

**Service Agreement with the  
Association of Community Mental Health Centers of Kansas**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between Sedgwick County, Kansas, "County," and the Association of Community Mental Health Centers of Kansas (ACMHCK), "Contractor."

WITNESSETH:

WHEREAS, County has established a community mental health center, which is commonly known as COMCARE, pursuant to the provisions of K.S.A. 19-4001 *et seq.*, and amendments thereto; and

WHEREAS, the ACMHCK has purchased a web-enabled access and reporting tool that provides 24/7 access to ACMHCK health data from CMT known as ProAct; and

WHEREAS, County and the ACMHCK desire to state the terms and conditions under which the County will have access to CMT's ProAct program.

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

**1. Purpose.** It is understood and agreed by the parties that it is the purpose of this contract for County to have access to CMT's ProAct program which has been purchased by the ACMHCK.

**2. Term.** The term of this agreement shall be from December 1, 2017 through November 30, 2018. Thereafter the agreement shall automatically renew for a successive period of one year unless either party provides sixty (60) day written notice to the other party of its intent to not renew.

**3. Compensation.** The initial year of the Agreement is \$12,850 (Twelve thousand, eight hundred fifty dollars) that must be paid to ACMHCK within 30 days of invoice. Additionally, a yearly access fee of \$21,850 (Twenty-one thousand eight hundred and fifty dollars) will be paid to ACMHCK within 30 days of invoice on an annual basis.

**4. Member Attribution.** COMCARE will use a mutually-agreed-upon file format to submit its current member list to CMT's ProAct program no later than the 15<sup>th</sup> of each month.

**5. Termination.** Either party to this agreement may cancel its obligations herein upon sixty (60) days prior written notice to the other party.

**6. Indemnification Agreement.** Both parties hereby expressly agree and covenant that they will hold and save harmless and indemnify the other party, its officers, agents, servants and employees from liability of any nature or kind connected with the work to be performed hereunder arising out of any act or omission of such party or of any employee or agent of that party to the degree such indemnification is allowed by law. Provided, however, that such indemnification shall not be required to the extent that either the indemnified party or the indemnifying party has (or but for the indemnity, would have) a defense against or limitation of the subject liability under the Kansas Tort Claims Act.

**7. Confidentiality.** Each party agrees that to the extent the law is applicable to this contract, the interpretation of this contract and all actions and undertakings of the parties under this contract shall conform to the requirements of the federal Health Information Portability and Accountability Act of 1996, Public Law 104-101 ("HIPAA"). To the extent that any term or condition of this contract conflicts with any HIPAA requirement, this contract shall be deemed amended by HIPAA to the extent necessary to enable the parties to fully comply with all administrative and regulatory requirements of HIPAA.

Both parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information ("Privacy Regulation") and HIPAA. All data and information considered to be protected health information ("PHI") under HIPAA that County may be exposed to through provision of services under this contract shall be strictly regarded as confidential and held in confidence and safekeeping.

**8. Independent Contractor.** It is agreed that the legal relationship between Contractor and County is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the goods and services and performing the duties required by County hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Contractor, or employees of Contractor, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, or employees of Contractor, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for the withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Contractor.

**9. Modification or Amendment.** This agreement may not be modified or amended except in writing signed by the parties hereto.

**10. Assignment.** The rights and obligations of County hereunder shall not be assigned to any other entity without the prior written approval of Contractor.

**11. Construction.** This agreement shall be construed in accordance with the laws of the State of Kansas.

**12. Authority.** Each person executing this Agreement represents and warrants that he is duly authorized to do so, on behalf of the entity that is a party hereto.

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

**14. 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.

**15. Retention of Records.** Unless otherwise specified in this Agreement, Contractor agrees to preserve and make available to County 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.

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

**17. Incorporation of Documents.** Appendix A (Sedgwick County Mandatory Contractual Provisions Attachment), Appendix B (Purpose and Outcomes), and Appendix C (Business Associate and Data Use Agreement) are attached hereto and are made a part hereof as if fully set forth herein.

