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PARTICIPATING CDDO AGREEMENT FY 2025

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PARTICIPATING CDDO AGREEMENT

FY 2025

Between the Kansas Department for Aging and Disability Services and a Community Developmental Disabilities Organization.

I. BASIC CONTRACT INFORMATION

The CDDO: SEDGWICK COUNTY DEVELOPMENTAL DISABILITY ORGANIZATION

Address: 615 N MAIN ST, WICHITA, KS 67203

Federal Tax Identification Number: 48-6000798

Contract Year: FY2025

II. PARTIES TO THE CONTRACT

This Contract is made effective this 1st day of July, 2024 by and between the Secretary for the Department for Aging and Disability Services ("KDADS") and SEDGWICK COUNTY DEVELOPMENTAL DISABILITY ORGANIZATION ("CDDO") all of whom may hereafter be collectively referred to as the "Parties." The Kansas Department for Health and Environment ("KDHE") is a party to this Contract as the Single State Medicaid Agency, in that Medicaid provides a portion of Contract funding.

The purpose of this Contract is to establish the expectations and duties of the CDDO, KDADS, and KDHE as specified in K.S.A. 39-1801 et seq., K.S.A. 39-7, 100 and K.A.R. 30-64-01 et. seq and any amendments thereto.

III. DEFINITIONS

- A. ADL: Activities of Daily Living are basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring, as defined under 42 CFR 441.505.
- B. Affiliate: is as defined in K.S.A. 39-1803(b): an entity or person that meets standards set out in rules and regulations adopted by the KDADS' Secretary relating to the provision of services and that contracts with a CDDO.
- C. Allocation Period: July 1, 2024 through June 30, 2025.
- D. BASIS: Basic Assessment and Services Information System. The BASIS manual contains the instructions for the DDP.

- E. Business Associates Agreement (BA): the BA Agreement located on the KDADS' Provider Website.
- F. Case Management: services which help beneficiaries gain access to needed medical, social, educational and other services.
- G. CDDO Administration/CDDO Administrative Responsibilities: those tasks and functions spelled out in the DDRA which are specific to the twenty-seven (27) Kansas CDDOs; functions which do not qualify as CSP activities.
- H. CDDO Peer Review Process: is a systemic evaluation process by which the Secretary shall assess the performance of each individual CDDO system. This process shall evaluate and report the degree to which it is effectively organized to fairly perform its statutory and regulatory responsibilities.
- I. CDDO Service Area: the county(ies) of which a CDDO is designated pursuant to K.S.A. 19-4001 et seq.
- J. Community Developmental Disability Organization (CDDO): any community intellectual and developmental disability facility organized pursuant to K.S.A. 19-4001 through 19-4015, established and operating on or after the effective date of K.A.R. 30-64-01 et seq.
- K. Community Service Provider (CSP): an entity providing IDD services.
- L. Competitively Employed: work (i) in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and (ii) for which a person is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by persons who are not disabled (Kansas Rehabilitation Services Manual §361.5 (b) (11)).
- M. Complaint: is any grievance, appealable action, or dispute resolution received by the CDDO or KDADS regarding a decision or action taken by the CDDO or Affiliate provider, if reported to KDADS or the CDDO.
- N. Contract Year: period set forth in Article XIII of the Contract.
- O. Developmental Disability (DD): as defined by K.S.A. 39-1803 (f).
- P. Developmental Disability Profile (DDP): (per BASIS manual 6.0) instrument designed to collect information about adaptive functioning skills, challenging behaviors, and health factors of an individual with intellectual and/or developmental disabilities which yields a converted score.
- Q. Developmental Disabilities Reform Act (DDRA): K.S.A. 39-1801 through and including K.S.A. 39-1811 and K.A.R. 30-63 through 64.
- R. Employment outcome: entering or retaining full-time or part-time competitive employment in the integrated labor market, supported employment, or any other type of employment in an

integrated setting. Other types of employment include self-employment, telecommuting, or business ownership, that is consistent with a person's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice (Kansas Rehabilitation Services Manual §361.5 (b) (11)).

- S. Family: means any person immediately related to the beneficiary of services. Immediate related family members are: parents (including adoptive parents), grandparents, spouses, aunts, uncles, sisters, brothers, first cousins, any step-family relationships.
- T. Federal Financial Participation (FFP): a percentage of state expenditures to be reimbursed by the federal government for the administrative and program costs of the Medicaid program.
- U. Formally Adopted KDADS Policies & Procedures ("Policies"): all policies contained in the HCBSIDD Program, the BASIS Manual, and other policies developed through the KDADS' Policy Development process.
- V. Fraud: the intentional misrepresentation of information that a person reasonably knows to be false or should know to be false, knowing the misrepresentation could result in some unauthorized benefit to himself or a CDDO for purposes of reimbursement.
- W. Functional Assessment: a CMS approved tool used by a contracted entity to assess a person's functional eligibility and level of care needed to live in a home and community-based setting.
- X. Guardian: an individual or corporation certified in accordance with state law, and amendments thereto, who or which is appointed by a court to act on behalf of a ward, and who or which is possessed of some or all of the powers and duties set out in state law, and amendments thereto. "Guardian" does not mean a "natural guardian" unless specified.
- Y. HCBS IDD Program: Home and Community Based Services for individuals with IDD pursuant to a federally approved program, through a waiver category of Medicaid funding, which allows community-based services that have been established by KDADS as an alternative for persons who are otherwise eligible for ICF-IID services.
- Z. HCBS IDD Program Eligibility: an individual with IDD who meets all programmatic requirements for the HCBS-IDD Program consistent with Appendix B: Participant Access and Eligibility and the Kansas Application for the 1915(c) Home and Community-Based Waiver and K.S.A. 39-1803(f) and (h).
- AA. HCBS IDD Wait List: a list of individuals with IDD who have been determined functionally eligible, meet program eligibility, who have a present, identified need for program services and are waiting to receive services subject to appropriations and funding capacity to serve. Individuals do not have to be financially eligible for Medicaid in order to be on the HCBS IDD wait list.
- BB. HIPAA: the Health Insurance Portability and Accountability Act including the HITECH Act amendments contained in the American Recovery and Reinvestment Act of 2009, and implementing federal regulations, as amended.

- CC. Home County of Children in Custody: the county in which the child was living before going into custody.
- DD. IDD System Eligibility: persons who meet the definition in K.S.A. 39-1803(f) and (h) and who are determined eligible by the CDDO.
- EE. Institutional Setting(s): includes institutions that are a Nursing Facility, State Hospital (Kansas Neurological Institute, Osawatomie, Larned and Parsons), an ICF-IID, Traumatic Brain Injury Rehabilitation Facility (TBIRF), or a Psychiatric Residential Treatment Facility (PRTF).
- FF. Intellectual Disability (ID): defined in K.S.A. 39-1 803(h).
- GG. Intellectual Disability and/or Developmental Disability (IDD): intellectual disability and/or developmental disability.
- HH. Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID): a private or public facility for individuals with intellectual disabilities. ICF-IID is considered an institutional equivalent setting for HCBS IDD waiver participants.
- II. KAMIS: Kansas Assessment Management Information System
- JJ. New person: an individual eligible to receive services funded through this Contract, but who is currently not receiving services as requested.
- KK. Options Counseling: impartially informing a person of the types and availability of community services provided within the service area and of the licensed providers and other agencies existing within the service area that the CDDO has been advised might be willing to provide services to the person, and the way to contact those licensed providers or other agencies as defined in K.A.R. 30-64-23.
- LL. Person: an individual eligible to receive services funded through this Contract. When referring to a person who is making decisions or reporting achievement of outcomes, person shall mean the person, and/or the person's support network as defined in K.A.R. 30-63-01.
- MM. Protected Health Information (PHI): shall have the meaning set forth in HIPAA.
- NN. Referral: Pursuant to the DDRA (K.S.A. 39-1805), for the purposes of serving as the single point of application, information or referral for services in the IDD system and assist all persons with a developmental disability to have access and opportunity to participant in community services.
- OO. Service Reduction: a reduction in service that includes voluntary or involuntary reduction in the number of hours of paid support provided to someone receiving family support services or a reduction in the number of days of day services or residential services.
- PP. SFY: official State Fiscal Year for the State of Kansas.
- QQ. Stakeholder: any person with a disability, or any individual or entity with an interest in the

lives of persons with IDD.

RR. State Aid: those funds distributed exclusively pursuant to K.S.A. 65-4411 et seq. and K.A.R. 30-22-31 et seq.

SS. Targeted Case Manager (TCM): services as defined by the Medicaid State Plan.

IV. REPRESENTATIONS AND WARRANTIES

A. Controlling Provisions:

1. In the event there is an alleged conflict among the terms of this Contract (including any appendix or other document referenced herein), the Parties agree that the following provisions shall govern in the following order: (1) Applicable federal/state of Kansas statutes and/or regulations; (2) HCBS-IDD Waiver; (3) DA 146a; (4) Amendments and Modifications to Contract; (5) the executed Contract; and (6) Formally Adopted KDADS' policies and procedures.

