Traumatic Brain Injury  Frail Elderly

Technology Assisted  Physical Disability

Intellectual Developmental Disability

**FINANCIAL MANAGEMENT SERVICES**

**PROVIDER AGREEMENT**

This FINANCIAL MANAGEMENT SERVICES PROVIDER AGREEMENT (the “Agreement”) is made effective this 1st day of January, 2016 by and between the Secretary of the Kansas Department for Aging & Disability Services (“KDADS”), and Click here to enter Provider. (“Provider”), all of whom may hereinafter be collectively referred to as the “Parties”. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Compliance with Federal, State or Agency Authorities. Provider shall strictly comply with any and all applicable Federal or State of Kansas statutes and/or Administrative Regulations including HCBS waiver services. Provider shall further strictly comply with State of Kansas Medicaid Waiver(s), as amended, the KMAP and Financial Management Services Policy and KDADS’ Procedure Manual(s), as amended, which relate or pertain to the use of Medicaid/HCBS Waiver funds including the payment for services rendered by Direct Service Workers provided, however, the Parties agree that to the extent there is a conflict between the provisions of this Agreement and any of those documents, the terms of this Agreement shall control.
2. Administrative Payment to Provider. KDADS shall pay to Provider a per Participant monthly administrative payment (“Administrative Payment”) in the amount of $115.00. This payment is to cover the Provider’s Administrative Costs with no part of such payment being used for the Participant’s Employee’s wages, employer’s FICA amount, state and federal unemployment taxes, workers’ compensation premiums or other required withholding amounts. Should this payment change (increase or decrease), this change may be made by letter from KDADS to the Provider and shall not require a formal amendment to this Agreement.
3. Direct Service Worker Reimbursement Rate. The Provider shall bill the respective Managed Care Organization the monthly amount required to be reimbursed for Provider’s payment to the Participant’s Direct Service Worker/employee. It is the Participant’s responsibility (not the Provider’s responsibility) to ensure that the Reimbursement Rate complies with the requirements of the Fair Labor Standards Act (FLSA). The Reimbursement Rate shall be obtained from federal/state drawdown/match for HCBS Medicaid program funding, with no portion being used or retained for administrative or any other use by the Provider.

It is the Parties’ intent that funds for the Direct Service Worker Reimbursement Rate are earmarked solely for the specific Participant to use in paying Direct Service Workers employed by the Participant and in paying workers’ compensation premiums and federal and state taxes associated with the employment of such Participant’s Direct Service Workers and cannot, under any circumstance, be used by the Provider for administration expenditures, Direct Service Workers employed by other Participants, working capital, recruiting, or other day-to-day business uses.

Such Reimbursement Rate fund shall be deposited by the Provider in an account in which such deposits may be traced to and accounted for each respective Participant. The Direct Service Worker rate/funds is subject to Medicaid rules and regulations and therefore, no portion can be utilized without the express direction of the respective Participant. The Provider shall not determine the use of such funds.

1. Term of Agreement. This Agreement shall commence on January 1, 2016, and continue until December 31, 2016, unless earlier terminated by either agreement between the Parties or pursuant to the provisions herein.
2. Participant Employer Identification Number. If necessary and requested, Provider shall assist the Participant in obtaining an Employer Identification Number (“EIN”).
3. Employee Orientation. Following the hiring of a Direct Service Worker (sometimes hereinafter referred to as the “DSW” or “Employee”) by the Participant, the Participant’s Employee shall meet with the Provider as a function of Information and Assistance to execute any and all payroll records, to obtain information/education on use of the Authenticare System with regard to payment for services rendered and submit information to in order for the Provider to perform a background check.
4. Agreement Termination, Default and Remedies:

a. Unless otherwise provided herein, any Party may terminate this Agreement, other than as specified herein below, by giving written notice of the termination at least ninety (90) days prior to the date of termination stated in the written notice; or

b. KDADS may terminate this Agreement without prior notice upon making the determination that termination is necessary to avoid harm to the public, to prevent fraud or abuse, or to protect public funds; or

c. In the event that Provider fails to perform a provision of this Agreement, time being of the essence, KDADS may exercise any and all other remedies provided for by law, including, but not limited to, the following:

1. Terminate this Agreement per sub-paragraph 7.b.; or
2. Delay payment until KDADS verifies Provider’s performance.

d. In the event of termination, with or without cause, the Provider shall account for and remit to KDADS any Residual Funds.