**18. 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 Mandatory Contractual Provisions Attachment
- b. Business Associate and Data Use Agreement
- c. Written modifications and addenda to the executed Agreement
- d. This Agreement document

**19. Entire Agreement.** This agreement and the documents incorporated herein contain the entire agreement between the parties hereto; any agreement not contained herein shall not be binding on either party, nor of any force or effect.

*[remainder of this page intentionally left blank]*

SEDGWICK COUNTY, KANSAS

ACMHCK, KANSAS

\_\_\_\_\_  
David T. Dennis, Chairman  
Commissioner, Third District

 4-5-18.  
\_\_\_\_\_  
Kyle Kessler, Executive Director

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Michael L. Fessinger  
Assistant County Counselor

**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**

### **PURPOSE AND OUTCOMES**

It is mutually agreed by and between County and ACMHCK that it is the purpose of this contract for County to have access to CMT's ProAct program which has been purchased by the ACMHCK.

#### **1. CMT Services**

- a. Subject to the terms and conditions of this Agreement, CMT agrees to deliver services to Customer and to permit users named by Customer to access and use the CMT ProAct Services (collectively referred to hereafter as the "CMT Services"). The specific CMT Services to be delivered to Customer shall be described in one or more agreed upon Statements of Work, which shall be incorporated into this Agreement.
- b. Each Statement of Work shall: (i) describe the CMT Services and the covered Customer populations in sufficient detail to enable CMT to determine the resources required to deliver CMT Services to Customer; (ii) identify any customized or optional services to be provided, and fees to be paid for such services; (iii) identify project managers responsible for coordination of the efforts of CMT and Customer; (iv) state the responsibilities of CMT, Customer, or third parties related to the implementation of the CMT Services; (v) establish milestones and a timetable for implementation of the CMT Services; (vi) identify the data required to enable CMT to perform the CMT Services and specify the responsibilities of CMT, Customer or third parties for the provision of such data required; and (vii) describe the compensation to be paid to CMT for provision of the CMT Services.
- c. CMT reserves the right to modify the manner in which it delivers CMT Services from time to time, provided that such modifications shall not have a material impact on CMT's delivery of the CMT Services to Customer pursuant to this Agreement and that Customer is notified in advance of any such modifications.
- d. The services provided by CMT will be performed at CMT's facilities located at 808 Aviation Parkway, Suite 700, Morrisville, North Carolina, or at such other facility as CMT may choose. Reports to Customer will be in written form, encrypted in a pass-phrase protected document, and delivered electronically.

2. **Data to be Provided to CMT.** Customer or a third party specified in a Statement of Work will provide CMT with claims data or service encounter data (collectively "the Claims Data") as needed to enable CMT to perform the CMT Services. Data will be provided in electronic form in accordance with file structures and secure data transfer procedures to be agreed upon by the parties and set forth in a Schedule to be incorporated into this Agreement by reference. It is understood that it may be necessary for CMT to reformat the Claims Data to enable CMT to perform the CMT Services. CMT therefore requires information regarding the data structures for the Claims Data, including the data dictionary (identifying the definition, type and length of each data field within the data files), documentation on how the applicable health plan voids and adjusts claims, and the crosswalk for eligibility and claims files. Customer will ensure that CMT

receives timely, complete and accurate Claims Data. Customer will provide updated Claims Data to CMT on a monthly basis, or as otherwise required by the relevant Statement of Work.

3. **Ownership and Use of Claims Data.** Claims data may be provided by a public health benefits program (such as a State Medicaid program) or a private health insurance or health benefits program (such as a health maintenance organization). All such health benefits programs are collectively referred to hereafter as “Health Plans”. Customer represents and warrants to CMT that it has been authorized to deliver Health Plan Claims Data to CMT for use as permitted by this Agreement. CMT agrees that it will only use or disclose the Claims Data to the extent necessary to perform the CMT Services, and as permitted by this Agreement and the Business Associate Agreement between CMT and Customer, which is incorporated into this Agreement by reference.

CMT may use the Claims Data to provide data aggregation services to Customer. CMT may de-identify the Claims Data and use de-identified data as permitted by law. CMT may use the Claims Data to create a limited data set and use the limited data set to support population based research as permitted by 45 CFR 164.514. All limited data sets will be safeguarded as required by 45 CFR 164.514.

