminate this Agreement without prior notice upon making the determination that termination is necessary to avoid harm to the public, to prevent fraud or abuse, or to protect public funds.
  - c. In the event that Contractor fails to perform a material provision of this Agreement, KDADS may, in addition to such other remedies provided for by law:
    - i. Terminate this Agreement; or
    - ii. Delay payment until KDADS verifies Contractor's performance.
5. Retention of and Access to Records. All records prepared pursuant to this Agreement shall be retained and safeguarded for a six-year period following termination of this Agreement, and said records shall be made available to any other party to this Agreement, and independent auditor retained by any other party, the Secretary of Health & Human Services, the U.S. Comptroller General, the Auditor of the Kansas Legislative Division of Post Audit, or their designees. Each party shall bear the costs of storing, retrieving, and producing its records created and required to be kept under this Agreement.
6. Independent Contractor Status. At all times pertinent to this Agreement, Contractor shall perform as and hold the status of independent contractor. Nothing in this Agreement is intended to create or imply any type of employer-employee, principal-agent, master-servant, or any other relationship other than that of independent contractor as between KDADS and Contractor. KDADS shall not withhold any form of taxes, insurance, assessments, or other amounts from payment to Contractor. Contractor shall be solely responsible for payment of any and all taxes incurred as a result of this Agreement.
7. Approval of the Director of Purchases. The parties agree that no funds can or will be authorized under this Agreement until the Agreement is approved and the appropriate authority is granted in writing to KDADS by either KDADS Procurement Officer and/or the Director of the Division of Purchases, Department of Administration.
8. Incorporation of the State of Kansas Contractual Provisions Attachment. The provisions of Contractual Provisions Attachment, Form DA-146a (Rev. 6/12), a copy of which is attached hereto and identified as Appendix B, are incorporated by this reference as if the same were set forth in full herein.
9. Service of Notices. All notices required or which may be given pursuant to this Agreement shall be in writing, personally delivered by courier or commercial delivery service, or sent by facsimile and United States mail, first class, postage prepaid, to the following addresses or such other address as may be designated in writing by the named person during the term of this Agreement:

If to Contractor:

Annette Graham, Executive Director, Executive Director  
Central Plains AAA  
2622 W. Central, Suite 500  
Wichita, KS 67203

If to KDADS:

Craig Kaberline, Commissioner on Aging  
 Kansas Department for Aging and Disability Services  
 New England Bldg  
 503 S Kansas  
 Topeka, KS 66603

Timothy E. Keck,  
 Department for Aging and Disability Services  
 New England Building  
 503 S Kansas Avenue  
 Topeka, KS 66603-3404

With a copies to:

Chief Counsel, Legal Division  
 Kansas Department for Aging and Disability Services  
 503 South Kansas Avenue  
 Topeka, KS 66603-3404

and

Lacey Vaughan  
 SCA Program Manager  
 Kansas Department for Aging and Disability Services  
 503 South Kansas Avenue  
 Topeka, KS 66603-3404

10. Reporting. (☐ No Reporting Required). In addition to Contractor's duties and obligations described elsewhere in this Agreement, Contractor shall prepare and deliver to KDADS quarterly written reports (the "Reports"). Reports shall be due as follows:

A.

