

**COMMUNITY PARAMEDIC SERVICES AGREEMENT**

by and between  
**SEDGWICK COUNTY, KANSAS**  
and  
**VIA CHRISTI HOSPITALS WICHITA, INC.**

This Community Paramedic Services Agreement made and entered into this 1<sup>st</sup> day of August, 2018, by and between Sedgwick County, Kansas ("County") and Via Christi Hospitals Wichita, Inc., a Kansas corporation ("Hospital"), with an effective date agreed by the parties to be August 1, 2018.

WITNESSETH:

**WHEREAS**, Hospital provides health care services through a fully integrated health delivery system that includes in-patient services, as well as a network of facilities located throughout Sedgwick County; and

**WHEREAS**, Hospital, from time to time, contracts with other local medical service providers to facilitate its programs; and

**WHEREAS**, County is in the business of providing emergency medical services to individuals by and through Sedgwick County Emergency Medical Services ("SCEMS"); and

**WHEREAS**, Hospital desires to partner with SCEMS to assist in Hospital's Congestive Heart Failure ("CHF") Clinic and Community Cares Clinic; and

**WHEREAS**, County, through SCEMS, has developed and maintains the expertise and resources necessary to perform and complete the Services for the Program.

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

1. **Definitions.** Whenever used in this Agreement, the following terms have the meanings so indicated.

(a) **Program:** the organized effort to navigate patients at risk for potentially preventable hospital admissions to more safe and effective settings for their healthcare needs.

(b) **Services:** generally the health care services made available by and furnished to Program Patients by County as a part of the Program. Said Services are more completely outlined in Appendix B, attached hereto and incorporated herein by reference.

(c) **Program Patient:** patients that are at risk for potentially preventable hospital admissions that fit Program enrollment guidelines and receive Services from County under this Agreement.

2. **Scope of Work.** County shall provide such Services as specifically detailed within Appendix B (CHF Program Requirements), attached hereto and incorporated herein by reference as part of this

Agreement. County will supply, at its own expense, all necessary equipment, supplies and other materials required to perform and deliver the Services.

3. **Term.** The initial term of this Agreement shall be for one (1) year, commencing on the effective date as agreed by the parties.

4. **Compensation.** Hospital agrees to pay and County agrees to accept as compensation for services provided pursuant to this Agreement the sum of EIGHTY THOUSAND DOLLARS (\$80,000.00). County agrees that said compensation will be solely used to fund, for one (1) year, one (1) SCEMS Community Paramedic position. Should the Agreement be terminated by either party for any reason, the parties agree that any remaining funds will be returned to Hospital within ten (10) business days of the termination. Upon termination or expiration of this Agreement, County will be under no obligation to continue the Community Paramedic Service.

5. **Community Paramedics.** The parties agree that County will have exclusive control and authority over the Community Paramedic position funded by this Agreement. The individual occupying the position will be an employee of County and will be subject to all rules, regulations, and policies governing all County employees. Hospital agrees that under no circumstance will it have any input in or control over decisions made regarding this position.

6. **Program Liaison.** Both County and Hospital will each provide Program liaisons which shall be a single point of contact for administration of the Program. Said liaisons will be readily accessible.

7. **Data Reporting and Management.** As it relates to this Agreement, County and Hospital agree to share patient population information at a minimum of monthly intervals, and, at all other intervals, upon request by either party. With respect to said patient population information, County will track, to a reasonable level of written detail and in an Electronic Medical Record ("EMR") format, all care encounters with Hospital for incorporation into Hospital's electronic medical records system. These EMRs will be available to Hospital upon request within two (2) business days of such request. In the event the EMR patient information received by Hospital is incomplete or is in an unreadable condition, Hospital will contact County's Program liaison and County will provide a new EMR within one (1) business day.

Hospital will assign referrals to the appropriate patient populations within the Program and will manage the Cerner system.

8. **Incorporation of Documents.** Appendix A (Sedgwick County Mandatory Contractual Provisions Attachment), Appendix B (Program Requirements) and Appendix C (Sedgwick County's Business Associate Agreement) are attached hereto and are made a part hereof as if fully set forth herein.

### **General Terms and Conditions**

**9. Contractual Relationship.** It is agreed that the legal relationship between Hospital and County is that of an independent contractor. County is at all times acting as an independent contractor and not as an officer, agent, or employee of Hospital. As an independent contractor, County, or employees of County, will not be within the protection or coverage of Hospital's worker's compensation insurance, nor shall County, or employees of County, be entitled to any current or future benefits provided to employees of Hospital. Further, Hospital shall not be responsible for the withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by Hospital to County.

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

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

**County:** Sedgwick County EMS  
Attn: Scott R. Hadley, Director  
1015 Stillwell  
Wichita, Kansas 67213

and

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

**Hospital:** Via Christi Hospitals Wichita, Inc.  
Attn: Regional Hospital President Wichita  
929 N. St. Francis St.  
Wichita, Kansas 67214

Office of General Counsel  
Attn: Matthew C. Hesse  
8200 E. Thorn Dr.  
Wichita, Kansas 67226

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

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

14. **Liability Insurance.** Hospital agrees to maintain the following minimum limits of insurance coverage throughout the term of this Agreement:

<b>Worker's Compensation</b> Applicable State Statutory Employer's Liability	
<b>Employer's Liability Insurance:</b>	\$100,000.00
<b>Commercial General Liability Policy</b>	
Each occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Personal Injury:</b>	
Each person aggregate	\$500,000.00
General aggregate	\$500,000.00
<b>Automobile Liability</b>	
Combined single limit	\$500,000.00

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

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

At all times relevant to this Agreement, Sedgwick County Paramedics will remain covered by the County's self-insured liability policies, which are subject to the limits of the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*

15. **Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding

the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.