Upon termination of this Agreement, all Claims Data will be returned to Customer, or destroyed if feasible, or if not, safeguarded by CMT on an ongoing basis as required by the HIPAA Security Rule.

4. **Privacy and Data Security.** CMT will abide by all state and federal laws governing use and disclosure of Claims Data, including the HIPAA Privacy Rule (45 CFR Parts 160-164). CMT will implement reasonable and appropriate administrative, physical and technical safeguards of the confidentiality, integrity, and availability of Claims Data as required by the HIPAA Security Rule. CMT will notify Customer of any breach of unsecured protected health information in the manner required by the HIPAA Breach Notification Rule.

5. **Use of CMT’s ProAct Data Analytics Service.**

- a. Subject to the terms and conditions of this Agreement, CMT hereby grants Customer and Customer’s Named Users a nonexclusive, nontransferable right to use the *ProAct* Data Analytics software and service (“the *ProAct Service*”) solely for Customer’s own internal business purposes. The permitted scope of use of the service is set forth in Schedule 1. Customer will not receive a copy of any software and will not have the right to install the *ProAct* Data Analytics software at Customer sites.
- b. The *ProAct Service* will be accessible to Customer and individuals designated by Customer as “Named Users”. Access to the *ProAct Service* will begin on the Effective Date and continue until termination of this Agreement. Access will be provided via a secure Internet connection 24 hours/7 days a week, except for scheduled downtime for system maintenance. CMT will use reasonable efforts to arrange for scheduled downtime to occur during off-peak hours, and to post advance notice of scheduled downtime on its web site. Access to the Service may be suspended by CMT in the event of Customer’s failure to make undisputed payments due CMT in a timely manner.



- c. CMT will use commercially reasonable efforts to make the *ProAct Service* available to Customer on a 24x7 basis, exclusive of maintenance periods. Customer will have access to Customer's data at least 99% uptime, as measured monthly, excluding planned downtime, with no more than two outages (unscheduled downtime) in excess of two hours in any month.
- d. CMT shall provide email or telephone support to Customer Named Users during normal business hours (8:30am to 5:00pm Central Standard Time) Monday-Friday, except on holidays.
- e. CMT represents to Customer that it owns all rights, title and interest in the *ProAct Data Analytics Platform*, has the right to make the *ProAct Service* available to Customer, and Customer's use of the *ProAct Service* will not, to the knowledge of CMT, infringe upon the intellectual property rights of any third party.

**6. Customer Responsibilities Regarding Use of ProAct Service.**

Customer may designate up to 10 individuals as Named Users per Customer Participant as identified in Schedule 2 for access to the *ProAct Service* and Customer Data. Customer will immediately notify CMT of any modification or termination of an individual's right to access the *ProAct Service*. CMT will assign Named Users temporary passwords to access the *ProAct Service* after which Named Users shall be responsible for choosing individual passwords. User identities and passwords may not be shared and will be kept confidential by Customer and its Named Users.

Customer will ensure that only Named Users are permitted to access and use the *ProAct Service*, and that use of the *ProAct Service* is only for the purposes permitted by this Agreement.

Customer and its Named Users are solely responsible for entry, accuracy and management of data entered into databases using the *ProAct Service*.

Neither Customer nor its Named Users will use the *ProAct Service* in any way to transmit through the *ProAct Service* any unlawful, harassing, libelous, unsolicited commercial email ("spam"), abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable material of any kind.

Customer and Named Users will secure appropriate permission to access *ProAct Service* records that include individually identifiable health information as required by applicable state and federal health care privacy laws. Customer and Named Users will only seek access to such records to the extent necessary to support individual treatment and/or Customer health care operations.

Customer and Named Users will abide by all applicable state and federal laws governing use and disclosure of individually identifiable health information, including but not limited to the HIPAA Privacy Rule (45 CFR Parts 160-164).