<u>Time Period</u>	<u>Report Due Date</u>
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- |  |  |
|--|--|
| 11. <u>Waiting List Report</u> . By the third day of the month following the reporting month, the Contractor shall provide its "waiting list" comprised of persons who have yet to receive SCA services. The list shall be provided to the SCA Program Manager via electronic email.   |  |
| 12. <u>HIPAA and HITECH Rule</u> . The Contractor and the KDADS have executed a Business Associates Agreement ("BA AGT."). In the event of an amendment to either the HIPAA or the HITECH Act, Contractor Agrees to cooperate in executing a revised BA AGT. The Contractor agrees to comply with the terms of the BA Agt. as if the same were set forth in full herein.   |  |
| 13. <u>Amendment or Assignment</u> . Modification or amendment to this agreement shall be in writing and executed with the same formality as the original. Similarly, this Agreement shall not be assigned unless approved in writing by the parties hereto. All assignments not approved pursuant to this provision are void.   |  |
| 14. <u>Signatures</u> . This Agreement (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. |  |
| 15. <u>Terms Read and Understood</u> . The signatories to this Agreement certify that they have read this Agreement, have had opportunity to confer with counsel and fully understand all of the terms. The parties acknowledge and represent that they enter into this Agreement of their own free will, and not from any representation, commitment, promise, pressure or duress from any other party.                                   |  |
| 16. <u>Cooperation</u> . The parties agree to fully cooperate with each other in the performance hereunder, and shall execute such additional agreements, documents, or instruments, if any, as may reasonably be required to carry out the intent of the Agreement.   |  |
| 17. <u>Waiver of Breach</u> . Waiver of a breach in performance of any term of this Agreement by KDADS shall not be construed as a waiver of any subsequent breach of the same or any other performance or provision of this Agreement.  |  |
| 18. <u>Invalidity</u> . Any provision of this Agreement determined to be invalid or unenforceable shall not affect the validity or enforceability of the remaining provisions, and in all respects the agreement shall be construed as if such invalid or unenforceable provision was omitted.   |  |
| 19. <u>Prior Negotiations</u> . This Agreement supersedes all prior negotiations and agreements between these parties with respect to the matters stated herein, and it represents the entire understanding of the parties.  |  |
| 20. <u>Binding Effect</u> . The terms and acknowledgements set forth in the Agreement shall be binding upon the parties and shall inure to the benefit of the parties, and their respective successors, assigns, heirs, executors, administrators and representatives.   |  |
| 21. <u>Dispute Among Contract Terms</u> . In the event there is a dispute as to the priority and/or interpretation of contract terms, the parties intend that the following order shall control: First, the DA-146a; Second, the terms of the within Agreement; and Third, the Scope of Work.  |  |
| 22. <u>Governing Law</u> . This Agreement shall be governed by the laws of the State of Kansas. Should judicial intervention be required, the parties agree that venue shall only be property in the District Court for Shawnee County, Kansas.  |  |
| 23. <u>Electronic Signatures</u> . The parties, and any non-party approver, agree that by typing in the name of the "Authorized Signatory" for the Contractor, any other party or non-party approver and marking the box "approved", that this not only constitutes the irrevocable  |  |

acceptance of all terms contained in the Agreement, but also that the signing party is authorized to bind the Contractor to such Agreement and that any objection to foundation, its authenticity or admission into evidence, if necessary, is hereby waived.

24. Miscellaneous Provision. None

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives on the dates noted by the signatures below.

**KANSAS DEPARTMENT FOR AGING  
AND DISABILITY SERVICES**

**CENTRAL PLAINS AAA**

By: \_\_\_\_\_  
Timothy E. Keck, Interim Secretary for Aging and Disability Services

By: \_\_\_\_\_  
Annette Graham, Executive Director

FY 2017

State of Kansas  
Kansas Department for Aging  
And Disability Services, and;  
Central Plains AAA

**AGREEMENT FOR:  
SENIOR CARE ACT AGREEMENT  
( FY 2017 )**

**APPENDIX A  
SCOPE OF WORK**

FY 2017

State of Kansas  
Kansas Department for Aging  
And Disability Services, and;  
Central Plains AAA

**SCOPE OF WORK**

**I. Introduction and Summary:**

This Scope of Work pertains to the Senior Care Act (SCA) as administered by the Kansas Department for Aging and Disability Services (KDADS).

**II. Term Of The Contract/Grant:**

A. Term and Termination. The term of this Agreement shall be for a period of one-year beginning July 1, 2016, and ending June 30, 2017; provided, however, that such term may be extended for three (3) ensuing one (1) year terms as follows:  
If the Contractor wishes to renew the Agreement, it shall send written notification to the KDADS by close of business on or before April 30th of the upcoming contract year. KDADS shall have up to and including June 1st to accept such renewal in writing. If the renewal is accepted, the Agreement shall be deemed extended for another one (1) year term pursuant to the terms and conditions of this Agreement as well as any new or amended terms and conditions as contained in the amendment which extends this agreement. If this agreement is renewed, the parties agree that all dates that appear herein shall be deemed amended to coincide with the time frame of the option year.

B. Quality Assurance; Reviews; Corrective Action Plans.

1. The Contractor must have a quality assurance plan in place to objectively and systematically monitor and evaluate the quality of services delivered under the SCA Program.
2. The quality assurance program must include consultation with providers, review of records, customer satisfaction, and customer outcome measures.

The Contractor shall strictly comply with any KDADS quality assurance programs and reviews of the SCA Program. Upon receipt of a written corrective plan, the Contractor shall timely perform by the deadline indicated, any corrective action required by KDADS when KDADS's quality assurance program identifies any problem with the SCA Program.

C. Default and Remedies. If the Contractor fails to timely perform any requirement or provision of this Agreement or any quality assurance corrective action plan, time being of essence, KDADS may take any action or seek any remedy authorized by law or by this Agreement including, but not limited to, the following:

1. Termination of this Agreement;
2. Reduction of the amount paid to the Contractor through the SCA Program or through any other program administered by KDADS by recoupment or by a setoff against the amounts otherwise due and owing from KDADS to the Contractor; or
3. Delay payments to Contractor while KDADS verifies the extent of Contractor's performance or nonperformance.

