

## CONTRACT

### Between the KANSAS DEPARTMENT For Aging and Disability Services and a COMMUNITY DEVELOPMENTAL DISABILITIES ORGANIZATION

#### I. BASIC CONTRACT INFORMATION

The CDDO:

Address:

Contract Number:

Federal Tax Identification Number:

Contract Year: State Fiscal Year (SFY) 2013

#### II. PARTIES TO THE CONTRACT

This Contract is entered into between the Kansas Department For Aging and Disability Services, including the Community Services and Programs Commission, (collectively referred to hereinafter as KDADS”) and

\_\_\_\_\_, a Community Developmental Disabilities Organization (hereinafter referred to as “the CDDO”). The use of the term “Parties” within this Contract means KDADS and the CDDO collectively.

#### III. PURPOSE

This Contract is entered into pursuant to provisions of the Developmental Disabilities Reform Act (the DDRA) for the purposes of establishing the expectations and duties of the Parties to each other as specified herein.

#### IV. DEFINITIONS AND REFERENCES

The following documents and authorities are hereby incorporated by reference into this Contract:

- A. Definitions. Appendix A: which sets forth certain defined terms, as used within this Contract, the Appendices, or in Addendum 1, and all appendices.
- B. Other Appendices: Appendices B, C, D, E, F,G and form DA-146a.
- C. Addendum 1: which sets forth certain financial terms and conditions.
- D. Applicable Laws and Regulations: Including, the Developmental Disabilities Reform Act (the DDRA, K.S.A. 39-1801 et seq.), K.S.A. 39-7,100, and Articles 63 and 64 of Chapter 30 of the Kansas Administrative Regulations.

V. REIMBURSEMENT/FUNDING

- A. Allocation. The CDDO is allocated funds as set forth in Addendum 1 and as governed by other relevant provisions in this contract.
- B. State Aid. KDADS will allocate to the CDDO (as set out in Addendum 1) the fixed sum of funds identified as State Aid.
- C. General Funds for Children’s Residential Supports. KDADS will allocate to the CDDO (as set out in Addendum 1) the fixed sum of funds identified as General Funds for the purposes of supporting residential services for children with I/DD as provided for in Appendix A.
- D. CDDO Administration. KDADS will allocate to the CDDO (as set out in Addendum 1) the fixed sum of funds identified as CDDO Administration.
- E. Home and Community Based Services MR DD Waiver (HCBS MRDD waiver). KDADS will allocate to the CDDO (as set out in Addendum 1) a maximum total sum of funds accessible through the HCBS MRDD waiver subject to the following conditions (and in addition to any conditions and requirements of the Medicaid program):
  - 1. Monitoring and Management. The CDDO will utilize available financial data to monitor expenditures for the HCBS/MRDD Waiver. The CDDO will work in cooperation with KDADS and the other CDDOs to manage total statewide expenditures, excluding new access due to crisis, allowed exceptions, or other access to services recommended by the Statewide Funding Committee and approved by KDADS, so as not to exceed the total funds budgeted for FY13 for HCBS/MRDD including FY13 waiting list funds.
  - 2. Transition from Institutional Settings.
    - a. KDADS will review proposed support plans and funding requests for persons seeking a community placement in the CDDO’s area and who are currently residing in an Institutional Setting. The CDDO may exceed the HCBS MRDD waiver allocation set out in Addendum 1 only as KDADS may authorize such (and based upon the availability of funding appropriated by the Legislature), pursuant to Contract section V.E.2.e.
    - b. For persons transferring from an Institutional Setting during this State fiscal year, KDADS will notify the CDDO when a proposed support and funding plan has been approved. KDADS will have fourteen (14) days from the date of receipt of the CDDO’s written submission of a plan to review and approve or request modification of that plan.

- c. The CDDO will provide a written explanation to KDADS for any delay of more than 14 days in providing services to a person, excluding new persons to services, as referenced in VI.a.1., once the plan has been approved.
  - d. 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 for in Addendum 1 may be allowed by KDADS. Pursuant to K.S.A. 39-1806 (a)(1), such rate(s) will 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.
  - e. For persons who transferred from a State Mental Retardation Hospital (SMRH) during the Prior SFY, KDADS will arrange for the transfer of funds from the SMRH account to the HCBS MRDD waiver account. The amount to be placed in the HCBS allocation shall be calculated to equal the aggregate difference of the annualized plan of care for all persons transferring to community services within the CDDO's service area from a SMRH (based on those persons' tier level or otherwise approved of rate(s) for day, residential and wellness monitoring services) compared to the annualized HCBS MRDD waiver costs for persons moving from community services into a SMRH from the CDDO's service area. The Director of Medicaid and Management Operations will have certified such transfers on June 1 of the SFY prior to the SFY covered by this Contract. These budgetary adjustments are made pursuant to K.S.A. 39-1806, and are already reflected within Addendum 1.
3. The CDDO may exceed the HCBS MRDD waiver allocation in the following situations:
- a. Persons in the custody of the Department of Children and Families may access new or additional HCBS/MRDD Waiver services for the purpose of addressing support needs related specifically to the person's I/DD. Access to HCBS/MRDD services and funding will not be utilized to replace the cost of supporting a typical person in custody. The CDDO will collaboratively work with the responsible child placing agency to assure that the health and welfare needs of the person are met. Persons in the custody of the Department of Children and Families residing in licensed foster care settings will have their needs for HCBS/MRDD services reviewed by the CDDO as needed, but at least annually, using the

needs assessment tool developed in SFY 2008 by the SFC. This review will be completed during the person's birth month.

- 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 or additional HCBS/MRDD Waiver services for the purpose of addressing support needs related specifically to the person's DD 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/MRDD services in an amount sufficient to provide for disability-related support needs of the person. The CDDO and KDADS will review the situation and determine how the health and welfare needs of the person will be met. KDADS acknowledges that the transition to children or adult services may transcend fiscal years.
- d. Persons who are transitioning to community services from a Youth Residential Center II or a Psychiatric Residential Treatment Facility and who previously accessed HCBS/MRDD Waiver funding are eligible to have such Waiver funding reinstated in an amount that addresses actual disability-related support needs.
- e. Persons who have lost other funding due to the termination of Technology Assisted, Autism or Traumatic Brain Injury Waiver services, will have access to HCBS/MRDD Waiver funding, not to exceed the actual level of disability-related support need.

4. Other Access to Waiver Services.

Persons who are listed on the statewide waiting list for HCBS/MRDD services, referred to RS for employment services and successfully closed from Vocational Rehabilitation Services as competitively employed, will have access to HCBS/MRDD Supported Employment waiver funding needed to successfully maintain their employment, not to exceed the actual level of disability-related support needed to maintain their job. Should they cease to be employed by that employer, the person would no longer be eligible to retain waiver funded services that they received to maintain that job and would remain on the HCBS/MRDD waiting list.

All other access to new or additional HCBS MRDD waiver funded services will be limited to those persons who are offered funding pursuant to either the waiting list or crisis criteria as contained in Appendix E to this contract.

