

SOUTHWEST DEVELOPMENTAL SERVICES, INC.
COMMUNITY DEVELOPMENTAL DISABILITY ORGANIZATION

AGREEMENT FOR AFFILIATION

[Affiliate Name]

October 1, 2021 to October 31, 2022

REVISED October 1, 2021

SOUTHWEST DEVELOPMENTAL SERVICES, INC.
COMMUNITY DEVELOPMENTAL DISABILITY ORGANIZATION

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Submit Data Sheet for your Affiliation Agreement

AGREEMENT FOR AFFILIATION

This agreement entered into this 1st day of October, 2021, between [Affiliate Name], hereafter known as the Affiliated Community Service Provider (CSP), and Southwest Developmental Services, Inc., the designated Community Developmental Disability Organization (CDDO), hereafter known as SDSI.

Whereas, effective July 1, 1991, the State of Kansas received approval from the Department of Health and Human Services under Section 2176 of Public Law 97-35 of the Social Security Act, entitled the Omnibus Budget Reconciliation Act, to provide Home and Community Based Services (HCBS) to eligible persons who would otherwise require institutionalization or placement in an Intermediate Care Facility for individuals with an intellectual disability (ICF/ID), and

Whereas, the Developmental Disabilities Reform Act of 1995 (DD Reform Act), KSA 39-1801 et. seq., provides for the development of an organized network of community services statewide, with specific local organizations designated as Community Developmental Disability Organizations (CDDOs) in the Act; and

Whereas, these services are to be provided and arranged through a designated CDDO, with designation coming from the state level, defined in KSA. 19-4001 et. seq. and

Whereas SDSI has been designated by the local county commissions as the CDDO for eighteen counties of Kansas, and

Whereas, the contractual agreement between SDSI, the Kansas Department for Aging and Disability Services, and the Kansas Department of Health and Environment governs the funding support for the services provided by the Agreement; and

Whereas, as the CDDO, SDSI has both the power and the duty (subject to appropriations) to provide either directly or by subcontract, services to persons with a developmental disability including assistance in establishing new providers if requested.

Therefore, in consideration of providing Home and Community Based Services to eligible individuals with an intellectual and/or developmental disability (IDD), the CSP and SDSI agree to the following:

I. ADMINISTRATIVE RESPONSIBILITY

1. Service Area. Services to be provided pursuant to this agreement by the CSP will be available to eligible persons residing in the 18-county area of SDSI which includes all of the following counties: Barton, Finney, Grant, Greeley, Hamilton, Haskell, Kearny, Lane, Morton, Pawnee, Rice, Rush, Scott, Seward, Stafford, Stanton, Stevens, Wichita.

a. The term "Eligible Person" shall mean that person who meets the criteria as a person with IDD under applicable rules, regulations and procedures of the Kansas Department for Aging and Disability Services (herein, "KDADS").

2. Point of Application and Intake Process. For each person applying for services, SDSI shall be the initial point of application and referral for such person. SDSI shall complete an intake process, which shall include, but is not limited to determination of the person's intellectual disability and/or developmental disability eligibility as defined in the KDADS/CDDO Eligibility Determination Policy revised April 26, 2004.

3. Primary Contact with Counties. SDSI shall serve as the primary agency contact for the County Commissioners of the 18-county service area with regard to funding for services to all Eligible Persons in those counties served under this contract; PROVIDED FURTHER, SDSI shall be solely responsible for the presentation of funding requests to said County Commissioners pursuant to K.S.A. 19-4001, et. seq.

4. Requirements for Affiliation. Prior to the execution of the initial Agreement for Affiliation, the CSP must provide all of the documentation listed in Appendix A hereto. Prior to the execution of any renewal Agreement for Affiliation, the CSP must provide all of the documentation listed in Appendix B. All documentation must be prepared electronically and submitted by email. This information is subject to approval by SDSI. These requirements are in addition to the requirements stated in other sections of this agreement.

- a. All documentation required under paragraph I.4. shall be submitted by the CSP to SDSI all at one time.
- b. From time to time, SDSI will provide forms, documents and updates electronically. It is expected that the CSP will have hardware and software capable of accessing those documents and files. CSP shall use such forms, documents, and electronic format as required by SDSI.
- c. From time to time, SDSI will require forms and documents to be submitted electronically from the CSP. The CSP shall have hardware and software capable of sending such file(s) electronically.
- d. From time to time, SDSI will conduct meetings and reviews utilizing video conferencing. The CSP shall have hardware and software capable of participating in such meetings using the same software as used by SDSI.

5. Approved Services. The contracting CSP is affiliated for all of those services identified by the CSP on the attached Appendix C. This list may be amended at any time, with the consent of SDSI, if the CSP has met all requirements of this agreement. The CSP will be responsible for applying for and maintaining licensing in any area of services provided for which licensing is required. Should the CSP become non-licensed for any reason in any area of service, they shall no longer receive funds for that service enabled through this agreement. If all licensing is terminated this contract shall be immediately null and void, and the CSP shall assist SDSI as requested in transitioning persons served until their service needs are met. If licensing is terminated for a specific area of service(s) the CSP shall assist SDSI as requested in transitioning persons receiving the terminated service(s) to other providers.