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

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

**18. Subcontracting.** None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of Hospital. In the event subcontracting is approved by Hospital, County shall remain totally responsible for all actions and work performed by its subcontractors. All approved subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any.

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

**20. 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.

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

**22. 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. Written modifications and addenda to the executed Agreement
- c. This Agreement

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

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

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

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

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

**27. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

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

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

SEDGWICK COUNTY, KANSAS

VIA CHRISTI HOSPITALS  
WICHITA, INC.

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

DocuSigned by:  
*Kevin Strecker*  
819E0018E595408  
\_\_\_\_\_  
Kevin Strecker  
Interim President

APPROVED AS TO FORM ONLY:

  
\_\_\_\_\_  
William Deer  
Assistant County Counselor

APPROVED AS TO FORM:

DocuSigned by:  
*Matthew Hesse*  
A9B940B04EA6425  
\_\_\_\_\_  
Matthew C. Hesse  
Senior Counsel

ATTESTED TO:

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

**APPENDIX A**  
**SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT**

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

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

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said contract being the 1st day of August, 2018. For purposes of this Attachment, the party "Hospital," as that party is defined in the Agreement to which this attaches shall be substituted for "Contractor."

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. 45-215 *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**

### **CHF Program Requirements**

#### **Referral**

1. Referrals into the CHF Program will be initiated by Hospital by utilizing the County Community Health Program Process.
2. County will strive to follow up on a patient within seventy-two (72) hours of referral into the CHF Program to do an initial assessment and process enrollment. Hospital recognizes that this target is merely a goal and that, given the constraints County faces with having only one (1) individual dedicated to this position, that goal may not always be met. In the event that County does not follow up on a patient within seventy-two (72) hours of referral, County will strive to make follow-up contact as soon as is practicably possible. County agrees that the individual paramedic in this position will be solely dedicated to the CHF Program and will make best efforts to achieve the goals set forth herein.
3. A patient will be counted as a completed enrollment after the initial assessment is complete and patient agrees to participation in the Program. The assessment and patient acceptance process will be facilitated by County.

#### **Intervention**

1. For the purposes of the CHF Program, the definition of intervention includes:
  - a. Initial assessment including:
    1. Discharge summary review
    2. PCP/Specialist care coordination approach
    3. Assessment of living environment
    4. Education on disease process
    5. Review and verification of medications
    6. Baseline vital signs and assessment
    7. Delivery and review of patient education and tracking materials
    8. Delivery of non-emergency access phone contact number and instructions for use
2. Completion of a series of home visits to educate the patient and family on appropriate care management.
3. If the patient meets clinical requirements for intervention, County will coordinate in-home diuresis with the patient's PCP or specialist to avoid hospital readmission or emergency department visit.
4. Provision of 24x7 non-emergency number to request mobile healthcare County support during the duration of the program enrollment.
5. Completion of program will be based on patient outcome with disease management program and meeting of defined graduation requirements.

#### **Program Management & Reporting**

1. County will provide weekly details of the CHF program including:

- a. Enrollment date
  - b. Medical record number (MRN)
2. Hospital will provide detailed level reporting for patients enrolled in program
  - a. Patient demographics
  - b. Count of ED Visits for each patient
  - c. Count of Inpatient Admissions for each patient
  - d. Recent discharge instructions and care plans
3. County will participate in monthly program review meetings to discuss outcome of CHF Program

**General**

1. Term of patient enrollment will be thirty (30) days.
2. The CHF program intervention will be administered, performed and reported on by Hospital and County after enrollment is made.
3. Program protocol and medical direction will be the shared responsibility of County and Hospital Medical Directors.
4. Hospital will retain the ability to audit the program and specific interventions at any time for the purposes of validating outcomes and adherence to process.

## **APPENDIX C HIPAA BUSINESS ASSOCIATE ADDENDUM**

### **SECTION 1: DEFINITIONS**

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

#### Specific definitions:

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

### **SECTION 2: OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

#### **Business Associate agrees to:**

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

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

### **SECTION 3: PERMITTED USES AND DISCLOSURES BY ASSOCIATE**

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

### **SECTION 4: SPECIFIC USE AND DISCLOSURE PROVISIONS**

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

### **SECTION 5: OBLIGATIONS OF COVERED ENTITY**

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

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

#### **SECTION 6: PERMISSIBLE REQUESTS BY COVERED ENTITY**

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

#### **SECTION 7: TERM**

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

#### **SECTION 8: MISCELLANEOUS**

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

## **SECTION 9: SECURITY RULE REQUIREMENTS**

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

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

## **SECTION 10: TERMINATION**

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

## **SECTION 11: EFFECT OF TERMINATION**

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

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

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

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

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

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

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

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

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

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

## **SECTION 12: NOTIFICATION OF BREACH**

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

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



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

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

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

13.1 Except as provided in section 13.2, the Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Covered Entity has obtained from the Individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Individual.

13.2. Section 13.1 shall not apply in the following cases:

- a. The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- b. The purpose of the exchange is for research (as described in sections 164.501 and 164.512(i) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.
- c. The purpose of the exchange is for the treatment of the Individual, subject to any regulation that the Secretary may promulgate to prevent Protected Health Information from inappropriate access, Use, or Disclosure.
- d. The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations in section 164.501 of title 45, Code of Federal Regulations.
- e. The purpose of the exchange is for remuneration that is provided by the Covered Entity to the Business Associate for activities involving the exchange of Protected Health Information that the Business Associate undertakes on behalf of and at the specific request of the Covered Entity pursuant to the Agreement.
- f. The purpose of the exchange is to provide an Individual with a copy of the Individual's Protected Health Information pursuant to section 164.524 of title 45, Code of Federal Regulations.
- g. The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (a) through (f).