### **III. Outcome/Goal(s):**

A. Fees for Services; Sliding Fee Schedule; Customer Payment; Voluntary Contributions. Pursuant to K.S.A. 75-5933 and the applicable section of the FSM, the Contractor shall, or shall require its subcontractors to, bill SCA customers and collect fees for services pursuant to the sliding fee scale.

B. Mandatory Customer Fee for Services. In order to receive SCA services, SCA customers are required to pay a fee for the services provided according to a sliding fee scale and the applicable section of the FSM. The Contractor or its subcontractors shall bill customers the amount required by the SCA sliding fee scale which was published in the Kansas Register.

C. Billing, Payments, Accounting, and Application of Payments. The Contractor, or its subcontractors, will prepare and send bills at least quarterly for the customer's fees. For customer fee payments billed, the Contractor will provide a written accounting to KDADS according to the prescribed format and will require its subcontractors to provide a written accounting to the Contractor. Pursuant to K.S.A. 75-5933, customer fees collected by the Contractor or its subcontractors as a billed co-pay shall be accounted for as program income and expended during the fiscal year in which the program income is received. Donated funds received by the Contractor or its subcontractors shall be accounted for as program income and expended for increased services during the fiscal year the program income is received.

D. Termination of Services for Failure to Pay Fee. In the event a customer fails to pay the appropriate fee, the customer's SCA services shall be terminated pursuant to the provisions of the applicable section of the FSM.

E. Voluntary Contributions. SCA customers with family income below the poverty income level may contribute toward SCA services. The Contractor must use any voluntary customer contributions it may receive to make additional SCA services available during the fiscal year this program income is received.

F. Prior Notification of Provider Rates Not in Application; Adding a Provider. The Contractor shall submit its proposed subcontractor unit rates via hard copy, fax or email to the KDADS prior to contracting for SCA Program services. Should Contractor fail to provide the KDADS with the name and the new provider rate by the 24th day of the month following the month in which services were provided by such new provider, the KDADS shall not reimburse Contractor for services rendered by the new provider for such month(s). For example, if the Contractor contracts with a new provider in August 2014, and the new provider starts to provide services in September 2014, but the Contractor does not provide such information to KDADS until November 20, 2014, KDADS would not pay the new provider for services rendered in September 2014, but would pay for services rendered in October 2014.

G. Change of Provider's Rate. During the term of this Agreement, Contractor may only change a provider's rate one time. If a provider's rate does change, however, Contractor shall provide the KDADS written notice of the same immediately following such rate change via hard copy, fax or email. If a rate is changed for an existing provider, the provider service maintenance and mass update shall be performed no later than 5:00 p.m. on the last day of the month in which the new rate becomes effective.

H. Administrative Services. In addition to the administrative services described elsewhere in this Agreement, the Contractor shall perform those tasks, which are necessary to administer the SCA Program and deliver the SCA Program services to the customers.

I. Stop-Gap Use of SCA Program Funds. The Contractor shall assure that SCA Program funds are spent according to the applicable section of the FSM.

J. Program Monitoring and Management. The Contractor shall develop and implement a plan to manage SCA Program funds in a way to stay within its SCA budget, to avoid disruption of customer services and, when required, to prioritize such services when resources are limited. If services are available on a limited basis, the Contractor shall enforce a waitlist for requested services. Each Contractor must submit a monthly waitlist to the KDADS SCA program manager by the 3rd of each month. The Contractor shall further monitor its performance and the performances of its subcontractors, and shall monitor and enforce the KDADS' policies among its subcontractors and assessors.

K. Subcontractor Competition; Minority-owned Businesses. The Contractor shall use a competitive process to solicit bids from potential subcontractors and to negotiate and award contracts to subcontractors. Where feasible, the Contractor shall award subcontracts to minority-owned businesses having their principal business offices within the Contractor's service area.

L. Code of Conduct. The Contractor shall develop, implement, and maintain a written code or standard of conduct prohibiting conflicts of interest and governing the performance of its officers, employees, and agents in negotiating and awarding subcontracts

and spending SCA Program funds. The code or standard of conduct shall be an official document adopted or approved by the Contractor's Board of Directors or other governing body. The code or standard of conduct shall address, at a minimum, the following issues:

1. That the Contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors or potential subcontractors;
2. All persons on the Contractor's policy-making board and all employees in top management will file conflict of interest statements which will set forth any organizational, financial, or familial relationship with actual or potential providers of services under funds from the SCA Program;
3. Persons serving on advisory councils who are also staff or board members of potential subcontractors which could be affected by SCA projects being considered by the Contractor's advisory council shall not be present during nor participate in any discussion, inside or outside of the advisory council's meeting, involving any presentation on those projects and may not vote in person or by proxy on any matter related to or affected by the SCA project; and
4. Such standard or code shall provide for appropriate penalties, sanctions, or other disciplinary actions for violations of the code or standard.