1. Retention of and Access to Records. All records created, maintained or prepared that relate or pertain to this Agreement shall be retained and safeguarded for a five-year period following termination of this Agreement. In addition to any other audit requirement contained herein, such records shall be made readily available to any other party to this Agreement, an independent auditor retained by any Party herein, the Secretary of the Department of Health & Human Services, the U.S. Comptroller General, the Auditor of the Kansas Legislative Division of Post Audit, or their designees. Each Party shall bear the costs of storing, retrieving, and producing its records created and required to be kept under this Agreement. Provided, however, that the Party requiring such audit shall pay the cost of the same. Provider shall cooperate with any auditing party and/or entity.
2. Independent Contractor Status. At all times pertinent to this Agreement, Provider shall perform as and hold the status of independent contractor. Nothing in this Agreement is intended to create or imply any type of employer-employee, principal-agent, master-servant, or any other relationship other than that of independent contractor as between KDADS and Provider. KDADS shall not withhold any form of taxes, insurance, assessments, or other amounts from payment to Provider. Provider shall be solely responsible for payment of any and all taxes incurred (if applicable) as a result of this Agreement.

The Parties further agree and intend that it is the Participant, not the Provider or the KDADS, that is the “employer” of Direct Service Workers for purposes of the Fair Labor Standards Act, and that the relationship of the Participant, the Provider, and the KDADS is described by the example from the U.S. Department of Labor Regulations found at 78 Fed. Reg. 190, 60483-84 October 1, 2013.

1. Annual Audit.  The Provider must submit to KDADS a Generally Accepted Accounting Principles (GAAP) audit for the Provider’s fiscal year that begins during 2016, but only if the Provider has not submitted a GAAP audit to KDADS for at least one of the Provider’s two immediately preceding fiscal years. Such audit, if required, must be provided to KDADS within six (6) months following the end of the Provider’s fiscal year that begin in 2016. For avoidance of doubt, if the Provider submitted a GAAP audit to KDADS for the Provider’s fiscal year that began in 2014 and/or for the Provider’s fiscal year that began in 2015, no GAAP audit is required for the Provider’s fiscal year that begins in 2016. Furthermore, the Parties agree that if the Provider submitted a GAAP audit to KDADS for the Provider’s fiscal year that began in 2014, the Provider is not required to submit a GAAP audit to KDADS for the Provider’s fiscal year that began in 2015. For purposes of this Agreement, the term “fiscal year” can mean a calendar year or a year that ends on a date other than December 31.
2. Audit upon Termination. In the event this Agreement is terminated, voluntarily or involuntarily, the Provider shall have a GAAP audit. Such audit shall be provided to KDADS within one hundred eighty (180) calendar days following such termination. If the Provider believes additional time is required, the Provider shall request an extension from the Secretary. Such audit shall be at the Provider’s expense. Notwithstanding anything else herein, this paragraph does not require a “termination” audit if the Provider signs an agreement with the KDADS to provide FMS services during 2017.

If, however, and for whatever reason, KDADS does not timely receive the audit, KDADS may audit the Provider and may charge the expense(s) for such audit to the Provider. If this provision is invoked, Provider agrees to timely reimburse KDADS for the expense(s) of such audit.

1. Residual Funds. For purposes of this Agreement, the term “Residual Funds” means funds for the Direct Service Worker Reimbursement Rate that are to compensate and pay required tax and other withholdings (state and/or federal) for Participant’s DSW/employee, that are retained and not spent by the Participant during the term of the Agreement. Participant may utilize such Residual Funds pursuant to the following:

a. Residual Funds on Hand as of January 1, 2016: Residual Funds on hand as of January 1, 2016, may be utilized pursuant to the terms of paragraph 12. b. herein;.

b. Residual Funds Accumulated during the Term of the Agreement: Residual Funds accumulated during the term of this Agreement may be used to pay overtime wages only if such use of the Residual Funds is authorized by the Participant in accordance with applicable state and federal law. The Parties agree that the Provider has no authority as to whether a Direct Service Worker works overtime or whether Residual Funds are used to pay overtime wages.

