

## **FINAL SETTINGS RULE VOLUNTEER AGREEMENT**

This Final Settings Rule Volunteer Agreement (the "Agreement") is effective this \_\_\_\_ day \_\_\_\_\_, 2016, by and between the Secretary of the Kansas Department for Aging and Disability Services ("KDADS"), and \_\_\_\_\_ (the "Volunteer"), all of whom may hereinafter be referred to as the "Parties."

WHEREAS, KDADS is seeking assistance for onsite assessments of HCBS settings to evaluate compliance with the CMS HCBS Final Settings Rule;

WHEREAS, Volunteer desires to assist KDADS pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, pursuant to the terms and conditions set forth herein, and for other good and valuable consideration, KDADS and Volunteer agree as follows:

1. Volunteer's Duties/Conduct: Volunteer shall, at all times, conduct himself/herself in a professional and courteous manner, and shall cooperate with and work diligently on assignments provided by the KDADS' HCBS Director, Susan Fout.

2. KDADS' Duties: KDADS will task assignments related to Volunteer's skills and abilities and provide ongoing feedback to Volunteer during and after completion of given assignments.

3. Volunteer's Schedule: Volunteer shall arrange his/her schedule with their KDADS Supervisor.

4. Term and Termination: Unless otherwise terminated, this Agreement shall be effective from \_\_\_\_\_, through \_\_\_\_\_.

5. Agreement Termination, Default and Remedies: Any party may terminate this Agreement with or without cause upon written, telephonic, or oral notice to the other party.

6. No Payment for Services: The KDADS is not responsible for paying Volunteer any monetary or other compensation whatsoever during the term of this Agreement.

7. Parking: KDADS shall not provide Volunteer with parking or a parking pass.

8. Compliance with KDADS' Rules and Policies: Volunteer agrees to at all times comply with all KDADS' and the State of Kansas' regulations, rules and policies, including with specific regard to dress, use of the telephone, IT Policy, Internet and building access.

9. IT Passwords: Volunteer agrees that during the term of this Agreement, he/she will not copy, forward, transfer or otherwise save any KDADS' data, in any medium whatsoever, and upon the termination of this Agreement shall return to the KDADS' IT department any and all

state owned equipment and/or passwords. Volunteer agrees to execute and abide by KDADS' IT Security Agreement, or the like.

10. Independent Contractor Status: At all times pertinent to this Agreement, Volunteer 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 Volunteer as between KDADS and Volunteer.

11. No Employee Status, Healthcare or other Benefits: Volunteer acknowledges and agrees that this Agreement confers no KDADS or State of Kansas employee rights or benefits to Volunteer. Volunteer further acknowledges that he will receive no healthcare coverage or any other benefits whatsoever under this Agreement.

12. Health Insurance Portability and Accountability Act ("HIPAA") and Health Information Technology for Economic and Clinical Health Act ("HITECH"): KDADS is a covered entity under HIPAA and therefore Volunteer is not permitted to use or disclose health information in ways that KDADS could not, and this protection continues as long as the data is in the hands of the Volunteer. In addition, Volunteer shall comply with 45 C.F.R. §205.50, *Safeguarding information for the financial assistance programs*, as well as 42 C.F.R. §431 Subpart F, *Safeguarding Information on Applicants and Beneficiaries*. Volunteer shall comply with all applicable privacy laws including HIPAA, and amendments thereto.

For purposes of this Section, the terms "*Protected Health Information*" and "*PHI*" mean individually identifiable information in any medium pertaining to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, that the Volunteer receives from KDADS or that is created or received on behalf of KDADS. The terms "Protected Health Information" and "PHI" applies to the original data and to any data derived or extracted from the original data. *See 45 C.F.R. §160.103.*

- a. Limitation of Use and Disclosure 45 C.F.R. §164.504(e)(2)(ii)(A): The Volunteer agrees that he/she will not use or further disclose the PHI other than as permitted or required by this Agreement or as required by law.
- b. Safeguarding and Securing PHI 45 C.F.R. §164.504(e)(2)(ii)(B): The Volunteer agrees to use appropriate safeguards and to take steps to protect the physical security of and prevent unauthorized access to the PHI.
- c. Notification 45 C.F.R. §164.504(e)(2)(ii)(C): The Volunteer shall notify his or her KDADS Supervisor, the KDADS' privacy officer and KDADS' Chief Counsel both orally and in writing of any use or disclosure of PHI not allowed under this Agreement of which he/she becomes aware, and of any instance of breach of PHI including situations where the PHI is transmitted, copied or removed by anyone except an authorized use or disclosure by a KDADS' staff member.
- d. Data Transmission: The Volunteer agrees that he/she will not transmit PHI unencrypted over the Internet or other open networks or over any wireless communication device (i.e., cellular telephones).