M. Compliance Standards. In operating the SCA Program, the Contractor shall meet the standards set by other federal, state, or local authorities including, for example, any applicable fire, health, safety, sanitation, licensing, registration, certification or insurance standards.

#### **IV. Services To Be Provided:**

A. SCA Program Services. The Contractor shall procure and coordinate in-home SCA program services described in the most recent version of the KDADS' Service Taxonomy to eligible persons pursuant to a written plan of care developed by one of the Contractor's case managers or other qualified assessors. Pursuant to K.S.A. 75-5932, the Contractor may not actually provide in-home services, but may provide administrative services such as assessments and case management.

B. Assessments; Reassessments. Assessments and reassessments shall be completed pursuant to the requirements contained in the applicable section of the KDADS' Field Service Manual ("FSM").

C. Determination of Eligibility. The Contractor shall determine the eligibility of persons to receive services under the SCA Program by applying information collected on the Uniform Assessment Instrument ("UAI") to the eligibility criteria contained in K.A.R. 26-8-2, and the applicable section of the FSM. In order to determine a person's eligibility, the person must give the assessor all of the information requested by the UAI, including accurate information on his or her income and liquid assets. Pursuant to K.A.R. 26-8-7, if a customer refuses to disclose his or her income or liquid assets, then that customer shall pay 100% of the cost of the service or customer may choose to decline/discontinue service.

D. Data Entry. The Contractor shall enter the following data into the Kansas Aging Management Information System ("KAMIS"):

1. assessment data recorded on the completed UAI;
2. reassessment data recorded on the completed UAI; and
3. units of service actually provided to eligible persons according to the timeframe requirements contained in the applicable section of the FSM.

E. Customer Safety; Background Checks; Liability Insurance Coverage. The Contractor shall take the following steps to provide protection for its customers and KDADS:

1. Regarding Contractor's Employees and Subcontractors. The Contractor shall ensure that its employees, assessors, or its Subcontractors who perform SCA Program services in customer's homes:
  - (a) are qualified under any applicable state and/or federal law to perform those services;
  - (b) have complied with the applicable section of the KDADS FSM;
  - (c) have complied with KDADS FSM requirements relating to background checks;
  - (d) are covered by a policy of liability insurance in an amount not less than \$200,000 per occurrence and \$600,000 annual aggregate to indemnify and recompense the customer and their family for any liability caused by the service provider's negligence; and
  - (e) are covered by a policy of liability insurance in an amount not less than \$200,000 per occurrence and \$600,000 annual aggregate to indemnify and recompense the customer and their family for any liability caused by the service provider's fraudulent or dishonest acts.
2. Regarding Contractor's Service Provider Organizations. In entering into an agreement with a service provider to perform SCA services in a customer's home, the Contractor shall contractually require such provider to comply with the following:
  - (a) that the provider and persons employed by or contracted with the provider are qualified under any applicable state and/or federal law to perform those services;
  - (b) have complied with the applicable section of the KDADS FSM;
  - (c) that such persons employed by the provider or contracted with the provider have complied with KDADS FSM requirements relating to background checks;
  - (d) are covered by a policy of liability insurance in an amount not less than \$200,000 per occurrence and \$600,000 annual aggregate to indemnify and recompense the customer and their family for any liability caused by the service provider's negligence; and

(e) are covered by a policy of liability insurance in an amount not less than \$200,000 per occurrence and \$600,000 annual aggregate to indemnify and recompense the customer and their family for any liability caused by the service provider's fraudulent or dishonest acts.

#### **V. Deliverables and Reporting:**

Other than the Waiting List Report required under the Agreement and the input of information into KAMIS, no additional reporting is required.