5. Other Related Provisions.

- a. Cost Data. The total costs of all services provided under Article V of this Contract will be tracked by the SFC during the course of this fiscal year. The CDDO will cooperate with the SFC in this process.
- b. KDADS Coordination of Services. KDADS and its divisions will continue to work to address the coordination of services between the systems as follows:
  - (i.) The Community Services and Programs Division of KDADS will coordinate regular discussions with the Department of Children and Families regarding the development of services and foster homes for persons with challenging behaviors who are in custody or at risk of coming into custody.
  - (ii.) To ensure that persons in custody who are also I/DD and persons transitioning out of custody as set forth in this Contract will have access to community supports at the time they are released from custody, KDADS will facilitate a linkage with the Department of Children and Families and their regions of the State. At minimum, KDADS will encourage participation of the CDDO representatives, the Child and Family Team, Child Placing Agencies, school districts and other stakeholders. Data from such representatives regarding persons who are I/DD and in custody will be made available to the CDDO and KDADS. Responsiveness to persons in custody will be managed at a regional level reflecting local and regional strengths and uniqueness and the reduced system-wide resources with on-going feedback to KDADS.
- c. Corrections and Adjustments. Before correcting for overspending of the HCBS/MRDD Waiver for the Contract Year, KDADS will adjust estimated paid claims by the cost of exceptions that are identified in Section V. and are incurred in the Contract Year.

In addition, KDADS will include the annualized cost of exceptions incurred in the Contract Year as well as considering the projected cost of identified individuals who qualify for exceptions due to the termination of Technology Assisted, Autism, or Traumatic Brain Injury Waiver services, or children aging out of custody, as it prepares it's following fiscal year base budget it submits to the Department of Administration.

- F. Unexpended Funds. At the end of the fiscal year, the CDDO will have ninety (90) days in which to obligate any unspent State Aid or General Funds. Any such funds not so obligated will be subject to recoupment. In the case of recoupment, either the CDDO will remit amount due by check or money order made payable to KDADS or, by express mutual agreement of the Parties, KDADS will reduce the next contract year's payments by an amount equal to the amount of the recoupment.

## VI. PERFORMANCE OF WORK

It is the expectation of KDADS that the CDDO will perform its regulatory functions as per K.A.R. 30-64-01 et. seq.

- A. Service Access Management. The CDDO will arrange for services to be provided to eligible persons for whom funding is available as provided for in Addendum 1. The CDDO will arrange for those services consistent with the following additional requirements:
1. New Persons. New persons to services should be served within an average of sixty (60) days from the date when funding for their needed services is determined to be available by the CDDO.
  2. Service Reduction.
    - a. If the CDDO projects that its anticipated billings will exceed its allocated funding amounts as identified in Addendum 1, or if funding reductions are executed pursuant to the Contract the CDDO may reduce services, including, but not limited to, across the board cuts so the CDDO's service area remains within 100% of its allocated funds. All changes in funding will be developed by the CDDO with input from the Council of Community Members and representatives of Affiliates. Appeals related to any cuts implemented pursuant to this subsection two (2) will be made directly to the Office of Administrative Hearings.
    - b. If the CDDO determines that a person's currently authorized services funded pursuant to this Contract exceeds the amount of the person's actual needs, the CDDO will take action to reduce the person's services either voluntarily or involuntarily. If the CDDO cannot reduce services voluntarily, in order to do so involuntarily the CDDO will follow the steps outlined in KDADS's Involuntary Service Reduction Policy.

- B. Statewide Funding Committee. The Parties agree to participate in the SFC. The Parties also agree to support the organizational structure and mission of the SFC as set out in Appendix C. The CDDO will appoint a representative (and alternate) to serve on the SFC.
- C. Statewide Quality Oversight Committee. The Parties agree to participate in the SQOC. The Parties also agree to support the organizational structure and mission of the SQOC as set out in Appendix F. The CDDO will appoint a representative (and alternate) to serve on the SQOC.
- D. Notice of KDADS Policy Change. KDADS will provide the CDDO with at least thirty (30) days advance written notice of any new or revised policy or procedure related to the matters addressed by this Contract, including, but not limited to, any cost containment policies or prior authorization requirements.
- E. Requirements Not Contained Herein. KDADS will not require either the CDDO or its affiliates to perform any new practices, abide by any requirements, or maintain any recordkeeping that is or are not expressly required by law or otherwise provided for within this contract.
- F. Prior Authorization Determinations. KDADS will process prior authorization submissions, and notify the CDDO regarding approval thereof, within fourteen (14) days of submission. At the discretion of KDADS, inaccurate submissions with substantive errors will be placed in rejected status, and KDADS will promptly notify the CDDO thereof in writing.
- G. Independent Rate Study
  - 1. KDADS Responsibilities. Pursuant to and in furtherance of K.S.A. 39-1806, KDADS will: (i) complete a biennial independent rate study; (ii) consult with the CDDO in planning for the Study and will use the most current rate study recommendations in its budget request for the next fiscal year; and (iii) utilize a Joint KDADS Provider Advisory Rate Committee, with membership and duties as defined in the 2005 Request for Proposal, in planning and providing oversight for the next Study.
  - 2. CDDO's Responsibilities. The CDDO will include in all of its contracts with Affiliates the requirement that Affiliates provide information in the Study as required by the DDRA.
- H. Impartial and Efficient Use and/or Distribution of Funds. The CDDO will administer the impartial and efficient use and/or distribution of funds identified in Addendum 1. The Parties agree and acknowledge that:
  - (i) payments made to the CDDO, and payments from or authorized by the CDDO to its affiliates, requires that all services provided must meet the standards for service access and quality as established by

KDADS;

- (ii) the system's ability to respond to the values of the DDRA has been decreased by the level of funding currently provided, and that this may influence the service options that are and can be made available; and,
- (iii) such payments are not necessarily indicative of the actual cost of each service delivered.

- I. Notification of Licensure Applications. KDADS will provide written notification to the CDDO, within thirty (30) days, of KDADS's receipt of any application for any new licensure or for re-licensure of any Community Service Provider seeking to operate within the CDDO's service area, and will seek the input of the CDDO concerning the qualifications and capabilities of the applicant prior to KDADS making any determination on the granting of that application.
- J. Statewide Stakeholder Meetings. The Parties agree to participate in meetings to be conducted with interested stakeholders, to be conducted at least three (3) times during the contract year, and as arranged by KDADS (with the first such meeting to be scheduled to be held during the month of August), for the purposes of discussing a variety of issues related to the capacity of the community services system and the supports that are needed for persons with an intellectual/developmental disability. KDADS will arrange to provide for electronic two-way communication, utilizing document-sharing capabilities, for those persons desiring to participate in these meetings in that manner. The CDDO will be responsible for designating a location(s) at which stakeholders within the CDDO's service area will have the ability to participate in these meetings. Agendas for these meetings will be developed jointly by representatives of the Parties and other stakeholders and will be distributed at least seven (7) days in advance of each meeting. KDADS and each of the CDDOs will rotate responsibility for the taking of minutes of these meetings, and KDADS 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 KDADS.
- K. Reporting and Requests for Information.
  - 1. Administrative and SQOC Reports. The CDDO will: (i) track and report CDDO administrative costs using a format agreed upon by the CDDO and KDADS; (ii) submit such report to KDADS within twenty (20) days following the end of each SFY quarter (i.e., the first such report will be due October 20<sup>th</sup>); and (iii) submit the SQOC data by the twenty-first (21<sup>st</sup>) day following the end of each SFY quarter. KDADS will provide an aggregated report to the SFC at each meeting of the SFC, not to exceed four (4) reports per Contract Year.



2. State Aid. The CDDO will submit quarterly and annual State Aid reports per K.A.R. 30-22-32(7)(g), using the electronic format developed and agreed upon by the Parties, with the first such report due October 31 of the Contract Year.
3. Special Requests by KDADS. With respect to requests by KDADS for special reports or information not otherwise required by law or by this Contract, the CDDO will 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 will identify the source of the request, the reason for the request. All requests made by KDADS to CSPs for information, will be copied to the CDDO.
4. Special Requests by the CDDO. KDADS will 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 will notify the CDDO and discuss possible options for obtaining requested information. Responses from KDADS will be given within a reasonable timeframe.