B. Criminal Provisions:

1. By entering into this Contract, the CDDO represents and warrants that it has not been convicted for any criminal offenses that indicate a lack of integrity or honesty. Crimes indicating a lack of integrity or honesty include but are not limited to the following: any conviction of federal, state or local laws for embezzlement; theft; forgery; bribery; falsification or destruction of records; receiving stolen property; racketeering; and violation of antitrust laws. Any conviction(s) incident to obtaining or attempting to obtain or performing a public or private contract, subcontract, grant or sub-grant; or conviction or any other offense which impacts the performance and/or responsibility of a contractor, subcontractor, grantee, or sub-grantee are also considered offenses which lack of integrity and honesty.

C. Accounting System:

1. The CDDO's Accounting System shall meet Generally Accepted Accounting Principles (GAAP), as amended.

D. Maintenance of Cost Records:

1. The CDDO shall maintain books, records, and other documents in such a manner so as to readily identify them directly with the delivery of services outlined in the Contract.

E. Submission of Reports:

1. The CDDO shall submit any required reports in accordance with the Contract. Failure to report required data could result in the delay and/or loss of funds. Both parties agree to utilize data submitted by CDDOs (for example Quarterly Reports and KAMIS data) to fulfill data requests to the extent possible.

F. Data:

1. KDADS represents and warrants that technical data issued to the CDDO for use in performing professional services under this Contract shall be current, accurate, complete, and adequate upon KDADS' knowledge, information and belief. The CDDO shall notify KDADS' Help Desk as soon as possible upon discovering any data deficiency. KDADS' Technical Representative shall take prompt and reasonable action to reconcile or remedy the data deficiency(ies). The CDDO may access their respective consumers' information through applicable KDADS' information systems as related to the Contract. The CDDO shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with HIPAA. No private or confidential data collected, maintained or used in the course of performance of this Contract shall be disseminated by either party except as authorized by law, either during the period of the Contract or thereafter. The CDDO must agree to return any or all data furnished by KDADS promptly at the request of KDADS in whatever form it is maintained by the CDDO, but in doing this the CDDO must comply with all applicable federal and state law, including but not limited to HIPAA and Kansas laws regarding record retention and destruction. On the termination or expiration of this Contract, the CDDO shall not use any such data or any material derived from the data for any purpose and, where so instructed by KDADS, shall destroy or render it unreadable, provided that such action does not conflict with all applicable federal and state law, including but not limited to HIPAA and Kansas laws regarding record retention and destruction.

G. Rights and Remedies:

1. If this Contract is terminated pursuant to K.A.R. 30-64-20, KDADS, in addition to any other rights provided for in this Contract, may require the CDDO to transfer title and deliver to KDADS in the manner and extent directed, any completed materials (including, but not limited to, eligibility documents and assessments,). KDADS shall be obligated only for those services actually provided prior to the date of termination. However, in the event of termination, the CDDO shall receive payment pro-rated for that portion of the Contract period in which services were provided to KDADS subject to any offset by KDADS for actual damages, including loss of federal matching funds. The rights and remedies of the Parties provided for in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

H. Federal, State and Local Taxes Contractor:

1. KDADS makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the CDDO.

I. Debarment:

1. The CDDO represents and warrants that it is not a "debarred" entity. As part of the Code of Federal Regulations () (2 C.F.R Part 180), all governmental entities receiving funding from the Federal Government must participate in a government-wide system for non-

procurement debarment and suspension. A person or entity that is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. The Secretary of KDADS is authorized to impose debarment. Before any person or entity enters into an agreement, grant, or contract with KDADS, the "Excluded Parties Lists" (located at the web site www.sam.gov) shall be researched for potential debarred persons or entities.

J. Lobbying:

1. No appropriated funds may be expended by the recipient of a grant which includes federal funding to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of the Legislature or an employee of a member of the Legislature in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. The Secretary of KDADS is authorized to require reviews of the CDDO audit and financial reporting policies to ensure appropriate oversight of agency funding allocated to the CDDO. This includes, but is not limited to, independent audit requirements; KDADS audit processes and CDDO Administrative funding reporting. Notwithstanding the foregoing, this provision is not intended to restrict the CDDO's ability to belong to any professional association, including, but not limited to, training and contract negotiations.

V. REIMBURSEMENT/FUNDING

A. Allocation:

1. The purpose of the funding allocation methodologies set forth herein is to equitably distribute the State Aid funds, and CDDO Administration funds appropriated by the Kansas Legislature for the SFY. Application of these methodologies shall not result in an allocation of funds in excess of KDADS' CDDO budget appropriation.

B. State Aid:

1. State Aid Allocations are made consistent with K.S.A. 65-4411 et seq. and K.A.R. 30-22-31 and 32.
2. "Hold Harmless": The first \$5,216,286.00 in State Aid is distributed in amounts equal to what each CDDO received in SFY 1986. Additional funding appropriated in the amount of \$1 million for SFY25 shall be allocated across CDDOs as a percent of the total Kansas population based on the 2022 Census Estimates.
3. "Excess of Hold Harmless": State Aid amounts in excess of \$5,216,286.00 are distributed based on the number of persons served in adult day and residential services as follows:
 - (a) The total number of persons served in adult day and residential as of

January 1, 2002, for each CDDO service area as listed.

- (b) The number of persons whose adult day and residential services are funded through general funds - Community and Family Services and Supports - as of the last transmission date for April 2005, are subtracted from the total number of persons listed above.
 - (c) The remaining number is converted to program units by adding the number of persons served in adult day to the number served in residential services.
 - (d) The amount in excess of \$5,216,286.00 is divided by the number of program units.
 - (e) The amount per program unit is multiplied by the number of program units determined to be provided in each CDDO service area. The "Hold Harmless" is added to the "Excess of Hold Harmless" resulting in the final State Aid allocation.
4. State Aid funds are discretionary and locally determined by the CDDO within the state-approved taxonomy codes. The CDDO will include in their first quarterly state aid report their State-Aid distribution methodology and this report shall be distributed to all affiliates. For additional State Aid resources, above hold-harmless, the CDDOs will engage with their affiliates to determine the plan to include the priority areas and process for accessing any new State Aid funds. All funds must be committed by the end of the Contract Year.
5. State Aid Priority Services: As defined in KDADS Taxonomy.
- (a) Transportation;
 - (b) Children's Services;
 - (c) Direct Service Provision;
 - (d) Funding for non-Medicaid eligible Case Management;
 - (e) Flex Funding: Costs for services provided to individuals with IDD that are not paid for by other sources. Examples include but are not limited to dental procedures, home modifications, wheelchairs, assistive technology, etc.;
 - (f) Emergent Need: Unpredictable consumer-specified need.

C. CDDO Administration Allocation:

1. To determine a per-person amount, the total amount allocated for CDDO Administration is divided by the unduplicated number in state data system, currently KAMIS, statewide, less persons residing in a public ICF-IID as of May 2013. The CDDO administration for each CDDO area is established by multiplying this per person amount by the number of persons listed in state data system for that CDDO area.

In collaboration, the parties will explore and test options for a different methodology for the CDDO Administration allocation. The Parties agree that a new methodology must

be finalized by March 31, 2025, in order to be utilized for July 01, 2025, allocation change.

In the event a different allocation methodology is not identified by March 31, 2025, for implementation on July 1, 2025, due to unforeseen circumstances, both parties agree to the following method to determine the data/source set:

CDDOs will report to KDADS as of the agreed upon snapshot date in a standard agreed upon format/template, their total number of I/DD eligible persons. This will include an excel (.xls or .csv version) spreadsheet/reportable list of names and applicable identifying information as determined by both parties for any verification purposes by March 31, 2025.

2. KDADS and CDDOs will collaborate to review processes to explore ways to streamline, reducing reliance on manual and paper procedures with an emphasis on exploring opportunities to exploit technology, create financial savings or cost avoidance and effective operations. As new technology is developed, KDADS will evaluate the financial impact to CDDOs by consulting with a small group and collaborating to propose making reasonable accommodations.
3. The CDDO may review and assess the IDD System funding needs as well as other enhancements which may improve the delivery of services to those individuals served by the IDD System and from time-to-time during the Contract present such assessments to the Secretary for consideration and/or feedback. In order for any needs and/or enhancements to be considered in the Department's budget request to the Governor, the CDDO will need to present the needs and/or enhancements to the Secretary no later than August 1st. Any needs and/or enhancements provided to the Secretary after this date will not be considered for this budget but may be considered in future budget requests.
4. KDADS Secretary will give due consideration to funding mechanisms for ID/D system growth and the CDDOs' related duties for requests to the Kansas Legislature based on impact and fiscal notes mutually identified by both parties, KDADS' budget enhancements and/or possible Governor's Budget Amendment requests upon timely presentation of the funding needs and/or the requested budget enhancements to the Secretary or her designee.
5. A task force, composed of KDADS and representatives of each statutorily established CDDO, shall be created to collaboratively analyze and address the current CDDO network funding needs. The task force shall determine the methodology which incorporates base cost, workload, geographic and other considerations necessary for the successful operation of CDDOs. Funding allocations and requested increases shall be presented to the Secretary for consideration in the agency's budget process.