#### **VI. Cost and Payment:**

A. KDADS' Duties and Obligations. During the Term of this Agreement, KDADS will perform the following duties and obligations, in addition to those described elsewhere in this Agreement:

1. Compensation. KDADS shall pay for services required under this Agreement with State General Funds and Social Service Block Grant monies appropriated by the Kansas Legislature for the SCA Program. KDADS has allocated a portion of the total appropriated SCA Program money not to exceed the amount allocated in corresponding fiscal year's Information Memorandum to pay for services to be provided by or through the Contractor under this Agreement. KDADS will pay the Contractor for services provided through the SCA Program according to the following:

(a) The administrative rate will be negotiated between the Contractor and the KDADS;

(b) Units of assessment shall be documented by recording 1 to 7.50 minutes as .50 unit and by recording 7.51 minutes to 15.0 minutes at 1.0 unit. Hours shall be documented by recording time in increments of .25, .50, .75 and 1.0 hours. With the least amount recorded at .25 hour, time shall be rounded as follows: .26 - .49 hour as .50 hour; .51 - .74 as .75 hour; and .76 - .99 hours as 1.0 hour.

(c) The amount billed to a customer pursuant to the sliding fee scale will be deducted from the amount billed by the Contractor; and  
(d) If a different funding amount occurs, the parties agree that such issuance shall not require an amendment to this Agreement, but notice of the same may be given by written notification, with a copy of the issued IM, and the parties shall be bound by the same.

The Contractor will submit a budget page(s) to KDADS to account for the change in funds.

2. Technical Assistance. Upon the Contractor's written request, KDADS shall provide the Contractor with technical assistance necessary for the Contractor to satisfactorily perform this Agreement. "Technical assistance" shall not include legal advice, services or representation; contract or report drafting services; performance of any of the Contractor's duties or obligations (including anything required by this Agreement); or granting extensions of time to perform a required act.

3. Billing and Payment Process. The parties shall follow the billing and payment process described below:

(a) General Method. Subject to section III.F. herein, Contractor shall be deemed to have submitted a timely billing to the KDADS when Contractor enters the required data into KAMIS before 10:00 p.m. on the twenty-fourth (24th) day of the month following the month in which services were provided (the "Original Billing Deadline"). KDADS will pay Contractor for entered units on or before the fifteenth (15th) day of the month following the Original Billing Deadline. Should Contractor fail to bill Purchaser for units of service provided, Contractor may enter such units within two (2) months following the Original Billing Deadline. No payment shall be made for units of service entered greater than two (2) months following the Original Billing Deadline. Despite the above, and for the month of June 2015, the final deadline for Contractor to enter units of service provided shall be August 24, 2015.

(b) Advance Payment for Services; Recoupment. Notwithstanding any other provision of this Agreement, the KDADS shall make a one-time advance payment representing an amount equal to two twelfths (2/12th's) of the amount allocated to the Contractor for services to be provided during the term of this Agreement. KDADS shall recoup the full amount of this one-time advance payment by withholding one-fourth (1/4) of the advance payment for the billing period November, 2014 through February, 2015 from the monthly payments which KDADS would have otherwise made to the Contractor during the term of this Agreement.

(c) Payment for Administrative Services. KDADS shall pay the Contractor a negotiated amount for administrative services, which the Contractor is required to perform during the term of this Agreement by making 12 monthly payments based on such negotiated amount.

(d) Nonpayments. The Contractor shall not submit to KDADS any billing for services which have not yet been performed. KDADS will not pay for any services after the total SCA Program money obligated under this Agreement has been paid to the Contractor.

(e) Withholding Payments and Recouping Overpayments. KDADS will not pay for services which have not yet been performed. KDADS may withhold payments for any services required by this Agreement which the Contractor is failing or has failed to perform. KDADS may recoup payments for any services required by this Agreement which the Contractor is failing or has failed to perform from any money held or controlled by KDADS under any program administered by KDADS which the Contractor would otherwise be entitled to receive. The Contractor shall return to or repay KDADS for any payments for services for which the Contractor billed but which the Contractor or its independent Contractors did not perform.

(f) Retroactive Adjustment of Financial Data. KDADS will make adjustments on previously paid services, which meet the following conditions:

(i) Unless otherwise provided for herein, a retroactive financial adjustment may only be made if entered by 10:00 p.m. two (2) months following the Original Billing Deadline. For example, a retroactive financial adjustment for the month of March, 2015, must be entered into KAMIS by 10:00 p.m. on June 24, 2015.

(ii) The Contractor shall enter units of service and plan of care data into the KAMIS by the deadline as identified in section 1.

(iii) The retroactive adjustments shall be made for the fiscal year covered by this Agreement only except in the case of provision section 4.

- (iv) If the adjustment is the result of an overpayment from KDADS, the financial adjustment shall be made regardless of the period in which the overpayment occurred.
- (v) The final deadline for Contractor to submit retroactive financial adjustments for the month of June will be August 24, 2015, unless such adjustment is the result of an overpayment as identified in section 4.
- (vi) The term "Retroactive Adjustment of Financial Data" shall not apply to the Contractor's written certification of match as described herein in Section VI, 5.