The CSP, before offering services under this agreement, must provide to SDSI proof of appropriate licensing for the particular service to be provided, or in the event licensing is not required, proof of compliance by the CSP with appropriate statutes, rules, regulations and SDSI policies and procedures (if any are applicable).

During the term of this agreement, the CSP shall immediately upon request by SDSI, provide SDSI with proof of licensing and compliance required by the terms of this paragraph.

6. Separation of Management. Each CSP that provides case management must separate case management services from direct services. A case management affiliate may not also provide direct services unless case management is supervised by a position that does not also supervise direct service staff.

7. Relationship of the Parties. The CSP hereby specifically acknowledges that the relationship between the CSP and SDSI is that of an independent contractor (i.e. the CSP is responsible for salary withholding and other insurance) and not as an agent, representative or employee of SDSI. Neither SDSI nor the CSP in any way hold themselves out as an agent, representative or employee of the other at any time. The CSP further acknowledges it is responsible for all knowledge of, and compliance with, applicable statutes, laws, rules, regulation and ordinances and payment of all debts incurred by the CSP, including, but not limited to, tax liabilities. The CSP shall pay all appropriate federal, state and local taxes and withholding, including, but not limited to, social security withholding, federal and state income tax withholding, unemployment compensation and workers' compensation. The CSP shall send to SDSI, upon request, documentation evidencing compliance with this paragraph. In the event SDSI discovers the CSP is not in compliance with the terms of this paragraph, SDSI will notify appropriate agencies to proceed with enforcement actions and SDSI will take other such actions deemed necessary, including, but not limited to, the termination of this affiliation agreement as allowed under Section III, paragraph 5a.

8. HCBS Services and Documentation. The CSP will complete all necessary requirements to obtain a Medicaid Provider number and submit results with a copy of the provider numbers to SDSI, upon execution of the agreement, and upon any additions or changes in provider numbers. HCBS Services to be provided by the CSP shall follow the guidelines outlined in the person-centered support plan based upon the Integrated Service Plan (ISP). Services shall further be provided in accordance with any licensing or other regulatory requirements. The CSP shall create and maintain such documentation as may be required by KDADS, this contract or applicable statutes and regulations. Documentation of services will be maintained on a daily basis which will provide proof that services for which payment is requested have been delivered; PROVIDED FURTHER, that upon request by SDSI, the CSP shall provide to SDSI such documentation.

9. Reimbursement for HCBS/IDD Program and Targeted Case Management (TCM) Services. HCBS/IDD Program Service funding units are those that are approved through the prior authorization process pursuant to the integrated services plan (ISP) managed by KDADS and contracted Managed Care Organization (MCO).

Reimbursement through the HCBS/IDD Program Services can be accessed only when the CSP has a current signed affiliation agreement with SDSI for the requested services, and KDADS and the client's MCO has granted prior authorization pursuant to the ISP.

TCM services are reimbursable directly through Medicaid only when the appropriate MCO contract and authorization is in place.

The CSP must bill the appropriate MCO or fiscal intermediary for all reimbursable services. The CSP must provide SDSI with information pertaining to Medicaid billing when requested.

State Aid funds are distributed to SDSI pursuant to K.S.A. 65-4411 et. seq. and K.A.R. 30-22-31 et. seq. State Aid funds are allocated at the discretion of SDSI and may only be used for KDADS-approved priority services as defined by KDADS service taxonomy. State Aid funds are not portable to areas outside of the SDSI CDDO catchment area. The CSP will invoice SDSI per the SDSI Local Finance Plan.

County mill levy funds are distributed at the discretion of SDSI as described in the SDSI Local Finance Plan. These funds are not portable to areas outside of the SDSI CDDO catchment area.

The CSP understands and agrees that it is subject to a financial penalty if the data provided by the CSP results in an inaccurate or incomplete functional assessment and a recoupment is levied by KDADS against SDSI. The financial penalty shall be equal to the amount of the recoupment levied against SDSI if the CSP's data was the only reason for the inaccurate/incomplete finding; the penalty amount shall be prorated if the CSP's data was not the only reason for the finding. SDSI will not penalize the CSP if the reason for the recoupment results from an error on the part of SDSI.

SDSI may recoup State Aid funds and county mill levy funds from the CSP if services were not provided as originally invoiced through the SDSI Local Finance Plan; PROVIDED FURTHER, SDSI, in its discretion, may recoup any such funds by offsetting the amount owed to SDSI against any future monies owed to CSP.

10. Person Centered Planning. The CSP will develop and implement a person-centered plan in accordance with applicable K.S.A. rules and regulations, KDADS policies and procedures and CDDO policies and procedures. CSP's will cooperate to ensure there is one plan and that services are delivered in accordance with that plan.

11. Medicaid Eligibility/Patient Obligation. The CSP shall be responsible for verification of the Medicaid/Medicare eligibility for each Eligible Person to whom services are being provided by the CSP. Requests for payment that are denied by Medicaid due to the ineligibility or monthly patient obligation may not be paid to the CSP. The CSP shall further be responsible for collecting from any person to whom services are provided by the CSP the monthly patient obligation owing from the person served. It shall be the CSP's sole responsibility to collect the amount of said monthly patient obligation owing and SDSI as CDDO has no obligation to either pay for or collect the monthly patient obligation for services rendered by the CSP to the Eligible Person.