D. Reimbursement/Payment:

1. Payment to the CDDO shall be made according to the process below.

E. State Aid Payments:

1. State Aid shall be paid in four (4) quarterly payments: July, October, January, and April of the Contract Year.

F. CDDO Administration:

1. A quarterly payment of federal and SGF (State General Funds) for CDDO administration shall be paid in July, October, January and April of the Contract Year. A fourth quarterly payment shall be made after receipt of the CDDO's third quarter administrative cost report showing that expenditures reported are equal to or greater than the amount of payments. If the CDDO's administration expenditures are less than the amount of payments for the first three quarters, KDADS shall contact the CDDO to ensure appropriate reconciliation will occur by the end of the SFY. KDADS will work with CDDO to reconcile all expenditures by forty-five (45) days after the end of the SFY.

G. CDDO Allocation

CDDO Allocation - FY25					
Community Developmental Disability Organization	State Aid	CDDO Administration			Total All Funds
		State Admin	Fed Admin	Total Admin	
SEDGWICK COUNTY DEVELOPMENTAL DISABILITY ORGANIZATION	1,222,306	1,267,373	981,908	2,249,281	3,471,587

H. Functional Assessment Reimbursement:

1. KDADS shall reimburse the CDDO \$150.00 per completed and entered assessments for persons seeking HCBS Medicaid services as indicated in KAMIS by the CDDO and also for public ICFs by the assigned CDDO. The CDDO has seven (7) business days from the date of completion to enter the data from the assessment into KDADS' data management system. Payment for completed and entered assessments shall be distributed by the twentieth (20th) of the month following the date of assessment if entered by the 10th of the month following the date of the assessment (i.e., if the functional assessment is completed by January 31st, entered by February 10th, payment shall be sent by February 20th).

I. Recoupment:

1. KDADS may recoup from payments due the CDDO, including but not limited to, for unexpended State Aid, CDDO Administration Funds and inaccurate functional assessments (as described in L.1. below). In the event of recoupment, either the CDDO shall remit the amount due by check or money order made payable to KDADS, or, by express mutual consent of the Parties, KDADS shall reduce the next contract year's payments by an amount equal to the amount of the proposed recoupment.

J. Recoupment Process:

1. In the event of a recoupment, KDADS shall provide written notice of the proposed recoupment.
2. The CDDO issued notice of recoupment shall have thirty (30) days from the date of the notice of recoupment to submit a written request for informal review by the Secretary or authorized designee. The written request shall include supporting documentation to be considered by the Secretary or authorized designee.
3. Within thirty (30) days the Secretary or authorized designee shall provide a final written determination on the notice of the proposed recoupment which includes the factual basis for the recoupment, and the CDDO's appeal rights with the Office of Administrative Hearings.

K. Recoupment Appeal Rights:

1. If the CDDO appeals the proposed recoupment prior to the deadline contained in the KDADS notice, KDADS would not recoup until the entry of an Initial Order by the Office of Administrative Hearings, assuming such Order allows the recoupment to proceed. The Parties consent to the jurisdiction of the Office of Administrative Hearings, Topeka, Kansas, to resolve such dispute.

L. Inaccurate or Incomplete Functional Assessments:

1. KDADS shall review completion of functional assessments as entered into KAMIS to determine compliance with this Contract and related KDADS policies for functional assessments. KDADS shall perform its quality assurance reviews by reassessing the data using the functional tool to ensure the tool was applied appropriately. If KDADS identifies an assessment that was applied or submitted inaccurately, or was completed by an assessor who was not qualified to conduct a functional assessment, or the assessment was submitted but is incomplete or fails to address all required elements, KDADS may recoup the previous payment for that functional assessment.

VI. ELIGIBILITY DETERMINATION AND FUNCTIONAL ASSESSMENT

A. Eligibility Determination:

1. The CDDO shall, directly or by subcontract, serve as a single point of entry to IDD

Services and provide information, referral and explanation of available services, and service providers for individuals with IDD, including non-Medicaid community-based options.

- a. KDADS and the CDDOs agree to collaborate on ensuring that eligibility determination for individuals with IDD, including those aged 0-5, and/or those seeking non-Medicaid funded services, is handled consistently and transparently. Eligibility determinations for HCBS IDD waiver services will follow the requirements outlined in the HCBS IDD Program Eligibility Determination Policy, while eligibility for non-Medicaid services may either be addressed through a separate policy or an aligned unified policy.
 - b. Both parties will work together to ensure that eligibility criteria, reassessment processes, and appeal rights are clearly communicated to participants and their families, regardless of the funding source. If more than one policy is maintained, KDADS and CDDOs will take steps to minimize confusion.
2. Upon completion of IDD eligibility determination, the CDDO shall complete a functional assessment for individuals with a qualifying intellectual or developmental disability using the tools and processes of the functional assessment tool. The assessment shall be initiated within five (5) business days and completed within twenty (20) business days from the date of written notification following determination of IDD eligibility.
- (a) The CDDO shall complete the functional reassessment for IDD waiver participants within three hundred and sixty-five (365) days and no sooner than two (2) months prior to the assessment due date.
 - (b) The CDDO shall enter the data from the HCBS IDD functional assessments into KAMIS and utilize the information system for collecting and updating data related to an individual with IDD being served by the IDD Program.
 - (c) All functional assessments shall be completed and entered into KAMIS within seven (7) business days after an assessment meeting. An exception to this requirement may be applied in varied and unique circumstances with approval of the IDD Program Manager. Evidence of failure to submit assessments in KAMIS within the established timeframe may delay development of the Person-Centered Service Plan, impact the delivery of services to the participant and may result in a performance improvement plan with the State.

B. Functional Assessment:

1. All functional assessments shall be performed by CDDO staff or by an entity that has entered into an agreement with the CDDO to perform functional assessments.

- (a) All functional assessments performed by any state-approved assessor that has entered into a subcontract agreement with the state-contracted CDDO to perform functional assessments, must be entered into KAMIS under the KAMIS identifying information of the State contracted CDDO.
2. CDDO staff or any sub-contracted entity staff that has entered into a contract with the CDDO to perform functional assessments shall not provide any direct services (including Case Management) to a person served.
3. KDADS will collaborate with the CDDOs to streamline the process for the CDDOs to notify KDADS of a new functional assessor and to submit the required documentation of assessor qualifications.

C. Comprehensive Options Counseling:

1. Upon an initial assessment and annually thereafter the CDDO shall collect a signed statement providing evidence that the person has been provided comprehensive options counseling. The CDDO shall submit the executed statement electronically to KDADS within seven (7) business days of completing the functional assessment. The CDDO shall use its best efforts to assure the person understands that no guarantee of services or providers is being made. Clear language shall be included in the statement regarding this fact.

D. Provisional Plan of Care:

1. The CDDO shall continue to comply with the existing provisional plan of care process for the following: Crisis requests, Exceptions requests and I/DD waiting list offers for waiver services through KDADS. The parties acknowledged these provisional plans of care do not apply to annual reassessments and shall include relevant State Plan services and must include at least one waiver service. The parties acknowledge the completion of this provisional plan of care by the CDDO shall in no way shift any case management functions or service from the community system to the MCOs. The parties acknowledge, material changes to the scope of work for the CDDO would be subject to remedies noted in this contract.

E. Changes or Enhancements to KAMIS:

1. When possible upcoming updates, upgrades or enhancements are anticipated to KAMIS, KDADS will provide notice of changes and/or enhancements in advance to the CDDO. KDADS will offer on-line training, when necessary, to assist the CDDO in learning the new functionality. KDADS will use CDDO representatives in usability testing to provide feedback on upgrades and enhancements prior to implementation.
2. In the event that a new software system is implemented for the functional assessment, KDADS will work with CDDOs, prior to implementation, to provide adequate training, communicate hardware specifications, clarify data access and reporting capabilities, and consult on a reasonable timeline and an implementation date so that CDDOs can make modifications to data tracking systems and/or work with external vendors.

F. Free Choice of Providers Consultation:

Upon request of persons served and/or guardians, the CDDO will impartially provide choice of available provider(s) and of the licensed providers and other agencies existing within the service area that the CDDO has been advised might be willing to provide services to the person, and the way to contact those licensed providers or other agencies. When notified of choice, the CDDO shall collect a signed statement providing evidence that the person has been provided options counseling. The CDDO shall make a referral to the chosen provider(s) and send documentation to the Managed Care Organization designee to facilitate the Person-Centered Service Plan revision.

G. Functional Assessment Manual

The CDDOs will continue to use the BASIS VI Manual and supporting documents to complete functional assessments until the parties collaborate in accordance with Section VI.H below to implement MFEI.

H. MFEI:

The CDDO's will collaborate with KDADS to implement the MFEI. The MFEI assessment launch date is planned for March 1, 2025, with all assessments using MFEI, with full transition, by June 30, 2025. The percentage of assessments due by month shall be as follows:

50% for March;
60% for April;
75% for May; and
100% for June.

1. The Parties shall collaborate on plan to address any backlog, training for all CDDOs, timely notification to CDDOs of technology requirements needed to complete the assessment, policy and process development, and adequate reimbursement rates.
2. The Parties mutually agree the new MFEI requirements will trigger the need for the Parties to renegotiate in good faith per Section XI. C. item 1. and Section XIV.B. Item 1. Upon implementation of the MFEI, the per MFEI assessment rate will be no less than \$175.00.