4. **Unused Funds.** During the last three months of this Agreement, or at such other time as the KDADS may prescribe, the KDADS may allow the Contractor to either (i) transfer unspent SCA program funds to another AAA, or (ii) to receive unspent SCA program funds from another AAA; provided, however, that any funds transferred pursuant to this section shall be reviewed and approved in writing by the KDADS. Application for the transfer of unspent funds and/or receiving unspent funds must be completed by the Contractor in written form to SCA program manager and KDADS Commissioner on Aging prior to Contractor releasing or receiving funds. Updated SCA budgets with corrected budget amounts must be received in entirety to the SCA program manager. In the event of a transfer of SCA Program funds, the parties agree that no amendment to this Agreement is necessary, and that notice of the same may be made by written notification, a copy of which shall be attached and made part of this Agreement.

5. **Matching Funds.** When a unit of local government, or the single entity responsible for ad valorem property tax levies for services for the aging, as designated by the local unit of government, pays matching funds directly to the Contractor, such amount shall only be considered matching funds by the KDADS upon receipt of proper resource justification. Resource justification shall include written minutes from the local unit of government or the single entity responsible for ad valorem property tax which identifies the amount committed for services to be delivered and shall be provided to KDADS not later than December 20, 2014. The parties further agree that this "match" document, once submitted to KDADS, is not subject to change or amendment unless there is a typographical or mathematical error which is documented in writing by the entity from whom the match is received, with a copy of such documentation being provided to KDADS. KDADS shall recoup from Contractor any funds designated as matching funds, which are not properly justified.

## **VII. State Resources To Be Provided (If Applicable):**

### **A. Appeals and Audits.**

1. **Notice of Action Including Notice of Appeal Rights.** Unless otherwise provided for by law, appeals of any action proposed or taken by KDADS, the Contractor (including any of its assessors or employees), or any subcontractor (including any of its employees) shall be governed by the applicable section of the FSM, the provisions of which are incorporated herein.

2. **Internal Review; KDADS' Corrective Action.** The Contractor shall provide an internal appeal or review process to hear and consider claims, complaints, or disputes involving actions by it or its subcontractors. Upon the filing of an appeal, KDADS shall internally review the action of the Contractor, or the subcontractor, whichever is appropriate, to determine whether the action proposed or taken was correct and appropriate and whether the action should be defended through the appeal. KDADS shall have the authority and discretion, at any point during the appeal process, to determine whether the action proposed or taken was incorrect or inappropriate and to take any corrective action KDADS deems appropriate to resolve the issues on appeal. The Contractor shall, and in all of its subcontracts, require its subcontractors to take any corrective action directed by KDADS which KDADS, after considering the issues involved in any appeal, deems necessary. Nothing in this subsection shall affect the Contractor's or the subcontractor's right to appeal the corrective action directed by KDADS.

3. **Roles During Appeal Process: KDADS' Handling of Appeals; Contractor and Subcontractor Assistance.** KDADS and the Contractor or subcontractor whose action is being appealed shall have separate roles during the appeals process. KDADS shall be responsible for presenting the case in defense of the action being appealed and the Contractor shall be responsible for assisting KDADS, and in its subcontracts shall require its subcontractors to be responsible for assisting KDADS, by supplying KDADS with the testimony and documentation which KDADS deems necessary to defend the appeal. A component of case management is to assist the customer with the appeal process, as requested. The Contractor is not prohibited from explaining how a customer may seek review of a program decision or from providing an appropriate form for the customer to use in requesting a hearing. During the hearing, the customer may be represented by any person or attorney as long as the representative is not the Contractor. The Contractor shall provide KDADS, and in its subcontracts will require its subcontractors to provide KDADS, with access to witnesses under its or the subcontractor's control and documents (and copies of documents) in its or the subcontractor's control or possession to prepare for and defend the appeal. The Contractor shall require fact or expert witnesses who are subject to Contractor's control and in its subcontracts shall require its subcontractors to require fact or expert witnesses subject to the subcontractor's control, to appear and testify at the appeal hearings.

4. **Compliance with Final Orders or Decisions.** Subject to its own appeal rights, the Contractor shall be bound by and shall comply with the final order, decision, or judgment issued in any appeal by the presiding officer, a hearing panel, the Secretary for Aging and Disability Services, the respective County District Court, or the Kansas Appellate Court with final jurisdiction in the same manner as if the Contractor had appeared and defended the action which was appealed. In its subcontracts, the Contractor shall require its subcontractors, subject to their own appeal rights, to be bound by and comply with the final order, decision, or judgment issued in any appeal by the presiding officer, a hearing panel, the Secretary for Aging and Disability Services, the County District Court, or the Kansas Appellate Court with final jurisdiction in the same manner as if the subcontractor had appeared and defended the action which was appealed.