L. Community Services Initiatives.

1. KDADS/CDDO Initiatives. The CDDO may participate in a KDADS initiated work group that will develop strategies for promoting the initiatives of KDADS/CDDOs that are consistent with the roles and responsibilities of the CDDO as those initiatives relate to the values of the DDRA. Those initiatives may include:
  - a. Disclosing and Mitigating Conflicts of Interest in all of KDADS's programs and activities.
  - b. Eliminating to the extent possible all Waste, Abuse and Fraud in the execution of all KDADS programs and activities.
2. KDADS, CDDOs and other interested I/DD system stakeholders will meet to develop and at least annually review a plan that identifies and addresses I/DD system issues (including those related to workgroups identified in this contract). This group may provide updates at the regularly scheduled I/DD Statewide Stakeholders Meetings.
3. Participant Direction. The CDDO will implement a process to inform persons seeking or receiving services in the CDDO's service area of the benefits and responsibilities associated with all available service options.

4. Employment and the Employment First Workgroup.

- a. The CDDO will encourage competitive employment for persons with I/DD, even though that may result in the discontinuance of services to those persons currently funded through this Contract. In such instances, KDADS will, within the rules and requirements of the program and available funding, ensure to those persons the right to return to their previous HCBS MRDD waiver funding if such persons disengage from identified employment or supported employment activities. As a part of those encouragement efforts, the CDDO will assure that all persons are aware of the support options available through the WORK/Working Healthy program.
- b. The Parties will support the recommendations made by, and participate in as necessary, the Employment First Workgroup which will:
  - (i) review and provide recommendations to KDADS, CDDOs and other interested I/DD system stakeholders regarding how to support Objective 3.2 of the Kansas Employment First Commission goals and objectives.
  - (ii.) continue to develop its recommendations to revise the current HCBS rate structure in a way that incentivizes competitive and integrated employment as the preferred outcome of services.
  - (iii.) make specific budget proposals regarding the recommendations of the Employment First Workgroup to incentivize competitive and integrated employment.
  - (iv.) utilize the system stakeholder meetings to evaluate and implement workgroup recommendations.

5. Challenging Behaviors Workgroup. The Parties agree to support the work of, and participate in as necessary, the Challenging Behaviors Workgroup, which will continue to:

- (i) develop strategies to address the training needs of affiliate providers;
- (ii) make recommendations to KDADS regarding the training and implementation of Positive Behavioral Supports for adults;

- (iii) review the feasibility of short term out of home community based services, which would include crisis intervention and stabilization; and
- (iv) make proposals regarding budget recommendations that would support the outcomes of the Challenging Behaviors Workgroup.
- (v) Utilize the system stakeholder meetings to evaluate and implement workgroup recommendations.

M. CDDO Performance Reviews.

1. CDDO Responsibilities. The CDDO will participate in and assist by providing required resources for, the CDDO Performance Review process(es) that are developed by the Strategic Plan Oversight Committee. The CDDO will provide:
  - a. information requested prior to the review being conducted and by the deadline identified;
  - b. assistance and support as requested by KDADS in the development of an adequate statewide pool of trained reviewers by promoting and/or soliciting the participation of affiliated providers' staff, staff from the CDDO, community members and advocate volunteers, as needed for completion of this review process in other CDDO service areas; and
  - c. a representative of the CDDO to act as the single point of contact for coordination and planning of the CDDO's own review.
2. KDADS Responsibilities. KDADS will:
  - a. ensure that KDADS staff leading the reviewing team have no direct oversight responsibilities with respect to the CDDO being reviewed; and
  - b. post all of the CDDO Performance Review reports, along with the CDDO's response(s), on KDADS' website within thirty (30) days of completion of each review.

N. Self-Advocacy Enhancement. The CDDO will support self-advocacy efforts in its service area. Examples of such efforts may include providing scholarships to the SACK Conference, and other consumer driven self-advocacy efforts and initiatives.

- O. Contract Accountability. The Parties agree that an ongoing monitoring of each of the Parties' performance under this Contract promotes both the integrity of the Contract and of the contracting process. To that end, each meeting of the Parties that is held during the course of this Contract Year will include an exchange of information from each of the Parties as to its fulfillment of its contractual obligations.
- P. Website Information. If the CDDO has a website or develops a website after July 1, 2009, it will ensure that access to its CSP component information (if applicable) is available to the same extent and manner as to all other CSPs in the CDDO's area. The website at a minimum will contain information regarding a list of all Affiliates in the area, the CDDO's policy(ies), and the CDDO's forms.
- Q. Transition of Persons who are I/DD eligible from any Institutional Settings. The CDDO will assist the parents and/or guardians of persons who are residing in or considering placement in an Institutional Setting, by providing those persons with information and education designed to aid and assist them in the decision making process regarding their choosing or declining community based services. When a person decides to transition from an Institutional Setting to community based services, the CDDO will work with the Institutional Setting provider in order to use a combination of the BASIS assessment process and an individualized person-centered support planning process to both evaluate each person's support needs and to develop strategies necessary to meet those needs.
- R. Per KAR 30-64-23(1) all BASIS assessments will be performed by CDDO staff or by an entity that has entered into an agreement with the CDDO to perform BASIS assessments and does not provide any direct services (including case management) to a person served.
- S. Integration into the KanCare Medicaid program. The CDDOs acknowledge the Administration's desire that community I/DD programs and services ultimately be integrated into the KanCare Medicaid program. The CDDOs are expected to work with KDADS to implement the features of Medicaid Reform as they relate to people who access I/DD services, consistent with relevant legislative direction. The CDDOs and KDADS acknowledge that their meaningful collaboration with respect to such efforts is in the best interests of Kansans with intellectual/developmental disabilities who participate in community services. This would include activities such as:
- a. Collaboration with KanCare pilot projects. During FY13 no CDDO or CSP will be compelled to participate in the KanCare program with regard to I/DD waiver services and/or targeted case management services. For any CDDO area which directly chooses to participate in a pilot project related to those services, or in any area where a CSP chooses to participate in a pilot project related to those services, the CDDO must collaborate with the State to ensure

that the pilot projects are implemented and operated consistent with the direction of the State, and ensure that the results are shared with I/DD system stakeholders. This collaboration will include participation in a KanCare I/DD Pilot Project Advisory Committee which will be guided by the charter included at Appendix G.

- b. Collaboration with KDADS, KDHE and MCO staff to support access to services and supports that will be available under the KanCare program.

## VII. INDEMNIFICATION

- A. Indemnification by the CDDO. If the CDDO is notified promptly in writing by KDADS of a claim(s) having been made against KDADS by any party, and with reasonable assistance in making an appropriate defense against that claim(s), the CDDO agrees to indemnify, protect, and hold KDADS harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, costs, and expenses (including reasonable attorney's fees), collectively referred to as "damages," that may be imposed on, incurred by, or asserted against KDADS, where such damages are caused directly or solely by the CDDO's acts or omissions. The CDDO further agrees to indemnify KDADS for any disallowance taken against KDADS of any Federal funds that are directly or solely attributable to any action or conduct of the CDDO. Any disallowance of federal funds that may occur and which are solely related to the structure of reimbursement provided for in this Contract will not be deemed to have been caused by the CDDO.
- B. Indemnification by KDADS. If KDADS is notified promptly in writing by the CDDO of a claim(s) having been made against the CDDO, and with reasonable assistance in making an appropriate defense against that claim(s), KDADS agrees to indemnify, protect, and hold harmless the CDDO from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, costs, and expenses (including reasonable attorney's fees), collectively referred to as "damages," that may be imposed on, incurred by, or asserted against the CDDO, where such damages are caused directly or solely by KDADS's acts or omissions. Any disallowance of federal funds that may occur and which are solely related to the structure of reimbursement provided for in this Contract will not be deemed to have been caused by KDADS.
- C. Rights in Indemnification. In the cases provided for above, the Indemnitor may not consent to the entry of any judgment or enter into any settlement agreement with regard to any claim(s) made against the Indemnitee, nor in any other way prejudice the rights or responsibilities of the Indemnitee under Kansas law, without the written consent of the Indemnitee, which consent will not be unreasonably withheld, conditioned, or delayed. The provisions of this Article will survive for three (3) years following the termination of this Contract.