VII. ACCESS TO SERVICES: CAPACITY, CRISIS AND PRIORITY SERVICES

A. Access to new HCBS IDD Program services shall be limited to one of the following:

1. Crisis/imminent risk of crisis:

- (a) Persons who are in crisis or at imminent risk of crisis and whose needs can only be met through services available through the HCBS IDD Program are those persons who:

- i. Require protection from confirmed/substantiated abuse, neglect, or exploitation or written documentation of pending action for same; or
- ii. Are at significant, imminent risk of serious harm to self or others.

2. Funding capacity to serve (waiting list):

- (a) Transition from different programs: Transition from other Home and Community Based Services.
 - i. Persons who have lost other funding due to the termination of Technology Assisted, Autism or Brain Injury program services may have access to HCBS IDD Program services if they meet HCBS IDD program eligibility.
 - ii. MCOs or KDADS will notify CDDOs when they become aware that an individual shall lose their funding due to the termination of Technology Assisted, Autism or Brain Injury program services and work jointly to ensure that the individual has timely access to HCBS-IDD program services.
 - iii. Functional assessments over 365 days for individuals who request transition from other Home and Community Based Services waivers to the IDD waiver must first be authorized by the KDADS IDD Program Manager via the BASIS Special Re-Evaluation form approval process.”

3. Transition from Institutions.

- (a) For persons transferring from an Institutional Setting during this SFY, MCOs and CDDOs shall notify each other when they become aware of an individual in an institutional setting is transitioning into the community.
- (b) Money Follows the Person: For persons transitioning to community-based services from an Institutional Setting that is either closing or reducing its bed capacity, negotiated rate(s) different from those provided may be allowed by MCOs. Pursuant to K.S.A. 39-1806 (a)(1), such rate(s) shall cover the actual cost(s) of services approved for the person as set out in the person's plan for transfer from the Institutional Setting. CDDO shall work with the MCO to help the individual or individuals choose a HCBS-IDD Program provider in or near their preferred community to allow for transfer from an institutional setting to assist the MCO in network adequacy and access to home and community-based services for this population.
- (c) Institutional Transition: For persons who are transitioning from an approved institutional setting after a sixty (60) consecutive day stay, the CDDO shall work in compliance with the HCBS Transition Policy, and with the HCBS Institutional Transition Specialist and the individual's

MCO, if applicable, to identify possible transition-eligible participants and assist individuals living in a qualifying institutional setting such as an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID).

- (d) Returning to the IDD Waiver after short-term institutionalization: For waiver participants who leave the IDD waiver to go into an approved institutional setting (as per Transition policy) who are in the setting until the temporary coding timeframe with KDHE has ended, and the institutional coding has begun (temporary coding defined as: month of entry plus sixty (60) days), and whose stay has not exceeded the time period in the temporary coding, the KDADS IDD Program Manager shall send approval for re-instatement of waiver to KDHE upon timely notification of discharge from facility by CDDO. Timely notification shall be within five (5)(business) days of discharge from facility.
- (e) Returning to the IDD Waiver after incarceration. For waiver participants who leave the IDD waiver due to incarceration who are in the setting until the temporary coding timeframe with KDHE has been met and the waiver coding has ended (temporary coding defined as: month of entry plus two months), the KDADS IDD Program Manager shall send a 3160 approval for re-instatement of waiver eligibility to KDHE upon timely notification of discharge from facility by CDDO if the individual has a current functional assessment and the individual can be automatically reinstated to the Medicaid program by KDHE (current Medicaid application on file with KDHE). Timely notification shall be within five (5) business days of discharge from facility. For individuals incarcerated over twelve (12) months or whose Medicaid eligibility cannot be automatically reinstated by KDHE (current Medicaid application on file with KDHE), a crisis application is required.

4. Crisis Exceptions:

(a) Procedures for Crisis.

- i. **New Persons.** When persons who are not receiving HCBS IDD program services present themselves to the CDDO as being in crisis, the CDDO shall make appropriate referrals to other available community services. If the CDDO determines that it does not have the resources to support the person in crisis, it shall work with KDADS, other CDDOs, and the MCO, if a MCO is assigned in KMAP, to secure crisis services.
- ii. If after all natural and community supports have been explored and exhausted the person is still determined to be in crisis, the CDDO shall provide a crisis approval recommendation to KDADS for access to HCBS-IDD Program services.

- iii. Documentation of all attempts to find other resources shall be maintained by the entity making the request and provided to the CDDO prior to the person being recommended for approval of for crisis funding.
- iv. If the CDDO determines that an individual does not meet the crisis threshold, written notification, including appeal rights should be sent to the individual, guardian, and TCM ". Notice to the MCO, if applicable, would be appropriate to help the MCO determine other supports.
- v. If the CDDO recommends approval of the crisis request at the local level, such documentation shall be provided to KDADS. KDADS shall grant or deny such request for services. If the crisis request is denied, KDADS shall prepare and submit to the individual allegedly in crisis a Notice of Action ("NOA") containing appropriate appeal rights.

B. Capacity to Serve (Waiting List).

1. KDADS shall maintain a single statewide HCBS-IDD wait list for individuals with IDD who have been determined to meet the HCBS-IDD Program level of care criteria and HCBS-IDD Program eligibility and who are waiting to receive any available service under the HCBS-IDD Program subject to appropriations and the HCBS-IDD Program's funding capacity to serve an individual waiting for services.
2. KDADS shall provide CDDOs with access to the waiting list, at least on a semi-annual basis, for individuals with IDD in the CDDO area they serve that indicates the individual's position on that list.
 - (a) Upon receiving access to the waiting list for individuals with IDD within its catchment area, the CDDO shall review, reconcile and update as necessary the waiting list at least on a semi-annual basis.
3. For persons moving from one CDDO area to another, the individual shall retain their place on the waiting list.
4. KDADS shall notify individuals when they are being offered HCBS services based on new allocations. KDADS shall also notify the MCO and the CDDO.
5. If an individual being offered services on the wait list declines services or does not respond to an offer of service within thirty (30) days and after the CDDO has made documented attempts to contact the individual via mail, phone, and email as available, the next person on the statewide HCBS-IDD wait list may be offered services. At the end of the response period, KDADS will notify the CDDOs, by email, those individuals who decline or fail to send a response regarding services.

C. Transition from the Waiting List to Institutional Setting (not incarceration):

1. If an IDD waitlist participant enters an approved institutional setting (as per the HCBS Transition Policy), that person will retain their position on the waitlist until the required consecutive sixty 60 days has passed. At the sixty 60-day mark, the participant may be eligible for the Institutional Transition process. KDADS IDD Program Manager will send notification of the person's institutional transition eligibility to the CDDO, the KDADS Institutional Transition Specialist, and to the assigned MCO. If an offer of funding was made and not accepted, the KDADS Program Manager will remove the person from the IDD waitlist, sending removal Notice of Action to the person and the CDDO. If the waitlist person discharges from the institution before the requisite sixty 60 days for an institutional transition timeframe, the person may retain their waitlist position.

D. Transition from the Waiting List to Incarceration:

1. If a waitlist individual is incarcerated, that person will retain their position on the IDD waitlist. If the person is offered funding, and the person declines, their name will be removed from the waitlist. A waitlist removal NOA will be sent to the person and the person's CDDO. The person, at release planning, can request crisis access funding at release of incarceration, if waiver services are needed for post release supports.

E. Notification of waiting list removal:

1. Notification of waiting list removal, with the exception of death or voluntary request for removal as a reason, will be sent by KDADS to the individual waiting, guardian, if applicable, and the CDDO, including reason for this action and the individual's right to appeal.

F. Exceptions:

1. Priority services may be provided, utilizing the procedure as set forth in Section VII, A.4.(a) to individuals in the following situations: MCOs and CDDOs shall notify each other when they become aware of an individual fitting one of these situations:
 - (a) To persons in the custody of the Department of Children and Families may access new or additional HCBS-IDD Program services for the purpose of addressing support needs related specifically to the person's I/DD. However, to prevent duplication, access to the HCBS-IDD program shall not be granted if the child's only need for services is related to supervision or other supports provided by the foster parent. The CDDO will review and attest that documentation gathered during eligibility and BASIS process identifies disability related support needs. The CDDO will submit PCSP if available as documentation. The CDDO shall collaboratively work with the responsible child placing agency and the MCO to assure that the health and welfare needs of the person are met. The MCO will assure that the health and welfare need of the person are met.

