

**KDOC and COMCARE of Sedgwick County
Service Provision Agreement**

This agreement is made by and between the Kansas Department of Corrections (KDOC) and Sedgwick County, Kansas, for its Comprehensive Community Care of Sedgwick County, hereinafter referred to as “COMCARE,” for the delivery of liaison, case management, boundary spanning and care-coordination services by COMCARE to offenders preparing for release from Kansas prisons and who are returning to Sedgwick County, as detailed in this agreement, related to accessing mental health care and related services in Sedgwick County, particularly offenders who are severely and persistently mentally ill (SPMI) or seriously mentally ill (SMI).

WHEREAS, on average 1100-1200 offenders release from Kansas correctional facilities to community supervision in Sedgwick County every year, of whom as many as thirty percent (30%) require some level of mental health care upon release.

WHEREAS, accessing mental health treatment necessary for mental illness is important to reducing the risk of an offender re-offending or returning to prison; so addressing the treatment needs of returning offenders increases community safety and has the potential to reduce recidivism and returns to prison; and in fact over the course of the last six years, return rates of offenders with mental illness has reduced by 35% through the risk reduction work being done in the various systems in Kansas;

WHEREAS, in addition to mental health treatment needs, about two-thirds of offenders leaving prison have a history and/or diagnosis of misusing drugs or alcohol, and often mental health and substance abuse treatment needs are co-occurring;

WHEREAS, best research-based practices include addressing the mental health and substance abuse needs of offenders pre-release when they are preparing for return to the community as part of reentry planning, to increase the potential for a safe and successful return, including by: establishing relationships with treatment providers; establishing care-coordination services for offenders as they near release; transitional planning to address treatment, medication management, housing, employment, financial, family and other reintegration issues, which involves treatment providers in the facilities and in the communities, as well as corrections case managers; and otherwise preparing for a continuum of care for the offender after release that is supported by and consistent with the post-release supervision plan;

WHEREAS, COMCARE provides mental health and substance abuse treatment to persons in the community in Sedgwick County, and is the designated community mental health center for Sedgwick County; has established relationships with substance abuse and other mental health and medical providers, as well as housing providers, to address these needs for persons with mental illness; and is working with corrections to identify ways for mental health and corrections systems to interface to more effectively and safely serve the returning offenders population;

WHEREAS the parties to this agreement desire to build on the ongoing collaboration between their agencies and the systems they represent by establishing a liaison or boundary spanner position, to deliver care-coordination services, and to establish a sustainable working partnership between corrections and the community mental health center;

THEREFORE the parties to this agreement hereby agree to the following:

1. KDOC will pay COMCARE a flat sum of \$ 64,701.00 for a period of one year (12) months, from July 1, 2018 through June 30, 2019, to be paid in increments of \$5,391.75 per month no later than the last day of each month. COMCARE shall submit an invoice to KDOC no later than the 10th day of each month following the provisions of services.
 - a. In the event the position discussed below becomes vacant during the period of this agreement, COMCARE shall provide coverage for the vacancy making the services available without a break in service, through a back up person.
2. This sum of \$64,701.00 covers the salary, benefits and travel for the position described in this agreement. COMCARE agrees to cover the other costs related to this position, including monthly allotment for cell phone reimbursement, pager, training, furniture, computer and phone, which costs will constitute an in-kind match by COMCARE. Except in the event COMCARE staff perform any/all of their duties on site at a KDOC facility or office, and requires access to office space, copies, fax, basic supplies, or phone use, KDOC will not bill COMCARE for any such incidental costs.
3. For this flat sum of \$64,701.00 COMCARE shall provide the following:

- a. Recruit, screen and select a qualified person to perform the duties of a Corrections Liaison/ Specialist set out in the attached Job Description, Attachment A;
- b. Assign this person full time to carry out the duties in the attached Job Description, Attachment A;
- c. Consult with KDOC before any final hiring decision is made, including providing necessary information for a background check to ensure the person is eligible to enter correctional facilities;
- d. Provide training to this person per the industry standard for community mental health centers, and coordinate with KDOC staff for this person to receive necessary KDOC training for this person to be eligible to enter and work in correctional facilities and with offenders and to have the necessary knowledge and information regarding KDOC's mental health services, discharge planning, release planning, post-release supervision, and related information;
- e. Work with KDOC staff to establish necessary procedures, protocols and policies for this person to provide services as set out in this agreement to serve KDOC offenders;
- f. Provide care-coordination services through this person to offenders preparing for release from Kansas prisons in person, by video, by phone and/or by e-mail; working with discharge planners, risk reduction and reentry (R3) staff, and unit team counselors to deliver the services covered by this agreement, to ensure access to treatment upon release has been arranged and secured; acting as a liaison to COMCARE to help set up these treatment services, and coordinating the delivery of these services; and provide short-term case management/skills building/coping skills services through this position until the offender is connected to case management services in COMCARE (CSS division); follow up with offenders who do not show for appointments to try to diagnose why and reengage them; and address system issues to increase access and staying connected by offenders;

- (a) To deliver services under this agreement the COMCARE liaison staff person will only be required to attend in person meetings at the facilities at most every other month.
- (b) On opposite months, the COMCARE liaison staff person will attend meetings, visit with facility staff, and meet with offenders via Skype or alternate type of secure telecommunication, at the Wichita Parole office. Wichita Parole will provide space and needed equipment to ensure appropriate connection is made. Facility equipment and access to telecommunication visits re already established at each site.
- g. Participate in multi-discipline team meetings with parole/reentry staff, and any other treatment provider, peer mentor, or other person working with the offender on his/her reentry/reintegration and risk reduction efforts, to provide input into case planning, and ensure all services available through COMCARE are available to the offender; and to address accessing benefits or any other resources needed to support the plan to which this person can contribute, through COMCARE or other resources/connections in the community;
- h. Serve as point of contact at COMCARE for parole officers/reentry case managers who are seeking an updated assessment of mental health care needs, to ensure the parole supervision/reentry case plan are consistent with mental health needs; and that offenders are assigned to specialized mental health staff appropriately; and otherwise, serve as point of contact for parole/reentry staff who seek information about offenders receiving services at COMCARE if there is a need to assist in getting information exchanged between corrections and COMCARE regarding offenders under supervision or involved in reentry planning;

- i. Work with KDOC mentoring coordinators to identify peer mentoring needs of offenders with mental illness, and assist reentry/parole staff in connecting offenders to peer mentoring resources when available and as appropriate;
- j. Assist in addressing housing needs of offenders with mental illness, making contacts, recommendations, and otherwise accessing resources to pay for housing and to identifying safe and affordable housing, in collaboration with reentry/parole staff; Attend all regional meetings of the Southern Parole Region held in Wichita, using that occasion to be updated and provide updates relevant to offenders receiving mental health care. Spend at least two days per month at the Wichita parole/reentry office to assist parole/reentry staff in addressing cases where there are issues related to mental health care. Assist parole/reentry staff in mental health group reporting, using this occasion to help identify and address any gaps in mental health care for offenders needing mental health services. Otherwise communicate with parole/reentry staff to ensure that offenders are able to access COMCARE services, and stay connected to services; that information is exchanged between corrections and COMCARE as needed to support the offenders' progress and success; and to address issues, questions or concerns as between the two agencies.
- k. Continue to work with parole and reentry staff as necessary, after the offenders are released, to ensure a continuum of care for mental health services;
- l. Participate in ongoing planning and development of a partnership between KDOC and COMCARE for delivery of the type of transitional planning and care coordination services which are the subject of this agreement to offenders releasing throughout the state, so that what is learned through the work done under this Memorandum of Agreement can be exported to and benefit other facilities and communities.