## VIII. MODIFICATION OF THIS CONTRACT

- A. Modification. Except as otherwise expressly provided for in this Article, any proposed modification to this Contract must:
1. be made in writing and signed by both of the Parties; and
  2. have a mutually agreed upon effective date.
- B. Renegotiation upon a Change in Law or Policy. Upon the request of either of the Parties, 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, or in any formally adopted KDADS Policies.
- C. Changes in Funding.
1. Renegotiation. 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 lack of 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 believes there is a need to modify this Contract, due to any potential increased funding, as identified in subsection 4 below or otherwise, becoming available, the CDDO reserves the right to require a renegotiation of the terms and conditions of this Contract with KDADS, and KDADS agrees to reasonably negotiate with the CDDO in that regard.
  2. KDADS Funding Reduction. If KDADS is subject to a formal funding reduction by action of the Governor or by enactments of the Legislature, KDADS may alter the allocation made to the CDDO, the rates provided for in Addendum 1, or other terms of this Contract, in order to meet those funding reductions. In such a case, KDADS will provide to the CDDO written notice of any such alterations at least thirty (30) days in advance of those alterations becoming effective.
  3. Expenditures Projected to Exceed Appropriated Funds. If KDADS at any time determines that current and projected expenditures in the statewide community DD service system will exceed the amount of funds appropriated to the system, then KDADS may take actions, in consultation with the CDDO, and through strategies developed by the SFC, to remedy any funding shortages. Written notice of any adjustments in funding will be given to the CDDO at least thirty (30) days prior to such adjustments becoming effective. Should either of the Parties to this Contract believe

there is a need to modify other terms or conditions of this Contract in response to any adjustments in funding being made, both Parties agree to negotiate and mediate in good faith regarding those other terms or conditions of this Contract .

4. Provider Assessment. The Parties acknowledge that on April 28, 2011, a new state law, as originated in Senate Bill 210, providing for a provider assessment on MR DD providers went into effect (“Provider Assessment”). Provider Assessment is intended to permit a drawdown of additional federal matching funds through the HCBS MRDD waiver for reimbursement of services provided. The Parties acknowledge that receipt of Provider Assessment federal matching funds is conditional upon the approval of the disbursement of such funds by the Centers for Medicaid and Medicare Services and/or the U.S. Department of Health and Human Services. In the event that such approval is received, the Parties acknowledge that nothing in this Contract would prevent KDADS from instituting an immediate increase in the rates. In this event, KDADS shall increase allocations as specified in Addendum 1, consistent with the enabling legislation.

#### IX. OVERSIGHT AND AUDIT

- A. KDADS Monitoring and Audits. All services that are provided pursuant to the terms of this Contract and in consideration of the funds received under Addendum 1, may, at any time, be monitored or evaluated by KDADS. Funds allocated pursuant to this Contract are subject to KDADS Independent audits which shall be carried out in accordance with the July 1, 2001 (revised on September 1, 2004), Independent Audit Policy.
- B. Legislative Post Audit. In the event that an audit of this Contract is conducted by the Legislative Division of Post Audit, neither of the Parties shall prohibit or prevent the Legislative Division of Post Audit from accessing information regarding the execution and/or performance of this Contract as is allowed by law. This provision shall not be construed so as 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.

#### X. SEVERABILITY

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.

#### XI. FORCE MAJEURE

The CDDO will 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.

## XII. WAIVER

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.

## XIII. CONTRACT TERM AND TERMINATION

- A. Term. Unless otherwise provided for within this Contract, the term of this Contract is to be concurrent with the Contract (fiscal) Year noted in Article I above.
- B. Termination for Breach. This Contract may be terminated by either Party if the other Party materially breaches this Contract, and such breaching Party has been provided with a written notice that identifies the breach with reasonable specificity, and such breach is not thereafter timely cured. The breaching Party will have thirty (30) days following receipt of such a notice in which to cure the alleged "cause" or to bring an appropriate appeal under the Kansas Administrative Procedures Act.

## XIV. HIPAA

- A. 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 will 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.
- B. 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 will 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.



- C. 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 will furnish to KDADS a written copy of the policies and procedures adopted by the CDDO in compliance with these requirements.

XV. MISCELLANEOUS PROVISIONS.

- A. Entire Agreement. This Contract as written embodies the entire understanding between the Parties, and expressly cancels and supersedes any prior or similar written or oral agreements, made or alleged to have been made, with respect to any of the subject matters contained herein.
- B. Notices. All formal notices required to be given as provided for within this Contract will be made in writing and:
  - 1. personally delivered;
  - 2. faxed or E-mailed, with a written copy thereof sent in follow-up as otherwise provided for herein, unless acknowledge as received;
  - 3. sent by United States Mail, postage prepaid, certified or registered with return receipt requested; or
  - 4. 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.
- C. Captions. 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.
- D. Authorized to Enter into Contract. Each of the Parties, KDADS and the CDDO, represents and warrants to the other that it is authorized to enter into this Contract.
- E. Kansas Law Applies. The laws of the State of Kansas (irrespective of choice of law principles) will 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.
- F. No Presumptions Based on Drafter. No provision of this Contract will be interpreted for or against any Party hereto on the basis that such Party was the

principle draftsman of such provision, and no presumption or burden of proof will arise disfavoring or favoring any Party by virtue of the authorship of any of the provisions of this Contract.

- G. Assignment. Neither 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 Contract is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
- H. No Joint Venture. 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.
- I. Appeals and Legal Challenges by any Third Party. 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 MRDD program or of this Contract.

XV. SIGNATURES

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their respective officials or officers, who are each duly authorized to do so as of the date of execution.

Secretary of Kansas Department for Aging and Disability Services	Date
Commissioner of Community Services and Programs	Date
CDDO Authorized Signature	Date
CDDO Authorized Signature	Date

ADDENDUM 1  
SFY 2013 Annual Allocation

I. CONTRACT INFORMATION

CDDO Name:  
Address:  
Contract Number:  
Federal Tax Identification Number:  
Allocation Period: SFY 2013  
Total Allocation Award:

II. PAYMENT SCHEDULE FOR STATE AID AND CDDO ADMINISTRATION

- A. State Aid. Upon receipt by KDADS of this Contract properly executed, State Aid will be paid in four (4) quarterly payments in July, October, January, and April of the Contract Year.
- B. CDDO Administration. A quarterly payment of federal and SGF for CDDO administration will be paid in July, October, and January of the Contract Year. A fourth quarterly payment will be made in April of the Contract Year 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 will contact the CDDO and may reduce the fourth quarterly payment. Any CDDO administration payments due to the CDDO as a result of a prior period adjustment will be due within forty-five (45) days of the end of the SFY.