5. Appeals Beyond the Administrative Level. To the extent permitted by law, the Contractor shall retain the right to appeal, pursuant to K.A.R. Art. 26-4 and the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601 et seq.), any final order or decision rendered at the administrative agency level which adversely affects the Contractor's interests and which KDADS decides not to appeal. The Contractor shall be responsible for prosecuting and paying for its own case on appeal. KDADS shall cooperate with the Contractor by, upon written request, providing copies of documents, including a copy of the agency record for use at the District Court level, and, if the District Court orders additional discovery, by making employees available to testify as witnesses. The KDADS has the right to take whatever action is necessary to protect its interests while the Contractor makes its appeal.

6. Audits. The Contractor will assist KDADS, and in its subcontracts will require its subcontractors to assist KDADS, in any audit or review of the SCA Program which might be performed by the Kansas Division of Legislative Post Audit or by any other State or Federal agency by making persons or entities, documents, and copies of documents subject to the Contractor's or subcontractor's possession or control available for the auditors or their representatives.

### **VIII. Miscellaneous Provisions:**

A. Authorities Incorporated by Reference. The parties shall be bound by those provisions and requirements which are applicable and relevant to the SCA Program and contained in the following authorities which are incorporated into, and made a part of, this Agreement by this reference:

- (1) The KDADS' FSM, and SCA Program policies and procedures, whether adopted before or during the term of this Agreement;
- (2) Kansas Department of Administration Form DA-146a (Rev. 6-12) (a copy of which is attached hereto as APPENDIX B);
- (3) the following Kansas Administrative Regulations, as presently exist or are hereinafter or amended: KAR 26-2-1 et seq., KAR 26-3-1 et seq. and KAR 26-4-1 et seq.;
- (4) the most current version of the KDADS' Service Taxonomy;
- (5) BA Agreement; and
- (6) The Health Insurance Portability and Accountability Act of 1996 and High Tech Act, as amended. The Contractor is responsible for reviewing the contents of the foregoing authorities and shall be obligated to perform in accordance with their terms whether or not the Contractor has obtained or reviewed a copy of the authorities.

B. Access to and Retention of Accounts, Books, and Records. During the Term of this Agreement and for a period of six (6) years after its termination for any reason, the Contractor and KDADS will retain and make available, upon written request, to the Secretary of Aging, the Division of Legislative Post Audit, any other State or Federal agency, or to any of their authorized representatives, this Agreement, all customer files and any other contracts, agreements, subcontracts, books of account, financial statements, canceled checks, bank statements, documents, files, records, ledgers, accounts, or data bases of any type or format relative to the performance of this Agreement that are necessary to verify the nature and extent of the costs incurred by KDADS or the Contractor in performing this Agreement, and which reflect the disposition of all funds received by the KDADS and the nature and amount of all charges claimed against such funds. The Contractor shall maintain its accounts and documents in a manner expediting determinations of the status of SCA Program funds, including the nature and amount of all SCA Program claims, charges, and payments. In addition, customer files shall include written documentation of intakes, assessments, signed customer agreements, releases of information, records of services provided, customer fees paid and received, reason for discharge, termination and any and all other information relevant or pertinent to the customer's respective file.

C. Non-Discrimination. In their respective performances of this Agreement, neither party shall discriminate against any person on the basis of race, ancestry, national origin, color, sex, disability, age, or religion and the parties shall comport their performances with all pertinent provisions set out in all applicable Federal and State anti-discrimination acts and associated regulations, all as amended, including, but not limited to: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq. and 45 C.F.R. Part 80); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq. and 45 C.F.R. Parts 1602, 1604, 1605, and 1606); the Age Discrimination in Employment Act (29 U.S.C. 621 et seq. and 29 C.F.R. Part 1625); the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq. and 45 C.F.R. Parts 90 and 91); the Americans with Disabilities Act (42 U.S.C. 12101 et seq., 28 C.F.R. Parts 35 and 36, and 29 C.F.R. Parts 1602, 1627, and 1630); the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq. and 45 C.F.R. Parts 84 and 85); the Kansas Acts Against Discrimination (K.S.A. 44-1001 et seq. and K.A.R. Articles 21-30, 21-31, 21-32, 21-33, 21-34, 21-50, and 21-70); and the Kansas Discrimination in Employment Act (K.S.A. 44-1110 et seq. (including the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 et seq. and K.A.R. Article 21-80)). The Contractor shall include the following statement in its public notices announcing or explaining SCA Program services: "In providing services, no person shall be discriminated against on the basis of race, sex, color, national origin, or physical disability or their equivalent." The Contractor shall certify its compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000d et seq.) and its implementing regulations, as well as the absence of any commitments or obligations, on its part and on the part of any entity participating in the Contractor's activities, which are inconsistent with Title VI and its regulations, by completing and submitting an "Assurance of Compliance" form.