12. **Insurance Requirements.** The CSP shall maintain all insurance required by employment laws such as worker's compensation. The CSP shall provide proof of the minimum \$500,000 general liability insurance with SDSI as a named insured when applying for and renewal of affiliation.

13. **Discrimination Prohibited.** The CSP does hereby acknowledge that it shall be an unlawful discriminatory practice for the CSP or any agent or employee of the CSP to refuse, deny, make a distinction, directly or indirectly, or discriminate in any way against persons because of race, religion, color, sex, physical handicap, nationality or origin of ancestry of such persons, in the full and equal use and enjoyment of the services, facilities, privileges, advantages or employment in the CSP.

The CSP, when otherwise qualified and available to provide services to a person, shall not discriminate in the selection for, or delivery of services to that person because of the severity of the person's disability, except if the secretary of KDADS determines that the person is inappropriate for community services because the person presents a clear and present danger to self or to the community. The CSP agrees to continue to provide services to the individual, even if circumstances change, once that person has entered the community services, for the agreed upon amount.

14. **Compliance with Regulations, Policies and Procedures.** The CSP agrees to comply and abide by all applicable state and federal statutes, laws and regulations, including, but not limited to, the Kansas Developmental Disabilities Reform Act of 1995, 39-1801, et. seq., and Kansas Administrative Rules and Regulations promulgated pursuant thereto. The CSP during the term of this agreement shall comply in all respects with all pertinent statutes and regulations, as the same may be amended and changed from time to time, including but not limited to K.S.A. 19-4001, et. seq., K.S.A. 65-4411, et. seq., K.S.A. 39-1801, et. seq., K.A.R. 30-63-01, et. seq., and K.A.R. 30-64-01. The CSP shall comply with all formally approved policies and procedures of KDADS, KanCare MCOs and SDSI. The CSP must cooperate with all SDSI administrative activities including, but not limited to, service access, application, eligibility determination and referral, third party eligibility determination reviews, gatekeeping, dispute resolution, council of community members, quality assurance, quality enhancement, funding management and management of the data collection system. The CSP must take appropriate action to assist SDSI in complying with the performance outcome measures identified in the current KDADS/SDSI annual contract.

15. **Monitoring of Services.** The CSP acknowledges that KDADS and SDSI have the authority to monitor all services provided by the CSP. The CSP shall cooperate with KDADS and SDSI to furnish information requested in an accurate and timely manner.

The CSP must supply accurate special reports or information to SDSI or KDADS or its designees within reasonably requested time frames. Many requests for information are regularly made as a result of regulatory or legislative demands placed on KDADS and SDSI. As such, requests will be identified as to source of request and/or informational needs.

16. **Death Protocol.** The CSP shall report the death of any person they serve under this agreement, in writing within 24 hours, to the Quality Assurance Managers of SDSI. This is in addition to any AIRS reports submitted. The CSP will provide all information needed for SDSI to comply with KDADS reporting requirements.

17. **Notification of Changes.** The CSP shall also promptly notify SDSI, in writing within two (2) business days, using the appropriate SDSI form(s), of any change of address, change in guardianship, wait list requests, change in service and/or provider or other information necessary to maintain current files.

18. **Functional Assessments.** The CSP shall participate in the Functional Assessment Process and provide SDSI all data as required in the SDSI Functional Assessment Process and as amended from time to time. Based upon such information as provided by the CSP, SDSI shall complete the functional assessment.

19. **Review of Financial Records.** SDSI, KDADS or its designees shall be authorized to review the financial condition of the CSP during the term of this agreement at any reasonable time; PROVIDED FURTHER, such review may take place during the term of this agreement or at any time within two (2) years after the termination hereof.

20. **Retention of Records.** Unless otherwise specified in this Agreement, CSP agrees to preserve and make available to SDSI at reasonable times for inspection and copying all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of six (6) years from the date of expiration or termination of this Agreement.

Matters involving litigation shall be kept for two (2) years following termination of litigation, including all appeals, if the litigation exceeds six (6) years.

21. **Reporting Requirements.** There is attached hereto and made a part hereof "Appendix A" or "Appendix B". Those documents specified on "Appendix A" or "Appendix B" are to be submitted to SDSI.

22. **Availability of Funds.** This contract is specifically based upon the availability of funds to pay for services to be provided by the CSP under the terms of this agreement and is subject to termination by either party upon the suspension or other non-availability of such funds.

23. **Audit Requirements (Qualifying CSPs).** If the CSP receives \$750,000 or more in annual gross revenues, the CSP shall submit audited financial statements to SDSI in accordance with Generally Accepted Accounting Principles (GAAP). Audits must be submitted no later than nine (9) months following the CSP's fiscal year end. The audit must include any management letters provided by the independent auditor.

24. **Monitoring Efforts for Non-qualifying CSPs.** If the CSP does not qualify under the provisions of Paragraph 23, the CSP shall have an independent accountant or accounting firm perform the necessary procedures to issue to SDSI a report verifying that the following requirements have been met;

- a. Attendance records or other service documentation is maintained to support that services billed for were delivered;
- b. The CSP is in compliance with federal and state payroll tax requirements including federal and state requirements for depositing and the reporting of all FICA, federal income tax withholding, federal unemployment tax, if applicable, state income tax withholding, and state unemployment tax.
- c. The CSP is in compliance with requirements of the Kansas Worker's Compensation Act, if applicable.