III. TRANSFER OF FUNDS

- A. When Allowed. Notwithstanding the requirements related to portability of funds found in K.A.R. 30-64-28, funds received through this Contract may be transferred to another unaffiliated entity, sponsoring organization, or endowment only if the CDDO does not have a funding service access list for services, or there are no persons on the Statewide Waiting List residing in the CDDO area.
- B. CDDO Support of an Affiliate Not Required. Nothing in this Contract requires the CDDO to pay any operating deficit of an Affiliate. Nothing in this Contract requires the CDDO to share any local tax support revenue the CDDO receives with any Affiliate.

IV. REIMBURSEMENT SOURCE

All Federal and State funds, State Aid, General Funds, and CDDO Administration provided by KDADS directly to the CDDO, and all HCBS MRDD waiver and TCM payments made directly to qualified, enrolled Medicaid providers through the Medicaid Fiscal Intermediary, currently HP Enterprise Services, will be made consistent with the terms and conditions of this Contract.

CONTRACT FUNDING			
	State General Funds	Federal Financial Participation	All Funds
State Aid			
General Funds for Children's Residential Supports			
CDDO Administration			
HCBS MRDD Waiver Allocation			
Total Award			

V. HCBS MRDD WAIVER RATES

Tier	Ordinary Tier		EF Funding Tier			
	Residential	Day	Residential	Day	Child In-Home Supports	Adult In-Home Supports
1	\$160.21	\$ 99.53	\$192.05	\$120.87	\$ 37.00	\$ 52.05
2	\$131.22	\$ 73.60	\$171.36	\$111.12	\$ 37.00	\$ 52.05
3	\$ 94.86	\$ 59.19	\$152.56	\$102.36	\$ 37.00	\$ 52.05
4	\$ 61.26	\$ 43.55	\$133.74	\$ 93.31	\$ 37.00	\$ 52.05
5	\$ 44.27	\$ 37.37	\$114.55	\$ 85.31	\$ 37.00	\$ 52.05

VI. HCBS MRDD WAIVER FUNDING UNITS

HCBS MRDD waiver service funding units are those that are approved through the prior authorization process pursuant to the Plan of Care (POC) and are subject to the conditions and limitations of this Contract. Through the annual review process, each person's POC is subject to reconsideration. All services provided by Affiliates that are consistent with the definition of Residential and Adult Day Services in the HCBS MRDD waiver, for either adults or children, will be reimbursed for services at the established ordinary tiered rate as set forth in this Addendum, except for those persons who receive rates established pursuant to the Extraordinary Funding (EF) Policy, an approved Individualized Rate, or who are funded through the Money Follows the Person initiative.

VII. SIGNATURES

The Parties acknowledge that the execution of this Addendum by the CDDO is not an agreement or admission that the rates (as paid to the Affiliates) or the allocations set forth herein are adequate and/or reasonable to fund the delivery of community based services as required by law.

For KDADS:

\_\_\_\_\_  
Secretary of Kansas Department for Aging  
and Disability Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deputy Secretary for Kansas Department for Aging  
and Disability Services

\_\_\_\_\_  
Date

For the CDDO:

\_\_\_\_\_  
CDDO Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
CDDO Authorized Signature

\_\_\_\_\_  
Date



## APPENDIX A

### DEFINITIONS, ABBREVIATIONS and RELATED TERMS and PROVISIONS INCORPORATED INTO THIS CONTRACT

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.

Allocation Period means the period set out in Addendum 1 to this Contract.

BASIS means Basic Assessment and Services Information System and is the KDADS database of service to persons with I/DD in Kansas.

CDDO means generally a Community Developmental Disabilities Organization.

CDDO Administration/CDDO Administrative Responsibilities mean 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.

CDDO Service Area means the county(ies) of which a CDDO is designated pursuant to K.S.A. 19- 4001 et seq.

CFS means The Department for Children and Family Services.

Community Developmental Disabilities Organization means any community mental retardation facility organized pursuant to K.S.A. 19-4001 through 19-4015, established and operating as of the effective date of K.A.R. 30-64-01 et seq.

Community Service Provider (CSP) is defined in K.S.A 39-1803 (e) as a CDDO or Affiliate thereof.

Competitive employment means 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 *Reference: §361.5 (b) (11)*

Contract Year means the period set forth in Article I of the Contract.

Crisis is defined in Appendix E.

KDADS/CDDO Policies means those policies adopted prior to June 30, 2002, and incorporated by reference as part of this contract. Policies adopted after July 1, 2002, meet the definition of Formally Approved KDADS Policies.

DDRA means the Developmental Disabilities Reform Act, K.S.A. 39-1801 through and including K.S.A. 39-1811 and Chapter 30, Articles 63 and 64 of the Kansas Administrative Regulations.

Developmental Disability (DD) is defined in K.S.A. 39-1803 (f).

Employment outcome means, with respect to a person, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in the Kansas Rehab. Services Manual §361.5(b) (11), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with a person's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

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 and any step-family relationships.

Formally Adopted KDADS Policies means and includes all policies contained in the HCBS MRDD waiver, and the BASIS Manual, and other policies developed through the KDADS Policy Development Process. KDADS will provide notice of any proposed changes in KDADS policies which affect the I/DD community service system stakeholders, and will provide timely advance written notice to the CDDOs as to changes in these policies.

General Funds for Children's Residential Supports means funds paid to provide residential supports to a child who does not meet the criteria for funding through the Technology Assisted (TA) Waiver and who formerly received Attendant Care for Independent Living (ACIL) funding.

Guardian means 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.

HCBS means Home and Community Based Services.

HCBS MRDD Waiver means Home and Community Based Services for the Mentally Retarded and Developmentally Disabled pursuant to a federally approved waiver, a category of Medicaid funding which allows community based services that have been established by KDADS for persons who are otherwise eligible for ICF/MR services.

HIPAA means the Federal Health Insurance Portability and Accountability Act, and implementing Federal regulations.

Home County means, and pursuant to K.A.R. 30-64-01, the following list shall be utilized to establish a "home county" for persons. The list is in priority order.

- a) The county of residence of a family member of the person with I/DD;
- b) Then the county of residence of the person's guardian; or,



c) The county in which the person is living.

The “home county” of children who are in custody is the county in which the child’s Medicaid case was opened.

ICF/MR means a private intermediate care facility for mental retardation.

Institutional Setting(s) means and includes institutions that are a SMRH, SMHH, and/or an ICF/MR.

Integrated setting means, with respect to an employment outcome, a setting typically found in the community in which applicants or eligible persons interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible persons, to the same extent that non-disabled individuals in comparable positions interact with other persons. Kansas Rehab. Services Manual *Reference: §361.5 (b) (33) (ii)*

I/DD means intellectual/developmental disability.

MRDD means mental retardation and/or developmental disability.

Mental Retardation is defined in K.S.A. 39-1803 (h) and as cited in the DBHS/CDDO Eligibility Determination for MRDD Services for Kansas Residents Policy.

MFP means Money Follows the Person.

Money Follows the Person (MFP) is defined as a project funded through the Centers for Medicare and Medicaid Services MFP Demonstration Grant dollars. The project is a joint effort between the Kansas Department on Aging and SRS. Qualified individuals living in qualified institutional settings for the qualifying period of time who are Medicaid eligible at least 30 days prior to moving into a qualified HCBS setting are eligible to participate for a designated period of time not to exceed 365 days.

New person means a person eligible to receive funded HCBS services, but who is currently not receiving services as requested.

PHI means Protected Health Information.