- (b) Persons who have been determined to be at imminent risk of coming into the custody of the Department of Children and Families may access new HCBS-IDD Program services for the purpose of addressing support needs related specifically to the person's IDD to assure the person avoids custody.
- (c) Persons under the age of 18 transitioning from custody, as well as persons transitioning out of custody at age 18 or thereafter, may access HCBS-IDD Program services in an amount sufficient to provide for disability-related support needs of the person. The CDDO and MCOs shall review the situation and determine how the health and welfare needs of the person shall be met. KDADS acknowledges that the transition to children or adult services may transcend fiscal years.
- (d) Persons who are returning to community services from a Youth Residential Center II or a Psychiatric Residential Treatment Facility (PRTF) and who were previously accessing HCBS IDD waiver funding, are eligible to have their waiver services reinstated if their stay is less than 60 consecutive days, plus the remainder of the month of admission, under the temporary stay policy. These individuals are not required to undergo the institutional transition process (HCBS Transition Policy), as long as they return to the waiver under this temporary stay provision.
- (e) For persons who are listed on the statewide HCBS-IDD wait list for HCBS-IDD Program services, referred to Vocational Rehabilitation Services ("VRS") for employment services, which is designed to help individuals with disabilities achieve employment and self-sufficiency and links employers with qualified and productive persons to meet their work force needs, may receive access to limited HCBS IDD Program services.
 - i. CDDO shall ensure that the individual has been referred to VRS. Upon notification to the CDDO of a pending successful VRS case closure, the CDDO will review the request for an exception to the waiting list and make a recommendation to KDADS for the individual to have access to HCBS IDD Supported Employment services needed to successfully maintain their employment. KDADS shall give preliminary approval of the request by completing the KDADS Notice of Action. Upon receipt of the successful VRS case closure, KDADS will issue final approval by completing the 3160 to KDHE and provide a copy to the CDDO and MCO. The Department of Children and Families ("DCF"), VRS, CDDO, and MCO should work collaboratively on the exact closure date to ensure a seamless transition from VRS to HCBS services.
- (f) Persons meeting the criteria set forth in the KDADS HCBS Military Inclusion Policy.
- (g) Persons previously on the IDD waiver transferring back to the IDD waiver

from the Working Healthy/WORK or STEPS program as per the KDADS Crisis and Exception Policy.

2. Procedure for priority services access:

- (a) New Persons (not receiving HCBS-IDD Program funded services). When persons in one of these situations present themselves to the CDDO and requests services, the CDDO shall review need for IDD services and shall provide a recommendation to KDADS for access to HCBS-IDD Program services.
 - (b) To help facilitate communication between CDDOs and foster care contractors, KDADS will request from DCF and DCF contractors key contact information and share with the CDDOs in order to assist with service planning.
 - (c) Persons currently receiving HCBS Program funded services. When persons who are currently receiving at least one HCBS-IDD program service that is funded by Medicaid present themselves to the CDDO as being in a priority service situation with a need for HCBS-IDD services, the CDDO shall notify the individual's MCO.
3. All other access to new HCBS IDD Program services shall be limited to those persons who are offered HCBS IDD Program services pursuant to either the statewide HCBS IDD wait list or crisis criteria.

G. Case Transfers and Referrals:

1. Upon receiving notice of a case transfer between two CDDOs, the transferring CDDO, with releases of information being signed if applicable, will send the receiving CDDO all existing supporting eligibility documentation including, but not limited to, psychological evaluation, Eligibility Determination Instrument, Eligibility Check list, IDD 1 Recipient Choice Form, listing of the current services and/or waiting list status. The transferring CDDO will encourage, if applicable, the current TCM to engage with chosen CSP and/or receiving TCM to ensure uninterrupted service provision and continuity of care. The timely transfer of these records is essential for facilitating seamless transitions between catchment areas.

VIII. QUALITY ASSURANCE AND REVIEW

A. CDDO Responsibilities:

1. The CDDO shall participate in and cooperate by providing required resources for the CDDO Peer Review process(es) developed by KDADS.

B. Complaint Tracking:

1. CDDO's shall complete a quarterly complaint tracking form for KDADS to ensure that

all complaints received by the CDDO and KDADS are adequately addressed. Any direct resolution reached by an affiliate and a complainant, not reported to KDADS or the CDDO, will not be considered a complaint and not reportable under this contract. The report shall be submitted to the IDD Upload Utility by October 20th, January 20th, April 20th, and July 20th of the current contract year.

2. In the event that a CDDO receives a written or oral complaint that meets the definition of complaint described herein the CDDO shall document the complaint on the "CDDO Quarterly Complaint Tracking" Form.
3. KDADS shall notify the CDDO of complaints received in order to allow the CDDO to follow up and report the outcome. If the complaint is received verbally, the CDDO shall capture the complaint in writing for tracking purposes.
4. The "CDDO Quarterly Complaint Tracking" Form shall track the date complaint received; name of complainant, complaint category (See #5), complainant issue, status of the issue, how the issue was resolved, and date issue was resolved. A written response shall be provided to the complainant.
5. Complaint Tracking Categories:
 - (a) Affiliation
 - (b) BASIS (Functional Assessment)
 - (c) CDDO Quality Assurance Process
 - (d) Consumer Complaint regarding Provider
 - (e) Consumer Crisis
 - (f) Eligibility Determination:
 - (g) Exceptions
 - (h) Other Funding Issues
 - (i) Other Concerns
 - (j) Dispute Resolution Process offered and/or pursued.
6. For the purpose of System Management, KDADS shall aggregate complaint data submitted by the CDDOs on a quarterly basis. KDADS shall report aggregate data and trend analysis to be shared with CDDOs no later than thirty (30) days following the submission of said data by all CDDOs to KDADS. In addition, the report will be provided at the regularly scheduled KDADS and CDDO business meetings in March and August.

C. Peer Review:

1. In addition to the duties and activities related to CDDO responsibilities, the CDDO shall participate in the CDDO Performance Review.
2. Operations Oversight workgroup will develop standard review policies and procedures, including review tools, reporting tools, and notifications that ensure a consistent implementation of the review process. This includes a Peer Review Policy prior to June 30, 2025.
3. Peer Reviews:
 - (a) CDDO Peer Reviews shall be conducted once every two (2) years on all CDDOs in the State of Kansas.
 - (b) Peer Reviews shall consist of an onsite visit. The reviews will consist of quality assurance and performance measures limited to and as defined by federal and state statute and regulation, formally adopted KDADS policies, this Contract, and the HCBS IDD CMS-approved waiver. As per X.A.2.(a). of this contract, the Operations Oversight workgroup will develop standard onsite review policies and procedures for KDADS approval. Reviews will begin after policies and procedures are completed.
 - (c) The CDDO shall cooperate with the peer review team by providing access to any records, documents or other information as requested by the review team regarding or relating to the execution and/or performance of this Contract.
 - (d) KDADS or its designee, reserves the right to audit CDDO records for compliance regarding complaints, deficiencies and identified areas of compliance related to CDDO administration, including federal financial participation standards and quarterly quality assurance review of functional assessments.
 - (e) KDADS will provide a written report within ten business days to the CDDO following the Peer Review. The findings of the Peer Review team will be considered final unless the CDDO contests the findings and provides a rebuttal.
 - (f) If the CDDO would like to provide a rebuttal, they will have ten (10) business days from the submission of the KDADS report to do so. A final report from KDADS will be due within ten (10) business days from the submission of the CDDO rebuttal. The CDDO rebuttal will be added to the original report and the report will be updated to reflect the outcome of the rebuttal.
 - (g) The final report will include a request for a performance improvement plan, if applicable. The timeline for the performance improvement plan will be

identified in the final report.

- (h) The findings of the Peer Review team will be final unless KDADS or CDDO contest the findings in accordance with the Peer Review Policy or as allowed under state law.
- (i) Results of the peer review shall not be made available or posted publicly until final determination has been made.

D. Quality Standards for Functional Assessments:

The CDDO is expected to meet the following quality assurance standards for functional assessments and report annually (calendar year) on the following:

- (a) KDADS shall, prior to public comment, submit to the CDDOs the policies and procedures for functional assessment training (MFEI). The Operations Oversight workgroup shall ratify the policies and procedures for MFEI functional assessment training by, January 1, 2025, which includes the following:
 - i. Training curriculum and online modality for training and scoring assessments;
 - ii. Functional assessment training protocols and trainers;
 - iii. Policy and process for regular retraining of functional assessors consistent with the assessment tool; and
 - iv. Quantitative analysis of the current functional assessment training system to develop procedures and continuous quality improvement.
- 2. In addition, the CDDO is expected to meet the following quality assurance standards for functional assessments and report quarterly on the following:
 - (a) 100% of Functional assessors have completed required trainings within thirty (30) calendar days of employment and at least annually thereafter;
 - (b) CDDO training, verification and internal quality assurance practices to ensure quality outcomes and consistent application of the scoring and screening of individuals; and

E. Licensure of Affiliates and Community Service Providers (CSP):

1. Notification of Licensure:

- (a) KDADS shall provide notification to the CDDO, within thirty (30) calendar days, of KDADS' receipt of any application for any new licensure or for re-licensure of any CSP seeking to operate within the CDDO's

service area, and shall seek the information, documentation, and cooperation of the CDDO related to a provider's affiliation, qualifications, capabilities, and current standing of the applicant as part of the review of a licensee during the application or reapplication process.