D. Suspension or Termination for Lack of Program Funding; Allotment. This Agreement may be suspended for any length of time or terminated at any time by either party for failure of the Kansas Legislature to appropriate funds to finance the SCA Program or for failure or refusal of the Department of Administration Division of Accounts and Reports to distribute funds to finance the SCA Program. The party suspending or terminating this Agreement pursuant to this Section shall give the other party notice, orally by



telephone and in writing by a facsimile transmission or hand-delivery, of the party's decision to suspend or terminate and of the effective date of the suspension or termination within 24 hours after that decision is made. KDADS shall not be required to use any of its State or Federal funds designated for expenditure in any other State or Federal program to pay for the Contractor's or a subcontractor's performance of this Agreement after the effective date of the suspension or termination of this Agreement. In addition, the State of Kansas' current financial situation does not make it possible for the KDADS to make firm, unalterable financial commitments. In the event the KDADS determines either a reduction or lack of funding requires a modification of this Agreement, the KDADS reserves the right to renegotiate terms and conditions of the Agreement with Contractor. Contractor agrees to cooperate with the KDADS in renegotiating this Agreement should the KDADS determine that such modification is necessary to manage the resources available to KDADS.

Further, and in the event the KDADS is subject to a formal funding reduction or allotment, the KDADS reserves the right to alter or adjust the payment amounts or terms of this Agreement to meet funding reductions or allotment(s) by sending a written notice of such alterations or adjustments to Contractor 15 calendar days before such alterations or adjustments become effective. Should Contractor believe there is a need to modify other terms or conditions of the agreement, the KDADS will, in good faith, negotiate regarding the terms of the Agreement.

E. Independent Contractor. The parties acknowledge and understand that the Contractor shall hold the legal status of an independent contractor during the performance of this Agreement. KDADS shall provide the policies which are to be applied, prescribe the deadlines to be met, and the expected outcomes of the Contractor's performance. The Contractor shall decide how to perform the required duties and obligations in order to correctly apply the required policies, to meet the deadlines, and to achieve the expected outcomes. Nothing in this Agreement, in the relationship created by this Agreement, or in the manner in which this Agreement is actually performed, is intended by the parties to be deemed or construed to create any type of employer-employee, principal-agent, master-servant, or any other type of relationship other than an independent contractor relationship between the KDADS and the Contractor. Nothing in this Agreement, in the relationship created by this Agreement, or in the manner in which this Agreement is actually performed, is intended by the parties to be deemed or construed to create any type of relationship between the KDADS and the Contractor. The parties acknowledge, understand, and agree that this Agreement does not and is not intended to, confer any protected or employment status on the Contractor, the Contractor's officers and employees, or the Contractor's contractors and its officers and employees under the Kansas Civil Service Act, K.S.A. 75-2925 et seq. The Contractor is solely responsible for paying all of the wages, salaries, insurance, employment benefits, workers compensation, unemployment, income taxes, Social Security and Medicare withholdings, and any other forms of compensation, assessments, or benefits, to or for its employees or contractors who perform services on behalf of the Contractor under this Agreement or otherwise. The Contractor, in its subcontracts, shall require its independent contractors to be solely responsible for paying all of their own wages, salaries, insurance, employment benefits, workers compensation, unemployment, income taxes, Social Security and Medicare withholdings, and any other forms of compensation, assessments, or benefits, to or for its employees or contractors who perform services on behalf of the Contractor under their subcontract or otherwise.

F. Conflicting Terms. Should a term or provision of this Agreement conflict with a term or provision of the KDADS Field Service Manual, Kansas Regulation or Kansas Statute, the term or provision of the KDADS Field Service Manual, Kansas Regulation or Kansas Statute shall control.

FY 2017

State of Kansas  
Kansas Department for Aging  
And Disability Services, and;  
Central Plains AAA

**AGREEMENT FOR**  
**SENIOR CARE ACT AGREEMENT**  
**(FY 2017)**

**APPENDIX B**

Kansas Department of Administration Form DA-146a (Rev. 6/12)

State of Kansas  
Department of Administration  
DA-146a (Rev. 06-12)

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 1st day of July, 2016.

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 will 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 will 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 will 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.