Person means 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.

POC means Plan of Care.

Portability means the requirement that persons currently receiving community service from one CDDO or CSP may move to another CDDO or CSP. With the exception of State Aid and CDDO Administration funding, all funds identified in Addendum 1 of this Contract, must be portable, in

accordance with the KDADS/CDDO Portability Policy, and a CDDO must provide continuity of service for persons who choose to continue services and who move from one CDDO to another CDDO or from one CSP to another CSP. Funds must be portable except when a person no longer needs services or voluntarily withdraws from services with no immediate foreseeable need for services.

Prior SFY means the State Fiscal Year immediately preceding the State Fiscal Year covered by this Contract.

Protected Health Information shall have the meaning set forth in HIPAA.

Referral is defined for the purposes of accessing services in the I/DD system as the process by which the CDDO provides to a person requesting or currently receiving services, information regarding all of the affiliated CSPs in the CDDO region who provide the services that the person is requesting.

Rehabilitation Services (RS) is a service of state government that helps people with disabilities achieve employment and self-sufficiency and links employers with qualified and productive persons to meet their work force needs.

Right to Risk is a principle that REQUIRES service systems to deliver services in such a way that the person served is not overprotected and thereby not unnecessarily limited in his or her opportunities for normal life experiences.

Service Reduction means 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.

SFC means Statewide Funding Committee.

SFY means the official State Fiscal Year for the State of Kansas.

SFY 2013 means the SFY covering the period of July 1, 2012 to June 30, 2013.

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

SMRH means a State Mental Retardation Hospital and/or a public ICF/MR

Stakeholder means any person with a disability, or any individual or entity with an interest in the lives of persons with MRDD.

Support Network means one or more individuals selected by a person or by the person and the guardian, if one has been appointed, to provide assistance and guidance to that person in understanding issues, making plans for the future, or making complex decisions. Such individuals share a personal relationship with the person such that they are considered central to

or interested parties to the planning of community services and supports for that person.

TCM means Targeted Case Management.

Targeted Case Management means services which will assist a person eligible under the State Plan in gaining access to needed medical, social, educational, and other services. TCM may include: assessment of an eligible person to determine service needs; development of a specific care plan; referral and related activities; and monitoring and follow-up activities. TCM does not include the direct delivery of an underlying medical, educational, social, or other service to which an eligible person has been referred.

Waiver Eligibility is defined as follows: In order to receive ICF/MR or HCBS MRDD services, persons must have a converted BASIS score of 35 or more as determined by KDADS using BASIS assessment information submitted by a CDDO. (See KDADS/CDDO Eligibility Determination for I/DD Services for Kansas Residents Policy for additional criteria.)

## APPENDIX B

### SFY 2013 STATEWIDE FUNDING ALLOCATION METHODOLOGIES

#### I. PURPOSE

The purpose of the funding allocation methodologies set forth herein is to equitably distribute the funds appropriated by the Kansas Legislature for SFY 2013. KDADS has mandated that the application of these methodologies cannot result in an allocation of funds in excess of the appropriation.

#### II. FUNDS OTHER THAN HOME AND COMMUNITY BASED SERVICES WAIVER FUNDS

A. State Aid. State Aid Allocations are made consistent with K.S.A. 65-4411 et seq. and K.A.R. 30-22-31 and 32.

1. “Hold Harmless.” The first \$5,216,286 in State Aid is distributed in amounts equal to what each CDDO received in SFY 1986.
2. “Excess of Hold Harmless” State Aid amounts in excess of \$5,216,286 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 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.
3. The “Hold Harmless” is added to the “Excess of Hold Harmless” resulting in the final State Aid allocation.

B. CDDO Administration.

1. To determine a per person amount, the total amount allocated for CDDO Administration is divided by the unduplicated number in BASIS statewide less persons residing in a SMRH.
2. The CDDO administration for each CDDO area is established by multiplying this per person amount by the number of persons listed in BASIS for that CDDO area.
3. If any new money comes into the IDD system for the funding service access list, as defined in the KDADS/CDDO Funding Service Access List for Developmental Disabilities Services Policy, 2.4 percent of that money will go to CDDO administration and will be allocated pro rata, based on the census data from BASIS taken on the agreed upon transition date.

C. Special Projects: CDDO Administration

An additional amount, over and above the amount available for CDDO Administration, is added to CDDOs with the added responsibilities they undertake related to SMRHs and other special projects. Any special projects will be listed individually, in this appendix.

1. TARC - \$16,000.00 SMRH Responsibilities; and
2. CLASS - \$16,000.00 SMRH Responsibilities.

III. HCBS MRDD WAIVER

The number of persons reported by each CDDO through BASIS as of the agreed upon snapshot date, who are receiving services funded by the HCBS MRDD waiver are listed as follows: (i) those receiving residential services; (ii) those receiving day services; (iii) those receiving in-home family support services.

A. Allocation Calculations. The amount allocated for each of the above listed services is determined as follows:

1. Residential Services.
  - a. The number of persons at each CDDO who receive residential HCBS-funded services whose services are not funded with individualized rates are listed by tier.
  - b. The number of persons in each tier is multiplied by (i) the tier rate; (ii) 365 days; and (iii) the local CDDO's Attendance Rate.
  - c. The amount authorized for individualized rates is multiplied by (i) 365 and (ii) the Attendance Rate, and is added to the tier allocation.

2. Day Services.

- a. The number of persons at each CDDO who receive HCBS-funded day services whose services are not funded with individualized rates are listed by tier.
- b. The number of persons in each tier is multiplied by (i) the tier rate; (ii) 260 days; and (iii) the local CDDO's Attendance Rate.
- c. The amount authorized for individualized rates is multiplied by 260 and the Attendance Rate, and is added to the tier allocation.

3. In-Home Support Services.

- a. The numbers of adults at each CDDO who receive HCBS-funded in-home support services are multiplied by \$19,000.
- b. The numbers of children at each CDDO who receive HCBS-funded in-home support services are multiplied by \$13,500.
- c. For those persons receiving Specialized Medical Care, each CDDO will be allocated the annualized amount of Specialized Medical Care on the approved Plan of Care.

B. Attendance Rate Determination. The CDDO Attendance Rates for residential and day services will be determined by conducting a survey of all CDDOs to determine the actual attendance rate for each service type in each CDDO area. The SFY2013 HCBS MRDD waiver allocation for both service types will be adjusted by each rate for each CDDO.

C. Statewide Appropriation Adjustment

1. If there are insufficient funds in the state HCBS MRDD waiver allocation after the above has been determined, then a Statewide Appropriation Adjustment will be made to each service type in each CDDO area and on the total HCBS MRDD Waiver allocation. This Statewide Appropriation Adjustment will be accomplished by determining the percentage of difference between the total adjusted amounts as described above and the actual allocation and then subtracting that percentage from each service at each CDDO's adjusted amounts. This amount will be deducted from the total of all waiver allocations at the bottom of the spreadsheets.
2. KDADS will quantify the total statewide appropriation adjustment in the spreadsheet by noting it with percent and dollars.

## APPENDIX C

### STATEWIDE FUNDING COMMITTEE (SFC)

- I. The role of the SFC will be:
  - A. To review spending of IDD funded services and formulate strategies to be presented for review and approval of CDDOs for submission to KDADS for final action.
  - B. To annually review and recommend revisions to the allocation methodology and committee-developed management procedures. These recommended revisions will be presented for review and approval by a majority of the CDDOs in attendance at a meeting of the SFC before submission to KDADS for final action.
  - C. To review spending related to Article V of the Contract and to formulate strategies for appropriate resource management to be presented for review and approval by a majority of the CDDOs in attendance at a meeting of the SFC before submission to KDADS for final action.
  - D. To develop agendas that will allow time for input from non-CDDO stakeholders concerning any current or previous agenda item.
  - E. To provide feedback to all of the CDDOs, KDADS, and other stakeholders on at least a quarterly basis.