Customer and Named Users are responsible for provision of the computer systems used to access the *ProAct Service*. Customer and Named Users will operate such systems in a manner that complies with the standards and implementation specifications of the HIPAA Security Rule (45 CFR Parts 160-164). Customer and Named Users will use currently available technologies to prevent introduction of malicious software into their own computer systems and through those systems to the *ProAct Service*

7. **Intellectual Property Rights.** Customer acknowledges that CMT owns all right, title and interest in the *ProAct Service* and the ProAct Data Analytics Platform, including but not limited to, components and business processes developed by CMT to implement the *ProAct* Platform, including the Behavioral Pharmacy Management Program™, the Quality Indicators™, Clinical Considerations™, OPI™, IHPT™, CMTT™ and all other Algorithms, and to software, documentation and descriptions of those methods and technologies. The CMT Intellectual Property is protected by both United States copyright law and international copyright treaty provisions, as well as by United States trademark and patent law (patent pending).

This Agreement transfers to Customer no title, ownership, license, proprietary right, security interest, or the rights to sell, lend, lease, sublicense, trade, barter, market or distribute the *ProAct* Analytics or any other Intellectual Property owned by CMT. Customer will not use or disclose any CMT Intellectual Property except as permitted by this Agreement.

The parties acknowledge that during the term of this Agreement, Customer may provide or otherwise make available Customer Intellectual Property to CMT. This Agreement transfers to CMT no title, ownership, license, proprietary right, security interest, or the rights to sell, trade, barter, market or distribute any Intellectual Property owned by Customer. CMT will not use or disclose any Customer Intellectual Property except as permitted by this Agreement. Customer grants CMT a limited license to use the Customer Intellectual Property for purposes of performing the CMT Services under this Agreement.

Customer and CMT each agree that it will not itself, or through any Affiliate, agent or other third party de-compile, disassemble, reverse engineer or create derivative works based upon the Intellectual Property of the other party, and that upon request it will assign to the other party all rights of ownership in any such derivative works.

8. **Data Products.** CMT shall own any enhancements to the *ProAct* Analytics platform or other CMT Services, as well as any general analytical results, data products, or derivative works produced by CMT in the process of rendering services to Customer (collectively, the "Data Products"). The Data Products shall be considered CMT Intellectual Property and shall not be considered "work for hire" under Copyright Law. Nothing in this section is intended to transfer to CMT ownership of any Customer Data, or reports prepared by CMT specifically for Customer, or to permit CMT to use or disclose Customer Data or Protected Health Information except as otherwise permitted by this Agreement.

9. **Use of Trademarks and Logos.** Neither party shall use in any advertising, sales promotion, letterhead, publicity or other public or media communications, any trade name, trademark, service mark, logo or similar other identification or abbreviation, contraction or simulation thereof owned by the other party without the prior consent of the other party, which consent shall not be unreasonably withheld or delayed. Each party shall have the right to review any and all materials bearing such party's trade name, trademark, service mark, logo or similar other identification or abbreviation, contraction or simulation thereof for the purposes of exercising its right of quality control over such items.
10. **Branding.** Customer may offer CMT Services under its own name and branding, provided: (i) it identifies CMT as the provider of the services; (ii) includes CMT branding in materials made available to third parties; and (iii) CMT approves any materials that offer CMT services or include CMT branding. It is understood that CMT branding will be included on CMT records accessed by Customer case managers, employees and/or agents and that CMT branding shall be affixed to all materials provided by Customer to third parties that include CMT reports, records, data or analysis.
11. **Information Services Provider.** Customer acknowledges that CMT is acting solely as information services provider and does not purport to be engaged in the operation of a health benefit program, the practice of medicine or any other professional clinical activity. The work product generated by CMT consists solely of information to be evaluated by Customer. All decisions regarding the operation of the Health Plan remain the sole responsibility of the Health Plan. All decisions regarding the operation of Customer programs are the sole responsibility of Customer. All decisions regarding the treatment of individual patients are the responsibility of the treating clinical professional.

## Appendix C

### BUSINESS ASSOCIATE AND DATA USE AGREEMENT

This Business Associate and Data Use Agreement is entered into between Care Management Technologies, Inc., Relias Learning LLC company ("Business Associate") and the provider listed in the signature block below ("Covered Entity").

WHEREAS, Covered Entity is a member of the Association of CMHCs of Kansas, Inc. (ACMHCK), which contracts with Business Associate for analytics services pursuant to an Analytics Services Agreement with a Subscription Start Date of January 1, 2018 (the "Analytics Services Agreement").

