

AGREEMENT FOR INPATIENT PSYCHIATRY SERVICES

by and between
SEDGWICK COUNTY, KANSAS
and
AFFILIATED PSYCHIATRIC, LLC

This Agreement, made and entered into this ____ day of _____, 2018, by and between Sedgwick County, Kansas ("County") and Affiliated Psychiatric LLC, a Kansas limited liability company ("Contractor").

WITNESSETH:

WHEREAS, Contractor provides contracted hospital-based services in the area of psychiatry; and

WHEREAS, County, by and through its COMCARE Department ("COMCARE"), desires to engage Contractor to provide said hospital-based services in the area of psychiatry; and

WHEREAS, the parties desire to state in writing the terms and conditions under which Contractor will provide said services.

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

1. **Services.** Contractor shall provide the services of a licensed psychiatrist as directed by the Director of COMCARE.

2. **Relationship of Parties.** 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 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, including the Psychiatrist, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, or employees of Contractor, including the Psychiatrist, 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.

3. **Authority to Contract.** Contractor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor'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 Contractor to act in connection with the application and to provide such additional information as may be required.

4. **Scope of Services.** Contractor, through the Psychiatrist, will perform admitting, rounding and discharging services for COMCARE patients with mental disorders in the Senior Behavioral Health unit and psychiatric consults for COMCARE patients in medical units at the Via Christi St. Joseph and St. Francis campuses.

5. **Term.** The initial term of this Agreement shall be for one (1) beginning January 1, 2019, and ending December 31, 2019. This contract may continue for a reasonable time after December 31, 2019, if both parties agree to continue operating under the terms of the 2018 contract while they are actively developing a contract for 2020.

6. **Compensation.** In return for services rendered pursuant hereto, County agrees to pay Contractor at the rate of \$125.00 for consults requested by the hospital, \$100.00 for consults requested by the hospital's physician, \$60.00 for follow up visits with clients, and \$60.00 for hospital discharges, for approximately sixty (80) hours per month. In no event shall compensation paid under any single term of this Agreement exceed \$120,000.00.

Contractor will be responsible for payment of Psychiatrist's mileage fees and/or other travel costs associated in performing this Agreement.

County will not provide compensation of any kind in the event that Psychiatrist is needed and/or required to provide testimony with regard to a case for which he provided services. Psychiatrist shall be independently responsible for making arrangements with the party requesting such testimony.

7. **Kansas Medical License.** Psychiatrist shall maintain an active Kansas medical license and shall submit proof of such to the Director of COMCARE prior to commencement of this Agreement. In the event Psychiatrist fails to present such proof, or to maintain an active Kansas medical license during the duration of this Agreement, this Agreement shall be terminated without consequence to County.

8. **Professional Liability Coverage.** Contractor shall secure, on behalf of Psychiatrist, the minimum professional liability insurance required under the Kansas Health Care Provider Insurance Availability Act, K.S.A. 40-3401 *et seq.* Contractor shall provide evidence of such coverage to the Director of COMCARE and the County's Risk Management Director prior to the start of this Agreement. Contractor and Psychiatrist agree to notify the Director of COMCARE and the County's Risk Management Director of any incident that might reasonably be expected to become a claim or any liability or malpractice liability claim made or litigation instituted which directly or indirectly, contingently or otherwise in any way affects or might affect the County.

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

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

Property Damage:	
Each occurrence	\$500,000.00
Aggregate	\$500,000.00
Personal Injury:	
Each person aggregate	\$500,000.00
General aggregate	\$500,000.00
Automobile Liability – Owned, Non-Owned, and Hired:	
Bodily injury each person	\$500,000.00
Bodily injury each occurrence	\$500,000.00

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

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

10. Restraint on Practice. Psychiatrist agrees not to engage in any professional activities that will cause a conflict of interest or appear to cause a conflict of interest that interferes with the effectiveness of Contractor's obligations under this Agreement. Notwithstanding these restrictions, nothing herein contained is intended to limit the right of Psychiatrist to clinically practice, write, publish, lecture, study, advise, testify and consult regarding the practice of medicine for a fee.