- e. Termination 45 C.F.R. §164.504(e)(2)(ii)(J): The Volunteer agrees that upon the termination of this Agreement, he/she will return or destroy, at KDADS' direction, any and all PHI that he/she maintained, received from, or created or received on behalf of KDADS in any form and will retain no copies of the PHI.
- f. Termination for Compliance Violation 45 C.F.R. §164.504(e)(2)(iii) and §164.504(e)(1)(ii): The Volunteer acknowledges that KDADS is authorized to terminate this Agreement if KDADS determines that the Volunteer is in violation of any HIPAA or HITECH provisions or KDADS' policies or procedures related thereto.
- g. Minimum Necessary 45 C.F.R. 164.502(b) and 45 C.F.R. 164.514(d): The Volunteer agrees to limit the amount of PHI used and/or disclosed to the minimum necessary to accomplish the intended purpose of the use and disclosure, or request.
- h. The Volunteer shall at all times recognize KDADS' ownership of PHI.

13. No Worker Compensation Coverage: Volunteer acknowledges that in the event he/she would be injured while providing the services under this Agreement, he is not entitled to any type of insurance or benefits coverage including, but not limited, to workers' compensation.

14. Release: Volunteer releases the State of Kansas, KDADS and its employees from any and all liability whatsoever relating or pertaining to the services provided by Volunteer under this Agreement.

15. Retention of and Access to Documents: All documents prepared pursuant to this Agreement shall be retained and safeguarded for a five-year period following termination of this Agreement, and said documents shall be made available to any other party to this Agreement, and independent auditor retained by any other party, the Secretary 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 documents created and required to be kept under this Agreement.

16. Amendment or Assignment: Modification or amendment to this agreement shall be in writing and executed with the same formality as the original. Similarly, this Agreement shall not be assigned unless approved in writing by the parties hereto. All assignments not approved pursuant to this provision are void.

17. Waiver of Breach: Waiver of a breach in performance of any term of this Agreement by KDADS shall not be construed as a waiver of any subsequent breach of the same or any other performance or provision of this Agreement.

18. Signatures: This 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.

19. Cooperation: The parties agree to fully cooperate with each other in the performance hereunder, and shall execute such additional agreements, documents, or instruments, if any, as may reasonably be required to carry out the intent of the Agreement.

20. Additional Assurances: The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, that at the request of either party, the other party shall execute such additional instruments and take such additional acts as are necessary or useful to effectuate this Agreement.

21. Terms Read and Understood: The signatories to this Agreement certify that they have read this Agreement, and fully understand all of the terms. 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.

22. 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.

23. Force Majeure: Neither party hereto shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, acts of terrorism, riots, civil unrest, flood, fire, tsunami, volcano, sabotage, airspace closure, ground stop(s), a U.S. Department of State Travel Warning or any other circumstances of like character.

24. Miscellaneous. Volunteer shall not assign, subcontract, or delegate any duties or obligations required by this Agreement to any other individual, agency, or organization. The waiver by any party of a breach of any requirement or provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or any other requirement or provision of this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. This Agreement supersedes all prior negotiations and agreements between the parties relative to the transaction and services contemplated by the Agreement, which contains the entire understanding of the parties. The terms and provisions of this Agreement shall be construed in accordance with and governed by the laws of the State of Kansas. Should judicial intervention be required, the parties agree that venue shall only be proper in the District Court for Shawnee County, Kansas.

25. Emergency Contact Information: In the event of a health or other emergency, the KDADS should contact \_\_\_\_\_.

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

**VOLUNTEER:** \_\_\_\_\_

\_\_\_\_\_

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

**KANSAS DEPARTMENT FOR AGING  
AND DISABILITY SERVICES**

\_\_\_\_\_  
Timothy Keck, Interim Secretary

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

STATE OF KANSAS  
Kansas Department for Aging and  
Disability Services; and

**VOLUNTEER AGREEMENT**

**APPENDIX A**

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

**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/Volunteer'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 charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to Volunteer 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. Volunteer 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 Volunteer 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 Volunteer 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 Volunteer.
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 Volunteer 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 Volunteer 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 subVolunteer or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Volunteer 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 Volunteer 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.  
  
Volunteer 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 Volunteer 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 Volunteer thereby represents that such person is duly authorized by the Volunteer to execute this contract on behalf of the Volunteer and that the Volunteer 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 Volunteer 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 Volunteer shall bear the risk of any loss or damage to any property in which the Volunteer 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.