The CDDOs will report information to KDADS, the SFC chairperson, and the Home and Community-Based Services Program Manager that is necessary for the SFC to perform its assigned tasks.

The SFC, KDADS, and CDDOs will use available data to project total system spending for the current SFY. If it appears the HCBS MRDD waiver allocation will not be fully expended, the SFC will formulate recommendations for consideration by SRS and the CDDOs to fully utilize projected unexpended funds. These recommendations will specifically include an analysis of those persons leaving HCBS services, the system's ability to allow service access to persons on the service access list, and/or access to new or increased levels of service for those currently served, and will include consideration of one-time assistive services funding. The use of unexpended funds will be determined jointly by CDDOs and KDADS no later than the end of the third quarter of the current SFY.

A total of one (1) non-voting seat will be made available to allow for direct input from participating advocacy organizations. The Developmental Disabilities Council, Self Advocate Coalition of Kansas, Families Together, and the Disability Rights Center will work in partnership to select a representative to serve in this capacity. The above-stated advocacy organizations will designate an alternate representative to attend meetings in the absence of the primary representative. Priority should be given to allow for direct representation by persons

who are eligible for IDD services in Kansas.



APPENDIX D  
GENERAL TERMS AND CONDITIONS

- I. Controlling Provisions. It is expressly agreed that the terms of each and every provision in this Appendix D will prevail and control over the terms of any other conflicting provision in any other document relating to and a part of this Contract to which this Appendix D is incorporated, with the exception of Appendix A to this Contract and the Contractual Provisions Attachment, Form DA 146a.
- II. Criminal Provisions. By entering into this Contract, the CDDO declares and assures 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 subgrant; 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.
- III. Accounting System. The CDDO's Accounting System will meet generally accepted accounting principles.
- IV. Maintenance of Cost Records. The CDDO will 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.
- V. Submission of Reports. The CDDO will submit any required reports in accordance with the Contract. Failure to report required data could result in the delay and/or loss of funds.
- VI. Retention of Records and Reports. Unless otherwise specified in this Contract, the CDDO will preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this Contract for a minimum of three (3) state fiscal years from the date of the expiration or termination of this Contract. Matters involving litigation will be kept for a minimum of three (3) years or for one (1) year following the termination of litigation, including all appeals, whichever is longer. The CDDO will notify KDADS of circumstances which impair the integrity or security of such materials during the retention period.
- VII. Data. KDADS warrants that technical data issued to the CDDO for use in performing professional services under this Contract will be current, accurate, complete, and adequate for its intended purpose. The CDDO will notify the KDADS Technical Representative as soon as possible upon discovering any data deficiency. The KDADS Technical Representative will take prompt and reasonable action to reconcile or remedy the data deficiency(ies). The CDDO may have access to private or confidential data maintained by KDADS to the extent necessary to carry out its responsibilities under this

Contract. The CDDO must comply with all the requirements of the Kansas Open Records Act to the extent applicable in providing services under this Contract. The CDDO will accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Contract will be disseminated by either party except as authorized by statute, 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 forms it is maintained by the CDDO. On the termination or expiration of this Contract, the CDDO will not use any such data or any material derived from the data for any purpose and, where so instructed by SRS, will destroy or render it unreadable.

- VIII. Rights and Remedies. If this Contract is terminated pursuant to K.A.R. 30-64-20, SRS, 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. KDADS will be obligated only for those services and materials rendered and accepted prior to the date of termination. In the event of termination, the CDDO will receive payment pro-rated for that portion of the Contract period 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 will not be exclusive and are in addition to any other rights and remedies provided by law.
- IX. Federal, State, and Local Taxes Contractor. KDADS makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
- X. Governing Law Consent to Jurisdiction. This Contract, and any act, agreement, Contract or transactions to which they will apply, or which are contemplated hereby or hereunder, will be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of Kansas and, to the extent applicable, the United States of America. Any dispute arising out of, or any suit or other proceedings pursuant to or arising out of these terms and conditions, or any act, agreement, contract or transactions to which they will apply or which are contemplated hereby or hereunder, will be subject to the jurisdiction of a court of competent jurisdiction located in the county of Shawnee, State of Kansas, and the CDDO will take any and all necessary or appropriate action to submit to the jurisdiction of such court.
- XI. Debarment. As part of the Code of Federal Regulations (45 C.F.R. Part 76), all governmental entities receiving funding from the Federal Government must participate in a government-wide system for nonprocurement debarment and suspension, A person or entity that is debarred or suspended will 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 will 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 sites [http://epls.arnet.gov/epl/owa/epls\\_search.name\\_srch](http://epls.arnet.gov/epl/owa/epls_search.name_srch) and

<http://exclusions.oig.hhs.gov> will be researched for potential debarred persons or entities.

- XII. Lobbying. 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.

Appendix E  
Access to HCBS MRDD Waiver Services

I. IN-HOME SUPPORT SERVICES

The CDDO will be allowed to increase a person's In-Home Support services if the following criteria are met:

- A. The person has been included in the BASIS snapshot with funds allocated in the current contract;
- B. The statewide Needs Assessment instructions, guiding principles, and tool are used to determine the units of service necessary for all persons receiving In-Home Supports;
- C. Any need for increased paid supports is documented on the Needs Assessment tool;
- D. Any involuntary decrease in paid supports follows the KDADS/CDDO Involuntary Service Reduction policy; and
- E. The CDDO demonstrates to KDADS that cost neutrality can be achieved and maintained by the increasing of these In-Home Support services. In determining cost neutrality, the CDDO will compare the cost of implementing the Needs Assessments with the units billed for In-Home Supports for the prior twelve (12) months as indicated by the HP Enterprise Services utilization report.

II. ACCESS TO SERVICES, ALLOCATION, AND REALLOCATION OF FUNDING

Access to new services will be limited to one of the following:

- (i) crisis/imminent risk of crisis; or
- (ii) re-allocation of funding; or
- (iii) waiting list funding; or
- (iv) exceptions as identified in section V.E. of this agreement.

Reallocation of funding will specifically include the CDDO's authority to re-allocate HCBS MRDD waiver funds attributable to a person's loss of waiver eligibility to any person currently receiving services and on the CDDO's waiting list for HCBS MRDD waiver funded services. If no such list exists, such funds will be reported to the SFC for statewide re-allocation

A. Crisis/Imminent Risk of Crisis.

1. Persons who are in crisis or at imminent risk of crisis and whose needs can only be met through services available through the HCBS MRDD waiver are those persons who:
  - (i) require protection from confirmed 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 in their current situation.
2. Procedures for Crisis
  - a. When persons present themselves to the CDDO as being in crisis, the CDDO will make appropriate referrals to other available community services. If after all natural and community supports have been explored and exhausted the person is still determined to be in crisis, the CDDO will allow the person to access HCBS MRDD waiver services. Documentation of all attempts to find other resources will be maintained by the entity making the request and provided to the CDDO prior to the person being approved for crisis funding.
  - b. If the CDDO determines that it does not have the resources to support the person in crisis, it will work with KDADS and other CDDOs to secure crisis services. Activity will be reported through the SFC.
  - c. After a person enters services, the CDDO will review the person's continued need for services after no longer than ninety (90) days. If the person needs fewer paid supports after this review, the CDDO will reduce services. If the person no longer needs HCBS MRDD waiver services, he/she will be removed from services. The CDDO will make appropriate referrals to other available community services. If the person is determined to need services after the initial ninety (90) days, the CDDO will continue to monitor the need for HCBS MRDD waiver services as appropriate. Documentation of this monitoring will be maintained by the CDDO.
  - d. The Secretary will make monthly reports to the State Budget Director, the 2013 legislative budget committees, and the SFC of the following: (i) crisis-related caseload and caseload growth; (ii) caseload and caseload growth related to children in custody; (iii) children transitioning from custody; (iv) persons exiting

Institutional Settings that are decertified or are reducing bed capacity; and (v) the costs related to the preceding.