An annual balance sheet and income statement detailing revenues and expenses related to this agreement shall be included with the accountant's report in addition to those items set forth in paragraph 24 above.

The CSP must submit a report under this paragraph no later than nine (9) months from the close of the CSP's fiscal year.

II. QUALITY ASSURANCE AND ENHANCEMENT

1. **Person-Centered Support Plans.** The CSP shall develop a comprehensive person-centered support plan (including risk assessments if applicable) with input from recipient, family, service providers, staff and others. This person-centered support plan should be kept current reflecting the service needs of the individual as they may change from day to day. The CSP will monitor the services provided under the recipient's Plan of Care, and provide assistance to the individual and to service providers in accessing needed services, reviewing recipient's needs to assure appropriate services, being available to recipient, staff and family for consultation, advocacy and monitoring service hours.

2. **Service Requirements.** The CSP shall provide services in a manner that is responsive to the person-centered support plan under which the CSP services are being provided. The services shall be provided in a manner that offers opportunities of choice to the person being served. The services shall be performed in a manner that insures that all of the person's rights are observed and protected.

3. **On-Site Monitoring.** The CSP's quality assurance and quality enhancement efforts must meet the requirements for CDDOs and affiliating CSPs as set out in K.A.R. 30-64-27 and K.A.R. 30-64-26.

Pursuant to K.A.R. 30-64-27, the CSP will cooperate with the monitoring process of the CDDO Quality Assurance Committee so that the Committee can determine persons being served by the CSP are receiving services consistent with K.A.R. 30-63-01 et. seq., are protected from harm, and are having their rights protected. The type and intensity of the monitoring process will be determined by the CDDO Quality Assurance Committee. The CSP must take appropriate action to correct any concerns identified by the Committee.

Should it be determined the services provided by the CSP do not meet the requirements set out in K.A.R. 30-63-01 et. seq. SDSI and/or KDADS may pursue one or more of the following steps:

a. Confer with the CSP regarding the identification of potential insufficiencies, and attempt by consensus to address concerns and efforts to reach reasonable and continuing improvement;

b. Thereafter, SDSI and/or KDADS will notify the CSP and the local quality assurance committee of any area(s) in which performance is not demonstrated. The CSP shall, in conjunction with SDSI and the local quality assurance committee, submit a plan of action within 30 days which describes how the CSP will achieve the necessary performance and/or improvement, and/or

c. If SDSI and/or KDADS determine resolution of identified deficiencies have not occurred in steps a. and b. above, SDSI will ask KDADS to proceed with licensing enforcement actions as specified in K.A.R. 30-63-12, et. seq. and other such actions deemed necessary, including, but not limited to, the termination of this affiliation agreement.

4. Training Program Requirements. The CSP shall develop, and provide to SDSI upon request, applicable written policies and a written training program for the CSP's staff whose responsibilities include providing services and support to persons served. In the event of any changes to the policies and/or the training program, the CSP shall provide to SDSI such policies and training program, in writing, within ten (10) business days after the changes become effective. The training program must specify the content of the training, the manner in which training will be delivered, and the way in which staff competency will be determined. At a minimum, the plan must include the following topics:

- a. First aid and CPR
- b. Person-centered support planning;
- c. Behavior management;
- d. Individual rights and responsibilities; and
- e. Abuse, neglect and exploitation.

The training program must include provisions for educating staff to provide services and support, such that persons served are healthy, safe and realizing their preferred lifestyles as outlined in each person-centered support plan.

The CSP at any time during the term of this agreement upon request by SDSI shall certify in writing that the CSP and all of its employees are in compliance with the terms and conditions of the CSP's training program.

All CSPs who will be providing TCM services after October 1, 2020 must develop and provide to SDSI a training plan. Thereafter, any CSP who begins providing TCM services after October 1, 2020 must develop and provide to SDSI a training plan at least five (5) days prior to initially providing the TCM services.

TCM providers shall obtain a minimum of 25 training hours over the course of each Training Term per employee. For purposes of this paragraph "Training Term" shall be October 1, 2021 through October 10, 2022 and thereafter Training Term shall commence on November 1 and end on October 10 of the following calendar year. On or before the last day of each Training Term, CSP shall provide to SDSI documentation of the required training in a form acceptable to SDSI. The content of the training is at the discretion of the TCM provider, however any hours spent by the TCM provider (herein "Trainer") in training another TCM employee will not be counted toward the Trainer's 25 training hours required hereunder for each Training Term. There will be no allowance for carryover of training hours made. The training hours required hereunder shall not be prorated for an employee who is employed by the TCM provider for only a portion of the Training Term and such employee must complete the full 25 hours.

5. Background Checks. The CSP agrees that they will not knowingly hire any individual with a history of one or more instances of abuse, neglect or exploitation of children or vulnerable adults.

Pursuant to KDADS policy, the CSP certifies that it will perform, maintain and keep current background and driving record checks for all of its employees and subcontractors. The CSP shall provide SDSI copies of staff background checks within five (5) business days, upon request.

