

AGREEMENT TO PROVIDE AFTER HOURS MENTAL HEALTH EMERGENCY SERVICES

by and between:

SEDGWICK COUNTY, KANSAS
and
SUMNER MENTAL HEALTH CENTER

This Agreement made and entered into this ____ day of _____, 2017, by and between Sedgwick County, Kansas ("County") and Sumner Mental Health Center, a Community Mental Health Center ("SMHC").

WITNESSETH:

WHEREAS, SMHC desires to make available certain mental health services to residents of Sumner County; and

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

WHEREAS, SMHC 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 SMHC professional inpatient pre-admission after hours tele-video screening services ("the Services") on an as-needed basis for residents of Sumner County.

2. Term. The initial term of this Agreement shall be for one (1) year, commencing on January 1, 2017, and ending December 31, 2017. The Agreement may continue for a reasonable time after December 31, 2017, if both parties agree to continue operating under the same terms of this Agreement while they are actively developing a new agreement for 2018.

3. Incorporation of Documents. Appendix A (Sedgwick County Mandatory Contractual Provisions Attachment), Appendix B (HIPAA Business Associate Agreement) and Appendix C (Scope of Services) are attached hereto and are made a part hereof as if fully set forth herein.

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General Terms and Conditions

1. **Contractual Relationship.** It is agreed that the legal relationship between SMHC 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.** SMHC 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 SMHC'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 SMHC to act in connection with the application and to provide such additional information as may be required.

3. **Compensation.** SMHC 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 Telephone 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, SMHC 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

Compass: Sumner Mental Health Center
 Attn: Dr. Rick Gaskill
 1601 W. 16th Street
 Wellington, KS 67152

5. Termination.

A. **Termination for Cause.** In the event of any breach of the terms or conditions of this Agreement by SMHC, or in the event of any proceedings by or against SMHC 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 SMHC on account thereof, by written notice, terminate immediately all or any part of this Agreement and SMHC shall be liable to pay to County any excess cost or other damages caused by SMHC 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. SMHC 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 SMHC'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. Contractor agrees to maintain the following minimum limits of insurance coverage throughout the term of this Agreement:

Worker's Compensation Applicable State Statutory Employer's Liability	
Employer's Liability Insurance:	\$100,000.00
Contractor's Liability Insurance: Form of insurance shall be by a Comprehensive General Liability and Comprehensive Automobile Liability	
Bodily Injury: Each occurrence Aggregate	 \$500,000.00 \$500,000.00
Property Damage: Each occurrence Aggregate	 \$500,000.00 \$500,000.00
Personal Injury: Each person aggregate General aggregate	 \$500,000.00 \$500,000.00

Automobile Liability – Owned, Non-Owned, and Hired:	
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. Contractor 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- and licensed to do business in the State of Kansas. It is the responsibility of Contractor to require that any and all approved subcontractors meet the minimum insurance requirements. Contractor shall obtain the above referenced certificate(s) of insurance, and in accordance with this Agreement, provide copies of such certificates to County.

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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

16. Environmental Protection. SMHC shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. SMHC 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. SMHC 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, SMHC 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 SMHC 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. SMHC 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. SMHC 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.

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

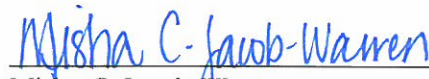
SEDGWICK COUNTY, KANSAS

SUMNER MENTAL HEALTH CENTER

James M. Howell, Chairman
Commissioner, Fifth District


Dr. Rick Gaskill
Executive Director

APPROVED AS TO FORM ONLY:


Misha C. Jacob-Warren
Assistant County Counselor

ATTESTED TO:

Kelly B. Arnold
County Clerk

APPENDIX A
SEDGWICK COUNTY MANDATORY 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 the Sedgwick County Mandatory Contractual Provisions Attachment, which is attached hereto, are hereby incorporated in this Agreement and made a part thereof. In the event of conflict between the provisions of this Agreement and the Sedgwick County Mandatory Contractual Provisions Attachment, the terms of the Sedgwick County Mandatory Contractual Provisions Attachment will control. "

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.
17. **Tax Set-Off.** If, at any time prior to or during the term of any executed agreement, Contractor is delinquent in the payment of real and/or personal property taxes to Sedgwick County, and the delinquency exists at the time payment is due under the agreement, County will offset said delinquent taxes by the amount of the payment due under the agreement and will continue to do so until the delinquency is satisfied, pursuant to K.S.A. 79-2012.

APPENDIX B HIPAA BUSINESS ASSOCIATE ADDENDUM

SECTION 1: DEFINITIONS

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

Specific definitions:

- a. **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103.
- b. **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Sedgwick County.
- c. **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

SECTION 2: OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- 2.1 not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law;
- 2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;
- 2.3 report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, as further provided for in Par. 12.1, *et seq.*;
- 2.4 mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;
- 2.5 in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- 2.6 make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;

- 2.7 make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- 2.8 make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules; and
- 2.9 maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528.