2. Affiliate Agreement with the CDDO:

- (a) If KDADS grants a person/entity's application for licensure (new or renewal), the CDDO shall enter into an Affiliate Agreement unless one of the following exceptions apply: (1) If the provider refuses to accept a reimbursement rate for services to be provided that is at least equal to that established by the Secretary to apply the CDDO, or as agreed to in the affiliation agreement with the CDDO, (2) if the provider has established a pattern of failing or refusing to abide by the services area procedures established by the CDDO according to K.A.R. 30-64-21, or failing to comply with its affiliation agreement with the CDDO; (3) if the CDDO demonstrates to the satisfaction of the Secretary that being required to enter into an affiliating agreement would seriously jeopardize the CDDO's ability to fulfill its responsibilities either under these regulations or pursuant to its contract with the Secretary. (K.A.R. 30-64-22, as amended) Additionally, CDDOs should have an affiliate agreement for all service providers, including services provided by an entity associated with or connected to the CDDO. If, however, an internal division, department, or section of the CDDO provides IDD services, the CDDO shall comply with the terms of its standard "Affiliate Agreement" as if the same were set forth in full herein.
 - i. The CDDO shall maintain a current affiliate agreement for each affiliate.
 - ii. Affiliate agreements shall indicate the service(s) the affiliate is approved to provide and be signed by all required parties.
 - iii. All applicable Choice documents shall be current and shall include all applicable affiliate providers and services they agree to provide.
 - iv. All choice documentation must be presented in plain language.

F. Setting Final Rule Compliance Monitoring and Reporting

1. Final Rule

- a) The CDDO shall notify the Settings Final Rule Compliance Coordinator of all potential concerns of non-compliance within five (5) business days of becoming aware. KDADS shall be responsible for any follow-up or additional oversight needed as a result of this reporting of non-compliance of the Final Settings Rule.

- b) The CDDO shall work with the Settings Final Rule team as needed to assist with transitioning of participants when compliance is determined unable to be met.

G. Public Accessibility

1. Public accessibility. The CDDOs will provide public accessibility in accordance with the following minimum requirements:
 - a) Be clearly identified by signage and be Americans with Disabilities Act (ADA) accessible.
 - b) Have a local community resource information available to the public.
 - c) Have normal business hours posted for at least two (2) business days when CDDO staff is consistently present to schedule appointments.
 - d) Have a reception area where the public is greeted by an individual.
 - e) Have an area that can accommodate privacy.
 - f) Have a Kansas phone number for the purpose of scheduling, information, and referral.
2. CDDOs through a good faith effort shall make accessible to stakeholders, information regarding upcoming meetings, policy changes and public comment opportunities.

IX. CONFLICT OF INTEREST

A. Conflict of Interest:

1. The CDDO shall at all times herein strictly comply with 42 CFR 441.301, as amended and specifically 42 CFR 441.301 (c)(1)(vi).
2. Specifically, a CDDO owned/operated Affiliate may not provide direct services to a person if the person has a Court Appointed Guardian and such Guardian is a CDDO employee, a CDDO owned/operated Affiliate employee or a Guardian who has a contractual relationship (personal or through an entity) with the CDDO or its Affiliate unless such Guardian has completed one of the following:
 - (a) File a Motion with the Probate Court disclosing all aspects of the conflict seeking a ruling thereon for the Probate Judge; or
 - (b) File a Motion with the Probate Court seeking the appointment of a substitute Guardian who does not have the conflicted relationship with the CDDO; or
 - (c) Designate a representative, to direct the services of a person the Guardian represents and provides paid supports to, when a conflict of interest exists.

3. The parties mutually agree to collaborate regarding Conflict of Interest. The parties agree in FY25 to engage with third party IDD Modernization contractors to assist, among other things, in kick off meetings, focus groups and road map development to facilitate structural, functional, and regulatory review consistent with CMS guidance in order to identify, eliminate or mitigate any conflicts of interest and ensure the delivery of unbiased services.

X. STATEWIDE GROUP MEETINGS, BUSINESS MEETINGS, AND STAKEHOLDER MEETINGS

A. Statewide Group Meetings:

1. The Parties agree to include two (2) non-voting seats to self-advocates and family members/natural supports in the Operations Oversight meeting. KDADS will select two (2) representatives to serve in this capacity. Priority will be given to allow for direct representation by individuals who are eligible for IDD services in Kansas.
2. The first meeting will convene within the first quarter of this contract to establish the charter for each group, the scope of the group, frequency of meetings, expected outcomes and deliverables with deference to the IDD Strategic Vision Plan. For the Operations Oversight group, CDDOs and KDADS will each select a co-chair to jointly develop the agenda and facilitate the meetings. The other groups will operate as sub-groups of Operations Oversight, and each will be led by a selected CDDO chairperson. Each CDDO chairperson will report on their sub-group's activities at the Operations Oversight meetings. Final decision-making authority for the sub-groups will rest with the Operations Oversight group. KDADS participations on the sub-groups is voluntary.
 - (a) Operations Oversight. CDDOs will work in partnership with KDADS to discuss operational system processes and issues to work toward greater consistency, streamlining processes, and minimizing duplication of efforts. The Charter will be revised to include prioritization of a workplan as agreed upon by the workgroup. KDADS will provide the data they are providing to CMS for review by CDDOs.
 - i. IDD System Eligibility – A subgroup of Operations Oversight. CDDOs will meet to discuss eligibility determination processes, seek further clarification in an effort to maintain consistency in eligibility determinations across the state.
 - ii. Functional Assessment – A subgroup of Operations Oversight. CDDOs will meet ongoing to discuss functional assessment challenges and processes to seek further clarification in an effort to seek greater consistency among assessors.
 - iii. Quality Assurance Oversight. – A subgroup of Operations Oversight. CDDOs will meet to discuss processes for system quality oversight that are effective to minimize duplication of functions, and seek clarification in an effort to maintain consistency in quality assurance

standards across the state. The Charter will be revised to include prioritization of a work plan as agreed upon by the workgroup.

- iv. Complex Needs - A subgroup of Operations Oversight. CDDOs will meet to discuss system challenges including but not limited to gaps in services and supports to individuals experiencing co-occurring IDD and behavioral health needs, interfering behavior or complex medical needs creating barriers to successful community integration and develop recommendations to address those challenges as a system.

B. KDADS and CDDO Business Meetings:

CDDOs and KDADS will meet face to face, with teleconference capability made available, or by virtual meeting if mutually agreed to by the parties, not less than two times per year. Meetings will be held in March and August at a location arranged by KDADS. The purpose of KDADS/CDDO meetings will be to discuss CDDO Operational activities with CDDO and KDADS leadership, input from Stakeholders including self-advocates, family members and natural supports is important, and a standing agenda item for this purpose shall be added to each Business Meeting agenda. Agendas for these meetings will be developed jointly by representatives of the parties and KDADS shall distribute at least seven (7) days in advance of each meeting. KDADS is responsible for taking the minutes and will post the minutes of each of these meetings on KDADS’s website within fourteen (14) days after receipt of those minutes and as they are approved by CDDOs.

XI. NOTIFICATION REQUIREMENTS

A. Notice of CDDO Name Change:

- 1. The CDDO shall submit a notice of name change, including legal name change or trade (dba) name change, to the KDADS Program Integrity Manager at least thirty (30) days prior to formalizing a CDDO name change for purposes of notifying stakeholders and required contract amendment. All stakeholder materials shall match the name of the CDDO. The CDDO shall comply with all State and Federal laws regarding name changes.

B. Notice of KDADS Policy Change:

- 1. KDADS will collaborate with CDDOs in development of new and revised policies pertaining to the activities identified in this Contract. KDADS shall post new or revised policies for review for thirty (30) days on the KDADS website prior to implementation. Upon posting, KDADS shall allow for the submission of written comments by the CDDO and other stakeholders prior to adoption of said policy addition or change. KDADS agrees to review the posted comments and take into consideration possible revisions to ensure policy contents complies with applicable federal regulations, state

statutes and regulations. KDADS shall provide the CDDOs with a final feedback matrix documenting KDADS' responses to their feedback. KDADS shall make reasonable attempts to notify impacted providers/contractors when new or revised policies are posted for comment. The process of notification is as follows:

- (a) Prior to the commencement of the 30-day comment period, KDADS shall email a copy of the draft proposed policy with proposed red-line changes (if related to CDDO functions, IDD program, HCBS IDD Waiver, IDD licensing) to all CDDOs and allow for a ten (10) business day review period. CDDOs shall select representatives to consolidate all feedback from the CDDOs.
- (b) KDADS shall post new or revised draft policies on the Listserv with the link to where the policy is located on the KDADS website.
- (c) KDADS will send a notice via the Listserv that the final policy has been posted on the KDADS website.

C. Requirements Not Contained Herein:

- 1. The Parties acknowledge that changes in KDADS' policy and/or procedure impacting the subject matter of this Contract may occur during the term of this Contract. Any and all such changes to existing policies and/or procedures and any proposed implementation of new policies and/or procedures are subject to the notification provisions of this Contract. With regard to the same, the Parties agree to work in good faith using common sense and good business practice to implement such policies and/or procedures. If the policies and/or procedures proposed to be changed or newly implemented would constitute substantial, material, or economic change, the Parties agree to re-negotiate in good faith the provisions of this Contract solely regarding implementation of such new or changed policies or procedures.
- 2. KDADS will provide notification and review with CDDOs on any IDD HCBS waiver renewals and/or changes pertaining to the activities identified in this contract.

XII. REPORTING REQUIREMENTS

A. Administrative Reports:

- 1. The CDDO shall: (i) track and report CDDO administrative costs using a format developed by KDADS and (ii) submit such report to KDADS Fiscal and Information Services Commission within twenty (20) days following the end of each SFY quarter (i.e., the first such report shall be due October 20th).