6. ANE Reporting Requirements. In accordance with K.S.A. 39-1401 et. seq., K.S.A. 39-1430 et. seq., and K.A.R. 30-63-28, all agents, employees, representatives, contractors and subcontractors of the CSP providing services as a result of this Agreement must immediately report any incidents of suspected abuse, neglect or exploitation directly to the appropriate official body responsible for investigating such incidents including, but not limited to, SDSI, KDADS, the Kansas Department for Children and Families, Adult or Child Protective Services and law enforcement. The CSP must also notify the person's legal guardian, if one has been appointed, unless such notification is likely to cause harm to the person served. Any notification that occurs more than one (1) business day after the incident is identified by the CSP will be considered out of compliance with this requirement and will be deemed a breach of this Agreement.

The CSP is expected to provide to SDSI all correspondence pertaining to the incident and follow corrective action(s) recommended as a result of complaint (abuse/neglect or health/safety).

7. Adverse Incident Reporting (AIR). The CSP will register with KDADS' Adverse Incident Reporting (AIR) system and abide by KDADS HCBS Adverse Incident Reporting and Management Policy 2017-110. CSP will report critical incidents to SDSI Quality Assurance (QA) staff no later than 24 hours after becoming aware of the incident. Critical incidents include, but are not limited to abuse, neglect, exploitation (ANE) reports, hospitalizations, police involvement, deaths of persons served, and any other incident defined by KDADS as critical. CSP will comply with all requests for information by SDSI. CSP will comply with any corrective action request(s) made by SDSI.

8. Recipient Records. All recipients' records (e.g. medical, psychological, social, financial, etc.) shall be retained and kept confidential. Such records shall be kept by the CSP and shall be made

available to SDSI and KDADS for review or copying as requested. The CSP is expected to comply in an accurate and timely manner with all reasonable SDSI or KDADS requests for information, the purpose of which is to assess/improve IDD service in this service area and/or response to requests for information issued by KDADS or the Legislature.

9. Quality Assurance Compliance. In the event, as a result of a quality assurance review of a CSP, SDSI discovers any deficiencies needing correction (herein "Deficiency"), SDSI shall deliver to the CSP/TCM a written notice of Deficiencies (herein "Notice of Action"). The Notice of Action may require the CSP/TCM to submit and complete a plan of correction approved by SDSI. The Notice of Action will set forth a deadline by which said plan of correction is to be submitted and completed. Failure to submit and complete the plan of correction within the time required in the Notice of Action may result in one or more of the following, as determined by SDSI in its sole discretion:

- a. The immediate forfeiture of payment to the CSP of local budget monies (herein "Local Monies") for services rendered by CSP under the terms of this Agreement. The amount of the Local Monies which the CSP shall forfeit will be calculated in the following manner: Local Monies shall be forfeited for the full month within which the Notice of Action is issued by SDSI and all subsequent months through the end of the month within which the plan of correction has been completed to the satisfaction of SDSI. CSP shall not be reimbursed nor paid any of the forfeited Local Monies.
- b. CSP shall pay to SDSI the sum of \$125.00 per day, from and after the date of the Notice of Action until such time as the CSP completes the corrective action to the satisfaction of SDSI.
- c. CSP will not accept new referrals nor shall SDSI refer potential clients to the CSP until such time as the CSP completes the corrective action to the satisfaction of SDSI.
- d. SDSI may terminate or suspend the Agreement for Affiliation.
- e. Any fines, penalties or obligations imposed upon CSP shall be paid immediately upon demand by SDSI; PROVIDED FURTHER, in addition to recovery of such payments through judicial proceedings, SDSI is authorized to deduct or set off said amounts from or against any future payments owing to the CSP under the Local Finance Plan until payment has been made in full.
- f. The foregoing actions are cumulative and SDSI may require or impose one or more of the foregoing actions as a result of CSP's noncompliance.

10. Service Termination by CSP. The CSP can initiate service termination consistent with SDSI policy but must deliver written notification to SDSI, the person served, the person's guardian (if one has been appointed) and a family member, if appropriate, at least thirty (30) calendar days prior to the CSP permanently discharging a person receiving services funded through this Agreement. Notification shall be

timed to avoid any potential gap in services (e.g. if service start is limited to the first of the month, termination date shall coincide with this timeframe. A person cannot be terminated from services until and unless at least one of the following occurs:

- a. Inappropriate Community Placement: The Secretary of KDADS has determined participation in community services is not appropriate because the individual is presently likely to cause harm to self or others;
- b. Failure to pay or meet monthly IDD Program Services client obligation;
- c. Failure to pay or meet financial agreements with chosen CSP;
- d. Failure to maintain contact: Individuals who cannot be contacted despite reasonable attempts, such as failure to respond to a registered letter, made by the CSP or SDSI;
- e. All funding for the person allocated in this agreement is discontinued;
- f. The person voluntarily withdraws from services.