The Provider shall account for the Residual Funds from 2016 as part of the audit required by paragraphs 10 and 11 (as applicable). If Provider has Residual Funds from 2016, Provider shall remit one half (50%) of Residual Funds to the KDADS within sixty (60) days after the accounting for the 2016 Residual Funds is due. The remaining balance of Residual Funds shall “carry over” to 2017. Notwithstanding this paragraph, a Provider may file with the KDADS a written request to retain Residual Funds in excess of the allowed 50%. The request shall be made in writing by the date that the accounting for the 2016 Residual Funds is due and shall specify the reasons therefor. The Parties agree that the Secretary’s decision shall be final and not subject to any appeal rights; and

c. Residual Funds on Hand as of the Termination Date: In the event this Agreement is terminated by either Party or the Provider does not sign an agreement with the KDADS to provide FMS services in 2017, any Residual Funds remaining as of the date of termination or December 31, 2016, whichever is earlier, shall be accounted for and remitted to the KDADS pursuant to Section 12 b. herein.. Such remittance shall occur within sixty (60) calendar days following completion of the audit required by paragraph 11 herein.

In addition to sub-paragraphs a., b. and c., above, a Provider who is a nonprofit organization entity who makes the election contained in K.S.A. 44-710(e)(1) regarding payment of unemployment claims on behalf of a Participant may, on behalf of such Participant, retain such Residual Funds until it has determined that no unemployment claim(s) have been made, but not in any event to exceed March 31 of the ensuing calendar year.

Failure of the Provider to strictly comply with the above provisions, time being of the essence, shall constitute a breach of this Agreement, and may warrant referral to the U.S. Attorneys’ Office, Centers for Medicare and Medicaid Services and the State of Kansas Attorney General’s office for alleged Medicaid fraud and/or criminal prosecution.

1. Employee Background Checks. In addition to the execution of payroll documents and Authenticare orientation that the Provider gives to a Participant’s employee, the Provider shall also perform such background checks as required by HCBS program policies, as amended. In the event a Participant’s employee fails to meet background requirements as contained in FMS/HCBS program policies, the Provider shall notify the Participant of the same. The Provider has no responsibility or authority to hire or terminate the Participant’s employee(s) based on the results of a background check or in any other situation.
2. Incorporation of the State of Kansas Contractual Provisions Attachment. The provisions of Contractual Provisions Attachment, Form DA-146a (Rev. 6/12), a copy of which is attached hereto and identified as **Appendix “A”**, are incorporated by this reference as if the same were set forth in full herein.
3. Service of Notices. All notices required or which may be given pursuant to this Agreement shall be in writing, personally delivered by courier or commercial delivery service, or sent by facsimile and United States mail, first class, postage prepaid, to the following addresses or such other address as may be designated in writing by the named person during the term of this Agreement:

If to Provider:

Click here to enter Provider Contact.

Click here to enter Provider Name.

Click here to enter Provider Street Address.

Click here to enter City State Zip.

If to KDADS:

Office of the Secretary

Kansas Department for Aging

and Disability Services

New England Building

503 South Kansas Avenue

Topeka, Kansas 66603-3404

1. Entire Agreement. The Agreement constitutes the entire agreement between and among the Parties concerning the subject matter hereof, and there are no other understandings, representations, or agreements, oral or otherwise, concerning the Agreement, which shall remain in full force and effect. This Agreement merges and supersedes any previous negotiations, understandings, agreements, representations, and warranties between the Parties.
2. Amendments; Modification; Waiver. The Agreement may not be modified, superseded, extended, terminated, or amended and no provision hereto may be waived except by a writing making specific reference hereto and signed by the Parties.
3. Binding Effect. The terms and acknowledgements set forth in the Agreement shall be binding upon the Parties and shall inure to the benefit of the Parties, and their respective successors, assigns, heirs, executors, administrators, and representatives.
4. Participation in Drafting. Each Party has participated in, or contributed to, the drafting and preparation of the Agreement. In any construction of the Agreement, the provisions shall not be construed for, or against, any Party, but shall be construed according to their plain meaning.
5. Severability. Should any material provision of the Agreement be declared or be determined by any court to be illegal or invalid or should any material provision of the Agreement be amended or modified by any court, the entire Agreement shall, at the option of each of the Parties, be deemed invalid, null and void unless all Parties agree in writing to its continued effectiveness.
6. Governing Law. The Agreement shall be construed and enforceable in accordance with the laws of the State of Kansas.
7. Signatures. The Agreement (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.
8. Terms Read and Understood. The signatories to this Agreement certify that they have read this Agreement, have conferred with counsel, and fully understand all of the terms, and the Parties acknowledge and represent that they enter into this Agreement of their own free will, and not from any representation, commitment, promise, pressure or duress from any other Party.
9. Cooperation. The Parties agree to fully cooperate with each other in the performance hereunder, and will execute such additional agreements, documents, or instruments, if any, as may reasonably be required to carry out the intent of the Agreement.
10. Authorization. The person who executed this Agreement by or on behalf of each respective party or individual, as applicable, represents and warrants that he/she has been duly authorized and empowered to execute and deliver this Agreement on behalf of such Party and that all necessary corporate approvals have been obtained.
11. Judicial Intervention-Venue. Should judicial intervention be required, the Parties agree that venue shall only be proper in the District Court for Shawnee County, Kansas.
12. Federal Administrative Changes: Centers for Medicaid and Medicare Services, Department of Labor and Internal Revenue Service. The Parties acknowledge that the Department of Labor (“DOL”), Internal Revenue Service (“IRS”) and Centers for Medicare and Medicaid Services (“CMS”) are each making administrative/policy changes which will likely affect financial management service delivery in Kansas. The Parties further acknowledge that such change(s) are out of KDADS’ control, and that KDADS has not provided any legal and/or accounting advice to Provider with regard to such issue(s). The Provider acknowledges and agrees that should it need legal and/or accounting advice, or the like, it would need to contact a professional who specializes in the advice requested.
13. Provider Owned: Attendant Care Service Agency. In the event that the Provider owns, manages, controls or participates with a third party entity who provides Agency HCBS attendant care services (the “Agency”), the Provider shall not:
    1. Influence, directly or indirectly, a Participant to select the Agency for the provision of agency attendant care services; or
    2. Engage in any other conduct whatsoever with such Agency which might create an actual or perceived conflict of interest; or
    3. Commingle funds received from this Agreement with funds received from or which relate or pertain to such Agency.
14. Guardian Prohibition. The Parties further agree that the Provider, its employees and/or agents, cannot be the Guardian of an HCBS Participant that the Provider serves. In the event this is currently the case, the Provider shall take immediate steps to facilitate the appointment of a successor Guardian and, during the meantime, the Participant shall be sent to a different Provider for Financial Management Services.
15. Advance Notice of Termination. In the event the Provider desires to terminate this Agreement, the Provider shall provide the KDADS and its Participants ninety (90) calendar days advance written notice of its intent to terminate, shall provide each Participant with a list of FMS providers, including addresses and phone numbers and shall assist the Participant, if requested, in obtaining a new FMS provider.
16. DSW Grievance Process. In conjuncture with Information and Referral and in compliance with the oversight requirements mandated by the Centers for Medicare and Medicaid Services (“CMS”), the Provider shall develop policies that allow a Participant’s DSW/employee to file a grievance, as required by HCBS program policies, as amended. Such policies and the right to file a grievance, however, do not supersede any claim the DSW may have with the respective state/federal agency having jurisdiction over such matter.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective duly authorized representative on the dates noted by the signatures below.

**KANSAS DEPARTMENT FOR AGING**

**AND DISABILITY SERVICES**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Timothy E. Keck, Interim Secretary

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Click here to enter PROVIDER NAME.

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Click here to enter title.

Date: Click here to enter a date.

**FINANCIAL MANAGEMENT SERVICES**

**PROVIDER AGREEMENT**

# APPENDIX A

Kansas Department of Administration Form DA-146a (Rev. 6/12)

State of Kansas

Department of Administration

DA-146a (Rev. 06-12)

**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. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: 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 chargeshereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. 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 to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.