B. State Aid Reports:

- 1. The CDDO shall submit quarterly and annual State Aid program reports per K.A.R. 30-22-32 (7)(g), using an electronic format developed by KDADS. Reports are due to KDADS Fiscal and Information Services Commission the 20th of the month following

the end of the quarter. Each State Aid program report shall incorporate the total expenditure, number of unduplicated persons served, units provided, and number of providers for each defined priority service per KDADS taxonomy.

C. Special Requests by KDADS:

1. Subject to the requirements of HIPAA, with respect to requests by KDADS for special reports or information not otherwise required by law or by this Contract, the CDDO shall provide the report or information within a reasonable time frame following its receipt of the request. All requests by KDADS for information and/or reports shall identify the source of the request, the reason for the request. All requests made by KDADS to CSPs for information shall be copied to the CDDO.

D. Special Requests by the CDDO:

1. Subject to the requirements of HIPAA, KDADS shall honor information requests from the CDDO if the information or data is available through current KDADS resources. If the information or data being requested is not available, KDADS shall notify the CDDO and discuss possible options for obtaining requested information. Responses from KDADS shall be given within a reasonable timeframe.

E. Capacity Report:

1. CDDOs agree to report capacity using a mutually agreed upon template. The CDDO and KDADS will convene to develop or utilize previously mutually agreed upon key indicators for evaluating IDD System capacity ensuring the information collected by the CDDOs is consistent with the intent outlined for Capacity Reports in the DDRA.
2. The reports from each CDDO shall be due to KDADS annually on March 31st.
3. The Parties agree to cooperate in a proactive manner as needed to address systemic gaps.
4. KDADS and CDDOs shall cooperate on specific capacity issues related to the respective CDDOs if or when either Party identifies the need.
5. KDADS will provide an aggregate report to CDDOs annually by May 30th. Only reports received in the agreed upon template by the March 31st due date will be incorporated into the aggregate report.

F. 3160 and 3161 Forms:

1. The Parties acknowledge the importance of maintaining up-to-date information in the State's data system.
2. KDADS shall complete Section 3 of the 3160 forms.
3. The 3161 shall be completed by the CDDO when it becomes aware of a change in an individual's circumstances. A copy of this form shall be sent to KDADS, DCF (for

children in DCF custody), MCO and the TCM. KDADS will send closure 3161s to KDHE.

G. Death Reporting:

1. When a person in services (a person with an active file with the CDDO) passes away, the CDDO shall complete and submit KDADS' Notification Form and shall update person's status in KAMIS as "deceased."

XIII. CONTRACT TERM, DEFAULT AND REMEDIES

A. Term:

1. Unless modified or terminated pursuant to the terms provided herein the term of this Contract shall be from July 1, 2024 through June 30, 2025.

B. CDDO Default:

1. The CDDO shall be in default of this Contract if it fails to strictly abide by any term or provision herein, time being of the essence.

C. CDDO Failure to Comply:

1. Upon an event of default, or if KDADS finds that the CDDO has failed to comply with the requests, standards or rules established by the DDRA or other provision of law, KDADS may, at its sole option, utilize the remedies set forth in K.S.A. 39-2001 et seq., as amended, including mediation and the entry of a consent order providing the CDDO an opportunity to cure. In the event the issue is not cured, KDADS shall provide the CDDO written notice providing the opportunity for hearing.

D. KDADS' Termination:

1. Notwithstanding any provision herein, KDADS, with or without advance written notice, including the opportunity to cure, may terminate this Contract due to fraud or to protect public funds. By way of example and not of limitation, examples may include, but are not limited to: embezzlement, Medicaid fraud, fraudulent billing statements or any other action or in-action relating or pertaining to the fiscal integrity of this Contract or the IDD Medicaid waiver program in Kansas.

XIV. MISCELLANEOUS CONTRACT TERMS

A. Modification:

1. Except as otherwise expressly provided for in this Article, any proposed modification to this Contract must:
2. Be made in writing and signed by both of the Parties; and
3. Have a mutually agreed upon effective date.

B. Renegotiation upon a Change in Law, Regulation, or Policy:

1. Upon the request of either of the Parties, only applicable sections of this Contract may be subject to renegotiation based upon any material changes in or implementation of, any changes made to any State or Federal statutes or regulations, the HCBS IDD waiver as approved by CMS, or in any KDADS Formally Adopted Policies & Procedures. For the purposes of this Section the Parties acknowledge and agree that the right to renegotiation will be limited to the specific provision(s) in the Contract related to and or impacted by the material change or implementation of any changes as described herein.

C. Changes in Funding:

1. Renegotiation:

- (a) The State of Kansas' current financial situation makes it impossible for KDADS or any other State agency to make firm, unalterable financial commitments. If KDADS reasonably determines that a change in funding requires a modification of this Contract, KDADS reserves the right to require a renegotiation of the terms and conditions of this Contract with the CDDO, and the CDDO agrees to reasonably negotiate with KDADS in that regard. Likewise, if the CDDO reasonably determines there is a need to modify this Contract, due to a change in funding, after the execution of this Contract, the CDDO reserves the right to require a renegotiation of the terms and conditions of this Agreement with KDADS, and KDADS agrees to reasonably negotiate with the CDDO in that regard.

2. KDADS Funding Reduction:

- (a) If KDADS is subject to a formal funding reduction by action of the Governor (budget, allotment or otherwise) or by enactments of the Legislature, KDADS may alter the allocation made to the CDDO in order to meet those funding reductions. In such a case, KDADS shall provide to the CDDO written notice of any such alterations at least thirty (30) days in advance of those alterations becoming effective. If such a budget reduction, allotment or the like occurs, the Parties acknowledge and agree that KDADS is not required to use other budgeted and appropriated state general funds to fund this Contract. In the event this occurs, the parties will work together regarding such reduction, pursuant to Section XI.C of the Contract.

D. Audit Requirements:

1. All services that are provided pursuant to the terms of this Contract and in consideration of the funds received, may, at any time, be audited, monitored or evaluated by KDADS. The CDDO must submit an audit completed by an independent public accountant within six months of the completion of the CDDO fiscal year to KDADS Office of Audit Services.

- (a) If the CDDO expends \$750,000 or more during its entity's fiscal year in Federal awards (total of all applicable federal awards) must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200.514, Scope of Audit. In addition:
 - i. The CDDO may be asked to conduct a separate limited scope engagement with agreed-upon procedures which should be conducted in accordance with 2 CFR 200.425 Audit Services. These additional procedures should follow Generally Accepted Government Auditing standards (GAGAS) attestation standards.
 - ii. If the federal award document requires performance measures be audited and reported by the State back to the Federal government, then the recipient of the award will have to report those performance measures either through their independent audit or through another entity designated by KDADS.
 - iii. If the federal award document requires KDADS to account for the award in specific line item detail, then the independent auditor will be required to submit detailed schedules of revenues and expenditures in the CPA report. If line item detail is not required, the independent auditor should include a schedule listing total revenues and total expenditures (state share and federal share) for each award. If the award covers multiple years, each year should be reported separately on the schedule.
- (b) If the CDDO expends less than \$750,000 (e.g., expend less than \$750,000 in all Federal or State awards OR are entirely state funded in a year) shall have a limited scope audit with agreed upon procedure which shall be conducted in accordance with 2 CFR 200.425 Audit Services for the year.
 - i. These procedures shall follow Generally Accepted Government Auditing standards (GAGAS) attestation standards and include the following:
 - ii. A financial audit of the recipient conducted in accordance with generally accepted auditing standards. It should assess the extent to which the CDDO's financial reports fairly reflect the CDDO's financial condition and include a statement of financial position, statement of activities, and statement of cash flows. There shall also be (a) a schedule of award expenditures for the period covered by the recipient's financial statements, (b) a schedule of findings and questioned costs, (c) a summary schedule of prior audit findings,
 - iii. A report on internal controls, and
 - iv. A report on compliance to the award terms and conditions.

- v. Report on compliance shall address one or more of the following types of compliance requirements: activities allowed or disallowed; allowable costs/cost; eligibility; matching, level of effort, earmarking; and reporting; or whatever compliance requirements are specified in the award document, applicable OMB Super Circular or applicable OMB Compliance Supplement.
 - vi. A review of performance measures if the federal or state award document requires these to be audited and reported upon. The recipient of the award will have to report those performance measures through their independent audit.
- (c) The CDDO shall submit any correspondence (e.g., management letters) from the auditor associated with the audit report.
- i. A detailed schedule of revenues and expenditures by line item if specified in the award document. This schedule must be prepared with reasonable assurance by the auditor. If line-item detail is not required, management should ensure a schedule is prepared listing total revenues and total expenditures (state share and federal share) for each award. If the award covers multiple years, each year should be reported separately on the schedule. Again, the auditor should apply procedures to this schedule to determine if they can provide reasonable assurance on its contents.

E. Outside Audits:

- 1. If an audit of this Contract is conducted by either KDADS, CMS and/or the Legislative Division of Post Audit, neither of the Parties shall prohibit or prevent the auditing entity from accessing information regarding the execution and/or performance of this Contract and shall at all times cooperate with such auditing authority. This provision shall not be construed to prevent either Party from taking legally permissible steps to protect against the production or dissemination of confidential or privileged information held by that or either Party and sought in connection with any such audit, or otherwise.