III. Other General Requirements

1. **Enforcement and Dispute Resolution.** Should the CSP fail to maintain compliance with this Agreement or any state or federal statute or regulation incorporated by reference and/or fail to correct identified deficiencies, SDSI shall at its discretion inform the CSP in writing of the deficiencies or instances of non-compliance. The CSP shall have thirty (30) calendar days (or less time if the health and safety of persons served may warrant) to either (1) resolve the deficiencies and/or instances of non-compliance, or (2) present SDSI with a corrective plan of action. Should the CSP fail to take either of these corrective actions, SDSI may take any or all of the following actions:
 - a. Place the CSP on probationary status for a specified amount of time during which it is expected the CSP will take immediate action to correct the deficiencies. During the probationary period the CSP may not accept new referrals;
 - b. Impose penalties in an amount not to exceed \$125.00 per day for each violation from the specified date forward until the CSP comes into compliance;
 - c. Suspend all or part of the payments provided for in the SDSI-Local Finance Plan agreement;
 - d. Implement any action allowed by the current SDSI-CSP affiliation agreement; or
 - e. Terminate the SDSI-CSP affiliation agreement.

Preferred resolution of disputes will take place informally between the parties involved. In the event such informal resolution is not

successful, the CSP, SDSI, or KDADS may require participation in dispute resolution utilizing an independent professional mediator designated by SDSI. The parties will share equally in the costs of the dispute resolution.

In the event dispute resolution is not successful, either party may file an appeal with the Office of Administrative Hearings, Department of Administration.

If the CSP loses its license to provide services, the CSP will no longer be provided funds pursuant to this agreement and must further cooperate with SDSI in assisting the transition of persons to alternative service CSPs until all service needs are met. The terms of this paragraph shall survive termination of this Agreement.

2. Indemnification. The CSP agrees to hold harmless and indemnify SDSI from any damages, liabilities, obligations, judgments, causes of action, lawsuits, claims or expense (including reasonable attorney's fees) imposed on, incurred by, or asserted against SDSI which in any way relates to or arises out of the CSP's performance or failure of performance of the terms and conditions contained in this contract, unless caused solely by SDSI or its employees.

SDSI agrees to hold harmless and indemnify the CSP from any damages, liabilities, obligations, judgments, causes of action, lawsuits, claims or expense (including reasonable attorney's fees) imposed on, incurred by, or asserted against the CSP which in any way relates to or arises out of SDSI's performance or failure of performance of the terms and conditions contained in this contract, unless caused solely by the CSP or its agents, employees, contractors or subcontractors. The terms of this paragraph shall survive termination of this Agreement.

3. Alterations or Amendments. Any alterations to this agreement shall only be valid when they have been reduced to writing, duly signed and attached to the original of this agreement. This agreement shall be subject to re-negotiation upon changes in federal or state laws or regulations to conform to any changes caused by amendments or revisions to those laws or regulations.

4. Severability. Should any term of this contract be declared by a court of competent jurisdiction to be invalid or unenforceable, the balance of all independent terms of this contract shall be preserved unaffected, deemed valid and enforceable, and remain in full force and effect.

5. Termination. This agreement may be terminated under the following terms:

- a. SDSI may terminate this agreement at any time, upon 30 days written notice to the CSP, as provided in K.A.R. 30-64-22(f) and CDDO Policy 2-12.
- b. The CSP may terminate this agreement after giving SDSI at least 60 days written notice or a mutually agreed to time for successful transition to new services for all people receiving services from the CSP.

- c. SDSI may immediately and without written notice, terminate this agreement, for cause, which shall include, but not be limited to (i) CSP's breach of, or failure to perform, any of the terms, conditions and covenants imposed upon CSP hereunder; (ii) CSP's failure to comply with any applicable governmental rules, regulations, codes, statutes, or administrative orders; (iii) there is a confirmed abuse/neglect/exploitation of a person served by the CSP based on K.S.A. 39-1401; and (iv) the CSP is convicted of, pleads guilty to, or is placed on diversion for, any misdemeanor or felony, except for traffic offenses.
- d. In the event the CSP at any time shall lose its license in any area of services for which a license is required, then in that event SDSI may immediately and without notice terminate this agreement or it may be amended by both parties.
- e. Unless terminated under paragraphs III.5.a-d. above, this agreement will terminate (i) when replaced by a new affiliate agreement signed by both parties to the current agreement; or (ii) if the CSP fails or refuses to deliver to SDSI the signed new affiliate agreement within thirty (30) days after said new affiliate agreement is delivered to CSP for signature, in which case this agreement shall terminate upon the expiration of said thirty (30) days.

6. Term of the Agreement. Unless otherwise terminated as set forth in paragraph 5 hereof, the term of this agreement shall commence on October 1, 2021 and terminate on October 31, 2022 at 12:00 midnight.

7. Notices. All notices, demands and any and all other communications that may be or are required to be given to, or made by either party to the other in connection with this Agreement shall be delivered in person, by confirmed email or by registered or certified mail, return receipt requested, to the addresses set forth below, or at such other addresses as specified by written notice and delivered in accordance herewith:

To SDSI
Southwest Developmental Services, Inc.
ATTN: Mark Hinde, President/CEO
1808 Palace Drive, Suite C
Garden City, KS 67846
Email: mhinde@sdsicddo.com

To CSP:
[Affiliate Name]
ATTN: Printed name, Title
Address
City, State Zip
Email: address

Except as otherwise expressly provided herein, each notice, demand, and other communication shall be deemed delivered/received (i) on the date of the postmark when deposited in the mail, postage prepaid, as aforesaid; (ii) the date sent if delivered by email; and (iii) upon delivery when hand delivered to the location or person aforesaid.