SECTION 3: PERMITTED USES AND DISCLOSURES BY ASSOCIATE

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

SECTION 4: SPECIFIC USE AND DISCLOSURE PROVISIONS

- 4.1 Except as otherwise limited in this Agreement, Business Associate may Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the contractual or legal responsibilities of the Business Associate.
- 4.2 Business Associate may Use or Disclose Protected Health Information as Required By Law.
- 4.3 Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.
- 4.4 Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- 4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.
- 4.6 Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

SECTION 5: OBLIGATIONS OF COVERED ENTITY

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

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

SECTION 6: PERMISSIBLE REQUESTS BY COVERED ENTITY

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

SECTION 7: TERM

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

SECTION 8: MISCELLANEOUS

- 8.1 A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- 8.2 The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules.
- 8.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.
- 8.4 In addition to any implied indemnity or express indemnity provision in the Agreement, Business Associate agrees to indemnify, defend and hold harmless the Covered Entity, including any employees, agents, or Subcontractors against any actual and direct losses suffered by the Indemnified Party(ies) and all liability to third parties arising out of or in connection with any breach of this Agreement or from any negligent or wrongful acts or omissions, including failure to perform its obligations under the HIPAA Rules, by the Business Associate or its employees, directors, officers, Subcontractors, agents, or other members of its workforce. Accordingly, upon demand, the Business Associate shall reimburse the Indemnified Party(ies) for any and all actual expenses (including reasonable attorney's fees) which may be imposed upon any Indemnified Party(ies) by reason of any suit, claim, action, proceeding or demand by any third party resulting from the Business Associate's failure to perform, Breach or other action under this Agreement.

SECTION 9: SECURITY RULE REQUIREMENTS

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

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

SECTION 10: TERMINATION

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

SECTION 11: EFFECT OF TERMINATION

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

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

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

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

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

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

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

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

provided, however, that nothing in this section 11.1 shall apply in the case of PHI remaining in its possession which Business Associate determines it is not feasible to return or destroy. Business Associate shall extend the protection of this Agreement to such PHI and limit further uses and disclosure of such PHI.

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

SECTION 12: NOTIFICATION OF BREACH

- 12.1 To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses, or Discloses Unsecured Protected Health Information, it shall, following the discovery of a Breach of such information, notify the Covered Entity of such Breach. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, Used, accessed, acquired, or Disclosed during such Breach. The Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in notification to the Individual under 45 C.F.R. § 164.404(c) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.
- 12.2 For purposes of this section, a Breach shall be treated as discovered by the Business Associate as of the first day on which such Breach is known to such Business Associate (including any person, other than the Individual committing the breach, that is an employee, officer, or other agent of such associate) or should reasonably have been known to such Business Associate (or person) to have occurred by the exercise of reasonable diligence.
- 12.3 Subject to section 12.4, all notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach by the Business Associate involved in the case of a notification required under section 12.2. The Business Associate involved in the case of a notification required under section 12.2, shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.
- 12.4 If a law enforcement official determines that a notification or notice required under this section would impede a criminal investigation or cause damage to national security, such notification or notice shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a Disclosure covered under such section.

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

(a) If the statement is in writing and specifies the time for which a delay is required, delay such notification or notice for the time period specified by the official; or

(b) If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification or notice temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in (a) is submitted during that time.

SECTION 13: PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.

- 13.1 Except as provided in section 13.2, the Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Covered Entity has obtained from the Individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Individual.
- 13.2. Section 13.1 shall not apply in the following cases:
- a. The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
 - b. The purpose of the exchange is for research (as described in sections 164.501 and 164.512(i) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.
 - c. The purpose of the exchange is for the treatment of the Individual, subject to any regulation that the Secretary may promulgate to prevent Protected Health Information from inappropriate access, Use, or Disclosure.
 - d. The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations in section 164.501 of title 45, Code of Federal Regulations.
 - e. The purpose of the exchange is for remuneration that is provided by the Covered Entity to the Business Associate for activities involving the exchange of Protected Health Information that the Business Associate undertakes on behalf of and at the specific request of the Covered Entity pursuant to the Agreement.
 - f. The purpose of the exchange is to provide an Individual with a copy of the Individual's Protected Health Information pursuant to section 164.524 of title 45, Code of Federal Regulations.
 - g. The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (a) through (f).

APPENDIX C

Scope of Services

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 Monday - Thursday, from 5:00 pm on Friday to 8:00 AM on Monday, and on all weekends and holidays for Sumner County residents. SMHC expressly agrees to pay an \$800.00 monthly fee to COMCARE for the administrative, equipment, and staffing costs associated with the services being provided under this agreement. SMHC 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 Sumner County requesting or requiring mental health emergency services. Such consultation may be with residents requiring service, members of their family, SMHC staff, law enforcement officers, hospital personnel, or other community professionals. SMHC 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 Sumner 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. SMHC 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 Sumner County residents.

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

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

E. SMHC agrees to provide an emergency contact name and phone number for COMCARE staff in case COMCARE is unable to reach SMHC's on-call staff. SMHC 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 Monday - Thursday, from 5:00 pm on Friday to 8:00 AM on Monday, and on all weekends and holidays for Sumner County residents.

B. These services shall include:

- a. Crisis intervention, counseling, and consultation to SMHC clients, or residents of Sumner County;
- b. Consultation to SMHC 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 SMHC clients and/or residents of Sumner Counties will be provided by a COMCARE Master Level Mental Health Professional.

D. SMHC agrees to make available to COMCARE the names and method of contacting designated SMHC staff members who shall make themselves available after hours for consultation, face-to-face intervention, and screening assessments on behalf of SMHC clients or other residents of Sumner County. In addition, SMHC agrees to make available to COMCARE information concerning procedures for hospitalizing residents of Sumner 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 SMHC on a monthly basis.

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

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

H. COMCARE will be responsible for all internal equipment expense necessary to provide after-hours tele-video coverage for SMHC. SMHC 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 SMHC upon receipt of monthly itemized statements submitted by COMCARE. Payment shall be made within thirty (30) days of the receipt of such statements.