F. Retention of and Access to Records:

- 1. During the term of this Contract and for the six-year period following the completion or termination of this Contract, each Party shall retain and safeguard this Contract and all books, documents, and records pertaining to its performance of this Contract, including those necessary to certify the nature and extent of the costs incurred by the other Party in performing this Contract. In addition, the Parties shall, during the same six-year period, upon written request, make available to the other Party or to an independent auditor retained by the other party or to the Secretary of Health & Human Services, the U.S. Comptroller General, the Auditor of the Kansas Legislative Division of Post Audit, or their designees, this Contract and all books, documents and records pertaining to the performance of this Contract, including those necessary to certify the nature and extent

of the costs incurred by the other Party in performing this Contract. Each party shall bear the costs and expense of storing its own records and of retrieving and producing its own records for any governmental entity. In addition, the Parties shall retain all documents related to matters involved in litigation for at least two (2) years following the termination of litigation, including all appeals, even if doing so requires retention of records for more than 6 years beyond the completion or termination of this Contract.

G. Severability:

1. If any provision of this Contract is determined by a Court of competent jurisdiction to be invalid or unenforceable to any extent, then the balance of all other independent terms of this Contract shall not be affected, and each such provision of this Contract may be enforced to the fullest extent permitted by law.

H. Force Majeure:

1. The CDDO shall not be liable for failure to perform under this Contract if such failure arises out of causes beyond the control of the CDDO. Such causes may include, but are not limited to, acts of nature, fires, quarantine, strikes, other than by the CDDO's own employees, and freight embargoes.

I. Waiver:

1. The waiver by any Party of a breach of any of the provisions of this Contract shall not operate or be construed as necessitating a waiver of any subsequent breach.

J. HIPAA. Confidentiality and Privacy:

1. Business Associate Agreement:

- (a) The CDDO agrees to execute the most current version of KDADS' Business Associate Agreement not later than forty-five (45) business days following the execution of this Contract; provided, however, if the CDDO has already executed KDADS' most recent version, it shall be deemed in compliance with this sub-section. KDADS is a covered entity under HIPAA and is therefore obligated to obtain reasonable assurances from the CDDO that the CDDO and its affiliated service providers shall not use or disclose any KDADS provided PHI in any way or manner that KDADS could not, nor in any way or manner unnecessary to the proper management or administration of the CDDO. The CDDO agrees to adopt and maintain in force appropriate confidentiality policies, procedures and protections for as long as the CDDO has any KDADS provided PHI in its possession.

2. Privacy Protections:

- (a) The CDDO agrees to comply with all applicable security provisions under HIPAA concerning the storing of this PHI in any format and agrees to institute and maintain appropriate safeguards to protect the physical

security of, and to prevent any unauthorized access to this PHI, and upon request shall furnish to KDADS a written description of those safeguards. The CDDO agrees to allow authorized representatives of KDADS access to the premises where this PHI is in the possession of the CDDO. The Parties hereby agree to comply with the privacy provisions of HIPAA, kept for the purposes of inspecting those physical security arrangements.

3. Safeguards:

- (a) The CDDO agrees to institute and maintain all appropriate administrative, technical, procedural and other physical safeguards necessary to protect this PHI from any unauthorized access or use by any persons or in any manner, and applicable at any location or place where any activities or services are performed or conducted by the CDDO pursuant to this Contract, and upon request shall furnish to KDADS a written copy of the policies and procedures adopted by the CDDO in compliance with these requirements.

K. Entire Agreement:

- 1. This Contract embodies the entire understanding between the Parties.

L. Notices:

- 1. All formal notices required to be given as provided for within this Contract shall be made in writing and:
 - (a) Personally delivered; or
 - (b) Faxed or E-mailed, with a written copy thereof sent in follow-up as otherwise provided for herein, unless acknowledge as received; or
 - (c) Sent by United States Mail, postage prepaid, certified or registered with return receipt requested; or
 - (d) Sent by any nationally recognized overnight courier service, and properly addressed to the appropriate official or officer of the addressed Party at that Party's principal business office.

M. Captions:

- 1. The headings or captions in this Contract are for convenience only and do not necessarily indicate an exclusive inclusion of all terms related to a given or identified subject as may be addressed within that section of this Contract.
- 2. Authorized to Enter into Contract: Each of the Parties hereto represents and warrants that it is authorized to enter into this Contract.

N. Kansas Law Applies:

1. The laws of the State of Kansas (irrespective of choice of law principles) shall govern the validity of this Contract, the construction of its terms and the interpretation of the rights and duties of the Parties. Any action brought to enforce, construe, or interpret this Contract (including but not limited to any mediation or arbitration) must be commenced and maintained exclusively in Shawnee County, Kansas.

O. No Presumptions Based on Scrivener:

1. No provision of this Contract shall be interpreted for or against any Party hereto on the basis that such Party was the principal draftsman of such provision, and no presumption or burden of proof shall arise disfavoring or favoring any Party by virtue of the authorship of any of the provisions of this Contract.

P. Assignment:

1. No Party may assign this Contract without the other Party's prior written approval, and any attempted assignment without such approval shall be null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

Q. No Joint Venture:

1. Neither Party has the power or authority to bind the other. The Parties to this Contract are independent contractors and nothing in this Contract shall be construed as creating any relationship such as a partnership, joint venture, or principal-agent.

R. Appeal and Legal Challenges by any Third Party:

1. The CDDO shall at all times and manner cooperate with KDADS in any administrative fair hearing or other legal proceeding involving any claim made by any third party against KDADS and asserting or involving any action or failure to act attributed to the CDDO in furtherance of the community-based services HCBS-IDD program or of this Contract.

S. Electronic Signatures:

1. The parties to this contract acknowledge that for any signature a CDDO is required to obtain, the CDDO may utilize electronic signatures that cannot be altered after the signature has been affixed and are obtained in accordance with industry accepted electronic signature practices dealing with records that contain Protected Health Information (PHI). This Contract (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the Parties hereto as if they were originals.

T. Cooperation:

1. The Parties agree to fully cooperate with each other in the performance of this Contract and amendments to which the Parties mutually agree.

U. Conflicts:

1. To the extent any provision of this Contract (including any exhibit, attachment, appendix, or other document referenced herein) is inconsistent with or contrary to any provision of State law, the relevant provision of State law shall be utilized to resolve any dispute under this Contract. Any effort, however, shall be made to resolve such conflict in a harmonious manner.

V. Single State Agency:

1. Nothing in this Contract is intended by the Parties to be, or to be construed or deemed to be, an unauthorized delegation of authority by the Single State Medicaid Agency (KDHE) prohibited by 42 U.S.C. 1396a or 42 C.F.R. Part 1 431, Subpart 1.
2. The Parties acknowledge that the Single State Medicaid Agency retains its full supervisory authority as the single state agency for administration of the Medicaid State plan. By executing this Contract, the Parties acknowledge the intended use of Medicaid funds to pay for Contractor's services and further acknowledge that the Single State Medicaid Agency's assistance shall be necessary in order to draw down FFP to pay for Contractor's services.

W. Authorities Incorporated by Reference:

1. The Parties agree that the following authorities shall be incorporated by this reference as if set forth in full herein:
2. Applicable federal or State of Kansas statutes and/or regulations; including HCBS final settings rule and requirements as defined under 42 CFR 441.301(c).
3. HCBS-IDD Waiver; and
4. Formally Adopted KDADS' Policies and Procedures.

X. Performance of Work:

1. The Parties acknowledge and agree that the CDDO will perform its works in accordance with the Formally Adopted KDADS Policies & Procedures including but not limited to the policies in the current version and effective date. The Parties further agree that any Formally Adopted KDADS Policies & Procedures established and implemented after the CDDO executes the Contract, or any revisions to the current version of Formally Adopted KDADS Policies & Procedures undertaken after the CDDO executes the Contract, will entitle the CDDO to exercise its right under Section XIV.B, Renegotiation Upon a Change in Law, Regulation, or Policy and request renegotiation of the Contract.

XV. DISPUTE AMONG CONTRACT TERMS

1. In the event there is a dispute as to the priority and/or interpretation of agreement terms, the parties intend that the following order shall control: First, the DA-146a (Appendix A) and second, the terms of the written Agreement.

2. IN WITNESS WHEREOF, the Parties have executed this Contract by their duly authorized representatives on the date set forth within.

**KANSAS DEPARTMENT FOR AGING AND
DISABILITY SERVICES**

**SEDGWICK COUNTY DEVELOPMENTAL
DISABILITY ORGANIZATION**

By: Laura Howard
Laura Howard, Secretary

By: Timothy V. Kaufman
Name: **Tim Kaufman**
Title: **Interim Director**

Date: 1/16/2025

Date: 12/17/2024

**KANSAS DEPARTMENT OF
HEALTH AND ENVIRONMENT**

DocuSigned by:
By: Janet Stanek
Janet Stanek, Secretary

Approved As To Form
Justin G. Williams

Date: 1/31/2025

State of Kansas
Department of Administration DA-146a
(Rev. 07-19)

APPENDIX A

CONTRACTUAL PROVISIONS ATTACHMENT

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

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1st day of July, 2024.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 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 in this contract, 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 State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A.

44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.