8. **Entire Agreement.** This agreement supersedes any and all oral understandings had by and between the parties hereto and constitutes the total agreement of the parties.

9. **Paragraph Headings.** Where used in this Affiliation Agreement, subject headings are included for convenience and ease of reference only. No heading or title ascribed to a paragraph or clause of this agreement shall be interpreted or construed to define the scope of any duty or obligation set out in the paragraph or clause.

10. **Definitions.** The definitions used in the DD Reform Act and K.A.R. 30-63-01 et. seq. and K.A.R. 30-64-01 et. seq., as well as any defined terms referred to in the KDADS and CDDO contract, are incorporated here by reference, and are to be applied to any term not defined in this agreement.

11. **Choice of Law and Jurisdiction.** The parties agree that this agreement and the party's rights and responsibilities hereunder shall be governed and interpreted according to the laws of the State of Kansas. The parties further agree and consent to the exclusive jurisdiction of the District Court of Finney County, Kansas, for any disputes between the parties or litigation, arising out of or concerning this agreement.

12. **HIPAA.** Confidentiality under the Health Insurance Portability and Accountability Act, 1996 (HIPAA):

SDSI is a covered entity under HIPAA and therefore SDSI is obligated to obtain reasonable assurances from CSP that the CSP will not use or disclose SDSI PHI in ways that SDSI could not. These confidentiality protections must continue for as long as the SDSI PHI is in the possession of the CSP. Upon execution of this Agreement and from time to time hereafter as required by SDSI, the CSP will execute a Business Associate Agreement with SDSI in a form acceptable to SDSI.

Definition:

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 CSP receives from SDSI or that CSP creates or receives on behalf of SDSI. The terms "Protected Health Information" and "PHI" apply to the original data and to any data derived or extracted from the original data that has not been de-identified.

- a. General Provision for Use and Disclosure. Except as otherwise provided in this section, CSP may use or disclose PHI to perform functions, activities or services for, or on behalf of, SDSI as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if performed by SDSI.

- b. Specific Uses and Disclosures Section 164.504(e) (2). Except as otherwise provided in this section, CSP may use PHI for the proper management and administration of CSP, or to carry out CSP's legal responsibilities. Except as otherwise limited in this Agreement, CSP may disclose PHI for the proper management and administration of CSP, provided that disclosure is required by law, or, when required by HIPPA, CSP obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies CSP of any instances of which it is aware in which the confidentiality of the information has been breached. Except as otherwise limited in this section, CSP may use PHI to provide Data Aggregation services to SDSI as permitted by 42 C.F.R. section 164.504(e) (2) (i) (B).
- c. Minimum Necessary. CSP agrees to limit the amount of PHI used and/or disclosed pursuant to this section to the minimum necessary to achieve the purpose of the use and disclosure.
- d. Safeguarding and Securing PHI Section 164.504(e) (2) (ii) (B): CSP agrees to establish appropriate safeguards to protect the physical security of and prevent unauthorized access to the PHI and upon request will furnish SDSI with a written description of such safeguards. CSP agrees to allow authorized representatives of SDSI access to premises where the PHI is kept for the purpose of inspecting physical security arrangements.

Appropriate administrative, technical, procedural and physical safeguards shall be established by the CSP to protect the confidentiality of SDSI PHI and to prevent unauthorized access to it. The safeguards shall provide a level of security that is required by the HIPAA regulations.

Security of facilities: CSP shall provide all reasonable security procedures at any place where services are performed by the CSP under this Agreement.

- e. Agents and Affiliates Section 164.504(e) (2) (ii) (D): CSP agrees to require all entities, including agents and affiliates which perform Covered Entity Functions on behalf of CSP, and to whom CSP discloses PHI received from SDSI or created or received by SDSI on behalf of SDSI, to agree to the same restrictions and conditions that apply to CSP with respect to use and disclosure of such information.
- f. Right to Review. SDSI reserves the right to review terms of the agreements and contracts between the CSP and affiliates as they relate to the use and disclosure of PHI subject to this Agreement.