11. Termination.

A. Termination for Cause. County reserves the right to terminate this Agreement immediately upon default and/or breach by Contractor or as a result of the failure of Contractor to provide acceptable services. Under this provision, default may include, but is not limited to the following:

1. Psychiatrist's inability to maintain the appropriate licensure to practice medicine within the State of Kansas or to maintain board certification in psychiatry;
2. A material breach of this Agreement, including, but not limited to the failure to perform duties assigned consistent with this Agreement, or the negligent performance of duties assigned; or the commission of any act designated in K.S.A. 65-2836 or K.S.A. 65-2837, as amended, which could result in the suspension or revocation of Psychiatrist's license to practice the healing arts, regardless of whether the license is either suspended or revoked; or
3. Psychiatrist's conviction of any felony offense or other conviction involving falsehood or dishonesty.

In the event of termination of this Agreement as a result of a breach and/or default by Contractor, County will not be liable for any fees other than payment to Contractor for those services rendered and completed prior to termination.

B. **Termination for Convenience.** Either party may terminate this Agreement upon thirty (30) days' written notice to the other party indicating the effective date thereof. In the event of termination under this provision, Psychiatrist shall be obligated to complete any and all projects currently under his responsibility, and shall do so within sixty (60) days of the effective date of termination. Psychiatrist shall complete such obligations according to the same standards as those required during the duration of this Agreement. If ancillary information necessary to complete such reports within sixty (60) days of termination is not available to Psychiatrist, Psychiatrist will complete said reports within sixty (60) days of receipt of necessary ancillary information.

Contractor will not be entitled to receive any further payments under this Agreement until all work called for has been fully performed within the above-prescribed time period. If Psychiatrist fails to complete all work contracted for prior to notice of termination within the above-prescribed time period, any extra cost or damage to the County resulting from such failure shall be deducted from any money due or coming due to Contractor. Contractor shall further bear any extra expenses incurred by the County in completing the assigned work, and all damage sustained, or which may be sustained by the County by reason of such failure.

C. **Reduction in Funds.** It is understood that funding may cease or be reduced at any time. In the event that adequate funds are not available to meet the obligations hereunder, either party reserves the right to terminate this Agreement upon thirty (30) days' written notice.

13. Record Keeping. Contractor agrees that it will maintain appropriate and complete records of the services performed hereunder for the benefit of County and that these records will be made available to County at any time. Said records shall also be made available by Contractor for the purpose of audit and review of Psychiatrist's services provided hereunder. Records generated shall be created, maintained and stored according to the records maintenance system of County and, as such, are property of the County.

14. Confidentiality. Contractor agrees that all County information, records and data to which Psychiatrist may have access to or custody of shall be protected by Contractor from any unauthorized disclosure.

15. 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: COMCARE of Sedgwick County
Attn: Joan Tammany, Executive Director
271 W. 3rd Street N. Suite 600
Wichita, KS 67202

and

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

Contractor: Affiliated Psychiatric, LLC
 Attn: Dr. Mukhtar Shah
 1148 S. Hillside, Ste. 104
 Wichita, Kansas 67211

16. Hold Harmless. Contractor shall indemnify County, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of Contractor'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.

17. 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.

18. 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.

19. 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.

20. Subcontracting. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of County. In the event subcontracting is approved by County, Contractor 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.

21. 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.

22. 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.

23. 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.

24. Order of Preference. Any conflict to the provisions of this Agreement and the documents incorporated by reference shall be determined by the following priority order:

- a. Sedgwick County Contractual Provisions Attachment
- b. Written modifications and addenda to the executed Agreement
- c. This Agreement document

25. Environmental Protection. Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

26. Nondiscrimination and Workplace Safety. Contractor 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.

27. 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.

28. Ownership of Data. All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by Contractor 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. Contractor shall not release any such materials without written approval of the County.

29. 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. Contractor 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.

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

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

SEDGWICK COUNTY, KANSAS

AFFILIATED PSYCHIATRIC, LLC

David T. Dennis, Chairman
Commissioner, Third District

Mukhtar Shah
Mukhtar Shah, MD

APPROVED AS TO FORM ONLY:

Michael L. Fessinger
Michael L. Fessinger
Assistant County Counselor

ATTESTED TO:

Kelly B. Arnold
County Clerk

APPENDIX A
SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

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

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

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption.

County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
 12. **Cash Basis and Budget Laws.** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
 13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.
- Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.
14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.
 15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
 16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
 17. **Tax Set-Off.** If, at any time prior to or during the term of any executed agreement, Contractor is delinquent in the payment of real and/or personal property taxes to Sedgwick County, and the delinquency exists at the time payment is due under the agreement, County will offset said delinquent taxes by the amount of the payment due under the agreement and will continue to do so until the delinquency is satisfied, pursuant to K.S.A. 79-2012.