4. COMCARE staff, including the COMCARE liaison, will work to increase appropriate billing on clients covered by this Agreement who are in the community to help offset the costs of the liaison position.
5. KDOC has provided COMCARE's staff access to the KDOC information systems, including Offender Management Information System (OMIS) and Total Offender Activity Documentation (TOADS) for reading and/or entering information about offenders as needed to deliver services under this contract. COMCARE agrees that its staff given such access to OMIS and TOADS will abide by all rules, regulations, policies and procedures related to use of the information and confidentiality, and will execute necessary paperwork so agreeing before being provided access.
6. COMCARE agrees that it shall at all times comply with the National Standards promulgated under the Prison Rape Elimination Act (42 U.S.C. §15601, et seq.), which are found at 28 CFR 115.5 to 115.93, inclusive, and the provisions of KDOC Internal Management Policy and Procedure (IMPP) 10-103, in regard to any of its employees who have or may reasonably be expected to have contact with inmates in delivering services and/or goods pursuant to this agreement. Including,
 - a. Prior to the hiring of any employee to work under this contract who will regularly go inside any KDOC correctional facility to perform his or her duties, COMCARE will submit name and necessary identifying information to the KDOC for a criminal background check, and repeat this process at 5-year intervals as required by 28 CFR 115.17; and also shall also inquire of prospective hires and employees considered for promotion as to their involvement in any prior events involving sexual misconduct set forth at subsection (a) thereof, also per 28 CFR 115.17 at subsection (a);
 - b. COMCARE will promptly make its employees under this contract available for orientation and periodic training provided by KDOC in regard to the obligations and

requirements imposed by said Act and National Standards, as required by 28 CFR 115.32 and IMPP 10-103, Sec. II;

- c. COMCARE will promptly make available upon request to KDOC in any sexual abuse incident review conducted pursuant to 28 CFR 115.86 in which any of COMCARE's employees are involved as the target of the investigation and review, or a witness thereto, any of its employees for interview by the Sexual Abuse Incident Review Board, as well as any pertinent records regarding the incident in question; and
 - d. COMCARE will promptly make available upon request any records necessary for KDOC to meet the requirements for data collection, review for corrective action, and audits, as set forth at 28 CFR 115.87, 115.88, 115.93.
 - e. COMCARE further acknowledges that KDOC must bar any contract employee found to have engaged in sexual abuse from its facilities' premises, as well as report any such employee to law enforcement agencies and relevant licensing bodies, and that KDOC otherwise must take appropriate remedial measures in response to any violation of its sexual abuse or sexual harassment policies, as set forth at 28 CFR 115.77. And COMCARE further acknowledges and agrees that KDOC, in its sole discretion, may bar any contract employee under investigation for alleged sexual abuse or sexual harassment during the investigation.
7. COMCARE agrees that during the course of this agreement it will at all times maintain professional liability insurance in keeping with industry standards for community mental health centers in Kansas. COMCARE currently has appropriate insurance, in keeping with industry standards, and provide a certification of insurance upon execution of this agreement.
8. COMCARE shall be responsible for all administrative and other costs associated with delivering the services outlined in this agreement, including salary, benefits, office space, office supplies, office equipment, supervision, long distance costs, faxing costs, copying

costs, travel, training, professional licensing, mileage, per diem, or any other costs incurred in delivering the services herein, from within the \$64,701 paid by KDOC. KDOC shall not be responsible for any other payment for the services beyond the \$64,701 indicated in this agreement.

9. The contact persons for informal resolution of questions about this agreement are:

a. COMCARE:

Joan Tammany, Executive Director
COMCARE of Sedgwick County, Kansas
271 W. Third St. N., Suite 600
Wichita, KS 67202
316.660.7626
Joan.tammany@sedgwick.gov

b. KDOC:

Margie Phelps, Director of Reentry
Kansas Department of Corrections
714 S.W. Jackson, Suite 300
Topeka, KS 66603
785.291.3726
margie.phelps@ks.gov

10. All formal contract notifications and communications, whether notices of termination or for any other purpose under this agreement, may be accomplished by use of regular mail or personal delivery directed to the following designated individuals:

a. COMCARE:

Talaya Schwartz, Contract Administrator
COMCARE Administrative Services
271 S. Third St. N., Suite 600
Wichita, KS 67202
316-660-7612
Talaya.schwartz@sedgwick.gov

With a copy to:

Sedgwick County Counselor's Office
Attn: Contract Notification
525 N. Main, Ste. 359
Wichita, KS 67203-3790

b. KDOC:

Secretary of Corrections
Kansas Department of Corrections
714 S.W. Jackson, Suite 300
Topeka, Kansas 66603

With a copy to:

Chief Legal Counsel

At same address as Secretary of Corrections

10. The term of this agreement shall commence on July 1, 2018 and terminate on June 30, 2019. This agreement may be terminated by either party upon a minimum of thirty (30) days written notice of such termination provided to the other party. Notice of termination shall be considered effective upon the date of receipt of notice by the other party. COMCARE shall be paid for all services rendered up to and including the termination date. This agreement may be renewed by written addendum for succeeding terms, subject to availability of necessary funding and mutual agreement of the parties.
11. This agreement may only be amended by written addendum executed by KDOC and COMCARE.
12. Nothing herein is intended to benefit any third party or to create in or confer upon any third party any rights arising from or in connection with this agreement.
13. Neither party to this agreement shall prohibit or prevent the Legislative Division of Post Audit from having access pursuant to K.S.A. 46-1101, et seq. to any records, documents or other information -- confidential or otherwise -- regarding or relating to the execution and/or performance of this agreement.
14. The parties enter into the agreement in good faith and in the belief that this agreement, and actions pursuant to this agreement, are in accordance with appropriate State or Federal laws and regulations.
15. The provisions found in the Contractual Provisions Attachment (Form DA-146a), which is found at Attachment B, are hereby incorporated in this agreement and made part hereof. Should any of the provisions of this agreement conflict with any provisions of the Contractual Provisions Attachment, the provisions set forth in the Contractual Provision Attachment shall control.

16. The provisions found in the Business Associate Addendum, which is found at Attachment C, are hereby incorporated in this agreement and made part hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first written above:

**STATE OF KANSAS DEPARTMENT OF
CORRECTIONS**

JOE NORWOOD, Secretary

Date: _____

**BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY**

DAVID T. DENNIS, Chairman
Commissioner, Third District

Date: _____

APPROVED AS TO FORM ONLY:



MICHAEL L. FESSINGER
Assistant County Counselor

ATTEST:

KELLY B. ARNOLD
County Clerk



Sedgwick County Government
Wichita, Kansas

Job Code: KIU
Date: 04-24-06

Position: CORRECTIONS LIAISON/SPECIALIST

Position Summary:

Coordinates discharge planning for mental health consumers with severe and persistent mental health conditions or serious mental health conditions leaving adult prisons, and access to services in the community by mental health consumers who have returned to the community from adult prisons and/or are under post-release supervision by the Kansas Department of Corrections. Works with corrections staff to maintain individual in the community with the goal of diverting them from re-incarceration whenever possible.

Qualifications:

Bachelors Degree from an accredited college or university in Social work or a related field, or any equivalent combination of training and experience which provides the required knowledge, skills and abilities.

Valid State of Kansas Drivers License.

Prefer some experience with offender/criminal justice population, and knowledge of the adult corrections system.

Major Job Responsibilities:

- Serves as liaison to corrections, including parole, correctional facilities, Day Reporting Center (DRC) and Community Residential Bed center (CRB), regarding mental health consumers who are returning to the community from prison and/or are already in the community under post-release supervision, who require mental health care, treatment, medication management and other services.
- Works with discharge planners, parole officers, and corrections contract service providers and clients to coordinate mental health care for mental health consumers in the adult corrections system.
- Meets with Program Managers and Team Supervisors to coordinate

assignment of Case Managers to mental health consumers coming out of prison and/or already in the community under post-release supervision.

- Assists corrections system in helping mental health consumers in the adult corrections system in accessing mental health care in the community, including assisting them in navigating the service system, assisting consumers in obtaining treatment appointments, and making recommendations to the mental health system about changes in policies or practices to ensure access by corrections-supervised mental health consumers, and otherwise.
- Participates in multidisciplinary team meetings and case conferences. Attends program staff meetings.