3. KDADS will perform a post review of persons determined to be in crisis.

*Or:*

B. Re-allocation.

1. The SFC will review the financial impact of persons exiting HCBS MRDD waiver services and make recommendations to KDADS regarding the possible re-allocation of these funds. The funds allocated for individuals entering services will not exceed the funds allocated for those leaving services.
2. When a person loses eligibility for waiver funding the CDDO has the discretion to fund another waiver eligible person(s) as long as the fiscal effect is neutral.

*Or:*

C. Waiting List. Funds allocated in the SFY 2013 Kansas State Budget to serve a portion of those persons who are waiting for initial access to HCBS/MRDD waiver services or access to additional HCBS MRDD waiver services, will be allocated using the following procedure:

1. Any waiting list funds appropriated by the Kansas will be allocated no later than July 1, 2012, as directed by the SFC using a distribution process that includes the following minimum criteria:
  - a. Each person must have an identified need for services or HCBS MRDD waiver funding for those services.
  - b. Persons to be funded must be eligible for HCBS MRDD waiver services.
  - c. The requested date for at least one requested service must have passed.
  - d. Allocations will be made based upon any and all services for which the person is past due and the length of time persons have been waiting for the offer of services, or funding as defined by both the "date requested" and "date applied" in the BASIS Services section. Priority will be given to those who have been waiting the longest by date requested. In the event that waiting list dollars will not cover all persons on a

specific “date requested,” priority will be given to those with the oldest “date applied” so that all waiting list dollars are allocated for expenditure.

- e. If the person is offered funding for services and they decline, the requested date will be required to be changed to an agreed upon date, but must be AT LEAST ninety (90) days from the date of decline. If the person is offered funding a second time and declines funding, he/she may choose to be removed from the waiting list or his/her requested date will be required to be changed to three (3) years from the date of decline. Nothing will prohibit a person from changing his/her requested service date to a future date in order to avoid being offered services before needed which could result in the person declining the services. If the service request is removed and the person reapplies for the service at a later date, the earliest the service can be requested is three (3) years from the date of the second decline.
2. Once all waiting list funding has been allocated for those persons identified using the above criteria, if any of those persons decline services, each individual CDDO may then utilize that funding to serve other persons who are waiting to access services per the CDDO’s local policy.
3. For persons moving from one CDDO area to another, the person’s “date applied” and “date requested” for services from the previous CDDO area will be honored.
4. Changes to the KDADS data management system (currently known as BASIS) will be developed collaboratively with respect to the parties to this agreement, and will be implemented on a mutually agreeable timeframe. Maintaining current data accessibility capabilities will be a priority in this process.

APPENDIX F  
Statewide Quality Oversight Committee (SQOC)

- I. The role of the SQOC will be:
- A. To examine issues related to appropriate oversight of IDD services being provided to persons and families, consistent with the management of quality enhancement/quality assurance requirements of K.A.R. 30-64-26 and K.A.R. 30-64-27 and of the mission of KDADS.
  - B. To work in partnership with concerned stakeholders representing CSPs, advocacy groups, and other interested parties to ensure that processes for system quality oversight are coordinated effectively and to minimize duplication of functions.
  - C. To annually review and recommend revisions to the Contract as it relates to quality enhancement/quality assurance issues.

Each CDDO will select a chairperson to work in collaboration with KDADS to organize an agenda, designate a keeper of minutes, and direct each meeting.

Meetings will take place quarterly or more often based on a consensus of members. Consideration should be given to varying the meeting place throughout the State to facilitate attendance by non-CDDO stakeholders and KDADS Field Staff.

Each agenda will allow time for input from non-CDDO stakeholders concerning any current or previous agenda item. The SQOC will provide feedback to CDDOs, KDADS and other stakeholders on at least a quarterly basis.

The SQOC will pursue the following topic areas or others for the purpose of creating recommendations that may be acted upon by KDADS and CDDO leaders:

1. The current process for ensuring that each person who utilizes MR/DD services funded through this contract receives quality services.
2. Education concerning the licensing process and how it is being utilized across the state.
3. Clarification of quality oversight roles between individuals, community service providers, CDDOs and KDADS Field Staff to enhance efficiency and communication.
4. System-wide data collection of select performance indicators as obtained from local and statewide quality oversight efforts, including satisfaction of persons served.



5. Analysis of data collected for the purpose of identifying trends and making recommendations for system improvement which may include policy changes, targeted performance goals, or training.
6. Draft a written procedure for the reporting of Critical Incidents which includes roles and responsibilities, time-lines, and operational definitions of what constitutes a Critical Incident, that will be presented to stakeholders for acceptance.

II. One (1) non-voting seat will be made available to allow for direct input from participating advocacy organizations. The Developmental Disabilities Council, the Self Advocate Coalition of Kansas, Families Together, and the Disability Rights Center will work in partnership to select a representative to serve in this capacity. The above-stated advocacy organizations will designate an alternate representative to attend meetings in the absence of the primary representative. Priority should be given to allow for direct representation by persons who are eligible for IDD services in Kansas.

Appendix G  
KanCare I/DD Pilot Project Advisory Committee

The parties agree to the establishment of a KanCare I/DD Pilot Project Advisory Committee. The parties also agree to support the organizational structure and mission of the Committee as set out below.

**Committee's Charge:**

The Advisory Committee will be responsible to develop and provide to the state, recommendations related to the following issues:

1. KanCare pilot project design.
2. Outcome measures for evaluating the KanCare pilot project, including customer satisfaction measures.
3. Process to track and measure outcomes of the KanCare pilot.
4. Ensuring utilization of an independent review source for specific outcome measures for KanCare I/DD pilot projects.
5. Identifying reimbursable CDDO costs related to the KanCare pilot project and potential ways to efficiently address those costs.
6. How to ensure the voluntary participation of CSPs and people receiving services in the KanCare pilot project, and in addition;
7. Collaboration to develop the access criteria, structure, and services related to the health home service model, and related implementation and operational criteria.

**Membership/Selection Process:**

Six members shall be appointed by the CDDO parties to this contract, and six CDDOs/CSPs members shall be appointed by KDADS.

**Timeline/Deliverables:**

- Members should be identified and ready to begin work by July 2, 2012.
- During the month of July, advisory committee members will be expected to provide input on the structure of a request for information which may be used by KDADS to solicit broad input as to a I/DD pilot project, including criteria for participation, goals of the project, measurements to use, timeline for participation and measurement, and any other operational issue.
- Following the use of an RFI (if used), and ongoing, while the state will select pilot project participants, advisory committee members will be expected to provide input on pilot project issues, including how to monitor the pilot project, how to add participants in the pilot project over time, and how to engage members for pilot project and larger I/DD system issues.
- All work of the committee must be done with the goal of launching pilot project sites on January 1, 2013.