- g. Notification Section 164.504(e) (2) (ii) (C): CSP shall notify SDSI in writing, within five (5) calendar days, of any use or disclosure of PHI not allowed by the provisions of this Agreement of which it becomes aware, and in the event PHI, subject to this Agreement, is subpoenaed, copied or removed by anyone except an authorized representative of SDSI or the CSP.
- h. Transmission of PHI: CSP agrees to follow the HIPAA standards with regard to the transmission of PHI.
- i. Custodial Responsibility: CSP shall notify SDSI of the individual CSP has designated as the custodian of PHI who is responsible for observance of all conditions of use. If custodianship is transferred within the organization, CSP shall notify SDSI promptly.
- j. Access, Amendment, and Accounting of Disclosures Section 164.504(e) (2) (ii) (E-G): CSP will provide access to the PHI in accordance with 45 C.F.R. Section 164.524. CSP will make the PHI available for amendment and incorporate any amendments to the PHI in accordance with 45 C.F.R. Section 164.526. CSP will make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. Section 164.528.
- k. Documentation Verifying HIPAA Compliance Section 164.504(e) (2) (ii) (H): CSP will make its internal practices, books, and records relating to the use and disclosure of the PHI received from SDSI, or created or received by CSP on behalf of SDSI, available to the Secretary of the United States Department Health and Human Services for purposes of determining SDSI's compliance with 45 C.F.R. Parts 160 and 164. CSP will make these same practices, books and records available to SDSI or its designee upon written request.
- l. Agreement Termination Section 164.504(e) (2) (ii) (I): CSP agrees that if this Agreement is terminated by SDSI at any time CSP will, within 90 days of such termination, return or destroy, at SDSI's direction, any and all SDSI PHI that it maintains in any form and will retain no copies of the PHI, to the extent such regulations do not conflict with K.S.A. 45-401 et. seq. or other applicable record retention obligations under federal or state law. If the return or destruction of the PHI is not feasible, the protections of this section of the Agreement shall be extended to the information, and further use and disclosure of PHI is limited to those purposes that make the return or destruction of PHI infeasible.
- m. Termination for Compliance Violation Section 164.504(e) (2) (iii) and Section 164.504(e) (1) (ii): CSP acknowledges that SDSI is authorized to terminate this Agreement if SDSI determines that CSP has violated a material term of this section of the Agreement. If termination of the Agreement is not feasible due to an unreasonable burden on SDSI, CSP's violation will be reported to the Secretary of the United States Department of Health and Human Services, along with steps SDSI took to cure or end the violation or breach and the basis for not terminating the agreement.

In witness whereof, this agreement has been executed effective the day and year first above written.

SOUTHWEST DEVELOPMENTAL SERVICES, INC.

Date: _____

BY: _____
Mark G. Hinde
President and CEO

[Affiliate Name]

Date: _____

Signed: _____
Printed name
Title
"CSP"

(11/03/2021 revision)

Submit Data Sheet for your Affiliation Agreement

Appendix A

All Documentation Required with Initial Affiliation Agreement Must Be Prepared Electronically and Submitted by Email to each of the following:

cwikoff@sdsicddo.com
ssandoval@sdsicddo.com
mhinde@sdsicddo.com

- 1) Data Sheet
- 2) Business plan
- 3) Certificate of good standing from Kansas Secretary of State
- 4) Marketing plan
- 5) Organizational chart
- 6) Copy of applicable licenses
- 7) NPI Number Confirmation
- 8) KMAP Number Confirmation
- 9) MCO contract(s)
- 10) Current insurance certificate listing SDSI as a named insured
- 11) Copy of most recently completed independent audit, as needed
- 12) Copy of accountant's report, if audit not required
- 13) Death Protocol Policy
- 14) ANE Policy
- 15) AIR Policy
- 16) Background Check Policy
- 17) Medication Policy
- 18) PCSP Policy
- 19) Training Plan
- 20) TCM Training Plan (if applicable)

Submit Data Sheet for your Affiliation Agreement

Appendix B

All Documentation Required with Renewal of Affiliation Agreement Must Be Prepared Electronically and Submitted by Email to each of the following:

cwikoff@sdsicddo.com
ssandoval@sdsicddo.com
mhinde@sdsicddo.com

- 1) Data sheet
- 2) Certificate of good standing from the Kansas Secretary of State
- 3) Organizational chart (only if modified)
- 4) Current copy of applicable licenses
- 5) MCO contract(s) (only if modified)
- 6) Current insurance certificate listing SDSI as a named insured
- 7) Copy of most recently completed independent audit, as needed
- 8) Copy of accountant's report, if audit not required
- 9) Death Protocol Policy (only if modified)
- 10) ANE Policy (only if modified)
- 11) AIR Policy (only if modified)
- 12) Background Check Policy (only if modified)
- 13) Medication Policy (only if modified)
- 14) PCSP Policy (only if modified)
- 15) Caseload list for providers of TCM
- 16) TCM Training Plan (if applicable)
- 17) TCM training documentation and hours (when applicable)

Submit Data Sheet for your Affiliation Agreement

Appendix C

The CSP is affiliated to provide the following services within the SDSI service area:

Agency Directed Services

- | | |
|---------------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> Assistive Services | <input type="checkbox"/> Personal Care Services |
| <input type="checkbox"/> Day Supports | <input type="checkbox"/> Residential Supports |
| <input type="checkbox"/> Enhanced Care Services | <input type="checkbox"/> Specialized Medical Care |
| <input type="checkbox"/> Medical Alert | <input type="checkbox"/> Supported Employment |
| <input type="checkbox"/> Overnight Respite | <input type="checkbox"/> Supportive Home Care |
| <input type="checkbox"/> Targeted Case Management | <input type="checkbox"/> Wellness Monitoring |

Financial Management Services

- | | |
|-------------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> Overnight Respite | <input type="checkbox"/> Enhanced Care Services |
| <input type="checkbox"/> Personal Care Services | <input type="checkbox"/> Specialized Medical Care |

Limited License Provider

- | | |
|---------------------------------------|-----------------------------------------------|
| <input type="checkbox"/> Day Supports | <input type="checkbox"/> Residential Supports |
|---------------------------------------|-----------------------------------------------|

Submit Data Sheet for your Affiliation Agreement