#### 1. DEFINITIONS

1.1 The following terms used in this Business Associate and Data Use Agreement (BAA) 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.**

1.2 **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 BAA, shall mean Care Management Technologies, Inc., a Relias Learning LLC company.

1.3 **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 BAA, shall mean the provider listed in the signature block below.

1.4 **HIPAA Rules** means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

1.5 **Limited Data Set (LDS)** shall have the same meaning as the term "Limited data set" at 45 CFR 164.514(e)(2).

#### 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 the 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;

2.4 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;

2.5 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;

2.6 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;

2.7 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;

2.8 To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

2.9 Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

2.10 If Business Associate receives or has access to protected health information that identifies an individual as having an alcohol or drug use diagnosis, or having received treatment for such, either directly or indirectly, Business Associate acknowledges that in receiving, storing, processing, transporting or otherwise dealing with any such patient/member records from Cardinal Innovations, it is fully bound by the provisions of the federal regulations governing the Confidentiality of Substance Use Disorder Patient Records, 42 C.F.R. Part 2. Business Associate also agrees to reasonably resist in any judicial proceedings any effort to obtain access to information pertaining to such patient/member records, except as otherwise permitted in the federal regulations governing the Confidentiality of Substance Use Disorder Patient Records, 42 C.F.R. Part 2.

#### 3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 Business Associate may only use or disclose protected health information as necessary to perform the services set forth in the Analytics Services Agreement.

3.2 Business Associate shall provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B) and to the extent permitted by 45 CFR 164.514(e). Business Associate determines: (i) patient identifiers and mapping requirements, (ii) business rules for data aggregation and analytics, and (iii) desired patient and provider views within the Subscription Services.

3.3 Business Associate may create and retain a LDS that excludes direct identifiers of individuals, their relatives, employers, or household members. Business Associate may use and disclose the "limited data set" for research, public health, or health care operations in accordance with 45 CFR 164.514(e). This BAA will also function as a data use agreement per 45 CFR 164.514(e)(4) and Business Associate agrees to comply with 45 CFR 164.514(e) in its creation and use of the LDS.

**3.4** Business Associate may use or disclose protected health information as required by law.

**3.5** Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

**3.6** Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth below.

**3.7** Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

**3.8** 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.

**3.9** Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

#### **4. PREPARATION OF LDS.**

**4.1** Business Associate may prepare, retain, and provide to Covered Entity a LDS in accord with the HIPAA Rules and this BAA.

**4.2** **Minimum Necessary Data Fields in the LDS.** In preparing the LDS, Covered Entity or its Business Associate shall include the data fields specified by the parties from time to time, which are the minimum necessary to accomplish the purposes set forth in Section 3 of this BAA.

**4.3** **Permitted Uses and Disclosures of the LDS.** Business Associate may use and/or disclose the LDS only for the Research described in the Agreement, this BAA, or as required by law.

#### **5. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS**

**5.1** Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 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, the permission by an individual to use or disclose his or her 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 on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

#### **6. 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.

#### **7. TERM AND TERMINATION**

**7.1** **Term.** The Term of this Agreement shall be effective as of Master Services Agreement Effective Date, and shall terminate upon termination of the Master Services Agreement or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

**7.2** **Termination for Cause.** 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 sixty (60) days.

**7.3** **Obligations of Business Associate Upon Termination.** 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 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 "Permitted Uses and Disclosures By Business Associate," paragraphs (e) and (f) which applied prior to termination; and
- Return to Covered Entity or 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.

**7.4** **Survival.** The obligations of Business Associate under this Section shall survive the termination of this Agreement.

#### **8. MISCELLANEOUS**

**8.1** **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

**8.2** **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

IN WITNESS WHEREOF, each party hereto, by its representative, has executed this BAA as of the date of latest signature below ("Effective Date"), and such party and its representative warrant that such representative is duly authorized to execute and deliver this BAA for and on behalf of such party.

**COMCARE of Sedgwick County (Covered Entity)**

Signature: Joan Tammany  
Name: Joan Tammany  
Title: Executive Director  
Date: 4-6-18

**Care Management Technologies, Inc. (Business Associate)**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Approved As To Form**  
Heslop