- o Educates community and professionals by providing information on resources necessary to client's success that are not available through the corrections system. Also educates corrections system about services available in the community for mental health consumers.
 - o Confers with client's corrections supervisor, caregivers, families, physicians, lawyers, community service providers and other professionals throughout the County to secure and coordinate client services.
 - o Assists mental health consumers with SPMI and SMI determinations who are leaving state prisons and returning to the community, and/or already in the community under post-release supervision, in securing access to housing services and options available through the mental health care system.
 - o Works with corrections staff to develop plans for mental health consumers returning from prison, which will support their safe and successful return to the community, in an effort to avoid return to a correctional facility.
 - o Attends pre-release and post-release team meetings for discharge planning, staffings with parole or corrections contract providers, and/or Prisoner Review Board, to help in discharge planning, responding to non-compliant or violation behavior, determining if adjustments are needed in mental health care plan, medication, etc.; determining whether revocation is necessary, identifying safe alternatives to revocation, and the like, to provide input about the mental health care, treatment and needs of the individual, so that information is factored in to discharge planning, responding to behavior, revocation decisions, and so forth.
 - o Facilitates intake procedures for mental health consumers returning to the community from state prison, and/or in the community under post-release supervision who are accessing services for the first time.
 - o Facilitates determination of eligibility of mental health consumers in the corrections system for mental health services; notifies individuals of their eligibility; contacts individual and their guardian to discuss services available and funding sources; tracks client until all services requested are being received. Assists mental health consumers in the corrections system, and corrections staff, in processing benefits applications and accessing benefits. Tracks data on consumers served. Documents services provided in the electronic medical record.
 - o Performs related work as required.

Knowledge, Skills, Abilities and Competencies:

- u Knowledge of community services and benefits programs.
- u Knowledge of symptoms and dynamics of mental illness in adults.
- u Knowledge of the adult corrections system.
- u Knowledge of wrap-around and recovery philosophies.
- u Knowledge of State and Federal agencies and their policies.
- u Skill in the use of a personal computer and related software.
- u Ability to work with individuals experiencing psychotic episodes.
- u Ability to work with adult felons.
- u Ability to effectively communicate with people, both listening and speaking.
- u Ability to write clear and concise reports.
- u Ability to develop and maintain rapport with consumers, general public and all levels of staff.
- u Possess the ability to negotiate several flights of stairs at a time and move effectively in varied settings throughout the community.
- u Possess the mobility and judgment to execute personal protective measures.

This class specification should not be interpreted as all-inclusive. It is intended to identify the major responsibilities and requirements of this job. The incumbents may be requested to perform job-related responsibilities and tasks other than those stated in this specification.

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. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due to Lack of Funding Appropriation or Budget Rescission or Allotment:** 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. If, in the judgment of the Secretary of the state agency party, as a result of a budget rescission ordered by the Governor, or a budget allotment ordered by the Secretary of Administration, insufficient funds remain to support the function performed in this agreement and for payment of charges hereunder, State may terminate this agreement upon giving 30 days' written notice. In the event of termination due to any circumstance set forth above, Contractor shall have the right to take possession of any equipment provided State under the contract, upon the effective date of termination. State will pay to the contractor all regular contractual payments incurred up to the effective date of termination, plus contractual charges, if any, incidental to the return of any such equipment. Upon termination of the agreement by the State, title to any such equipment shall revert to the contractor upon the effective date of termination. 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.
14. **Compliance with Prison Rape Elimination Act (PREA):** The contractor agrees to comply with all applicable provisions of the Prison Rape Elimination Act of 2003 (42, U.S.C. §§ 15601, et seq.), as amended from time to time, and National PREA Standards promulgated by the Attorney General of the United States, under authority of that Act, found at 28 CFR Part 115, as amended from time to time. The contractor further agrees to comply with all applicable administrative policies and procedures of the Kansas Department of Corrections and its facilities, dealing with the subject matter of sexual abuse or sexual harassment of inmates or juvenile residents.

Attachment C

HIPAA RULES

BUSINESS ASSOCIATE ADDENDUM

DEFINITIONS

1.1 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, and in reference to the party to this agreement, shall mean Kansas Department of Corrections.
- (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.

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.

PERMITTED USES AND DISCLOSURES BY ASSOCIATE

3.1 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.

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).

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.

PERMISSIBLE REQUESTS BY COVERED ENTITY

6.1 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.

TERM

7.1 **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.

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.

SECURITY RULE REQUIREMENTS

9.1 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.

TERMINATION

10.1 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.

EFFECT OF TERMINATION

11.1 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.

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.

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).

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