



**Kansas Department of Health and Environment  
Bureau of Community Health Systems**

**Medical Materials Agreement**

**1. Parties to the Medical Materials Agreement.**

a. Kansas Department of Health and Environment [KDHE]; and

b. \_\_\_\_\_  
[FACILITY]

\_\_\_\_\_  
City/State/ZIP

2. **Purpose of the Medical Materials Agreement.** The Kansas Department of Health and Environment (KDHE) is an executive agency of the State of Kansas and among its duties is the preparation for the possibility of medical or health care emergencies. Toward that end, the Medical Materials have been cached for the purpose of making the same available to local providers of health care services or goods, such as health departments, clinics, hospitals and pharmacies, for distribution to the public in the event of such an emergency. The FACILITY is a local provider of health care services or goods. It is in the best interests of the citizens of the State of Kansas, of KDHE and of the FACILITY that plans are in place to promote the proper and efficient distribution of Medical Materials during an emergency incident. This Medical Materials Agreement sets forth terms and conditions under which Medical Materials will be provided to the FACILITY.

Therefore KDHE and the FACILITY agree to the following.

3. **Definitions.** For the purposes of this Agreement, the term “Medical Materials” shall mean durable and non-durable assets, including but not limited to medical supplies, pharmaceuticals and equipment, delivered from KDHE to the FACILITY pursuant to this Agreement.

4. **Binding Appendices.** The provisions found in Appendix A, (Contractual Provisions Attachment [Form DA-146a]) and Appendix B, (Whistleblower and Debarment Certification) are hereby incorporated in this Agreement and made a part hereof. Such provisions shall take precedence over any contrary provisions of this Contract.

5. **Term.** The term of this agreement shall be for three (3) years from the date it is signed by the Secretary of KDHE.

6. **Termination.** This Agreement may be terminated by KDHE upon five (5) calendar days’

unilateral written notice (letter, fax or e-mail) to the FACILITY or by an agreement of the Parties which is in writing and executed with the same formality as this Agreement. The FACILITY shall, upon notice, immediately inventory and return all undistributed Medical Materials to KDHE.

7. **Extension and Modification and Amendment.** This Agreement may be modified, including extended, as necessary if such modification is in writing and executed with the same formality as this Agreement.
8. **Confidentiality.** All information provided by KDHE regarding the state's cache of Medical Materials, including, but not limited to their availability, the amount dispensed and/or the amount on hand, storage, distribution and dispensing, is strictly confidential under state and federal law. All information provided by the FACILITY shall remain strictly confidential, subject to the provisions of state law. This information shall be shared only with key emergency response professionals on a need-to-know basis and will be done so in a secure manner.
9. **Distribution of Medical Materials.** KDHE shall distribute Medical Materials from the state's cache at no charge to the FACILITY as it deems appropriate during an event for the distribution area assigned to the FACILITY.
10. **Costs.** KDHE shall not be responsible for any costs related to this Agreement, except as set forth herein.
11. **Manifest and Instructions and Guidance.** KDHE shall provide an inventory manifest, handling instructions, and appropriate Medical Materiel treatment guidelines for Medical Materials.
12. **Receipt of Medical Materials.** Upon delivery of the Medical Materials, the FACILITY shall cause to be executed, on a form approved by KDHE, a receipt acknowledging delivery. The receipt shall be executed by the FACILITY's administrator or the administrator's designee and shall be presented to the person delivering the Medical Materials upon delivery.
13. **Care of Medical Materials.** Upon delivery, the FACILITY assumes responsibility for maintaining the physical security and integrity of the Medical Materials, including compliance with handling instructions provided by the U.S. Centers for Disease Control and Prevention, and any applicable federal laws and regulations. The FACILITY shall maintain the Medical Materials in accordance with the manufacturer's instructions and also in a safe and secure location during distribution, storage and dispensing. The Medical Materials shall be kept physically separate from the FACILITY's inventory.
14. **Reports and Transfer of Medical Materials.** The FACILITY shall maintain records of the type and in the form directed by KDHE for the accounting of Medical Materials received, used, returned, disposed of, or transferred to a local government, tribe or other entity. The FACILITY shall provide KDHE with access to or copies of such records upon demand. In the event the FACILITY transfers Medical Materials to a local government, tribe or other entity, the FACILITY shall notify KDHE of the transfer, forward this Agreement with the transfer of the Medical Materials, and shall use its best efforts to ensure that such transferee complies with the

terms of this Agreement.

- 15. **Substitution of Medical Materials Inventories.** The Medical Materials inventory shall not be used in place of the FACILITY stock at any time. The FACILITY may use its stock to substitute for Medical Materials, but no reimbursement shall be available for this action.
- 16. **No Charges Allowed.** The FACILITY shall not charge a fee for the provision of Medical Materials or for the use and dispersal of Medical Materials to patients.
- 17. **Return of Unused Medical Materials.** Upon request by KDHE, the FACILITY shall return such unused Medical Materials as specified by KDHE.

The PARTIES, through duly authorized representatives, assent to the terms and conditions of this Agreement and have executed it as of the date shown below.

FACILITY

KANSAS DEPARTMENT OF  
HEALTH AND ENVIRONMENT

\_\_\_\_\_  
Name of The FACILITY (Print or Type)

By:

By:

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Robert Moser, MD  
Secretary

\_\_\_\_\_  
Name of Authorized Individual

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Individual

\_\_\_\_\_  
Date

**CONTRACTUAL PROVISIONS ATTACHMENT**

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 7th day of May, 2014.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

**COMPLIANCE WITH THE  
"PILOT PROGRAM FOR ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS"**

Congress has enacted a law, found at 41 U.S.C. 4712, that encourage employees to report fraud, waste, and abuse. **This law applies to all employees working for contractors, grantees, subcontractors and subgrantees on federal grants and contracts [for the purpose of this document, "Recipient of Funds"]**. The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) mandates a pilot program entitled, "PILOT PROGRAM FOR ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS".

This program requires all grantees, their subgrantees and subcontractors to:

- Inform their employees working on any Federal award they are subject to the whistleblower rights and remedies of the pilot program;
- Inform their employees in writing of employee whistleblower protections under 41 U.S.C. 4712 in the predominant native language of the workforce; and,
- Contractors and grantees will include such requirements in any agreement made with a subcontractor or subgrantee.

Employees of a contractor, subcontractor, grantee [or subgrantee] may not be discharged, demoted, or otherwise discriminated against as reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form or condition of employment.

Whistleblowing is defined as making a disclosure "that the employee reasonably believes is evidence of any of the following:

- Gross mismanagement of a federal contract or grant;
- A gross waste of federal funds;
- An abuse of authority relating to a federal contract or grant;
- A substantial and specific danger to public health or safety; or,
- A violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant).

To qualify under the statute, the employee's disclosure must be made to:

- A Member of Congress or a representative of a Congressional committee;
- An Inspector General;
- The Government Accountability Office;
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An official from the Department of Justice, or other law enforcement agency;
- A court or grand jury; or,
- A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct.

The requirement to comply with, and inform all employees of, the "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections" is in effect for all grants contracts, subgrants, and subcontracts through January 1, 2017.

**The Recipient of Funds acknowledges that as a condition of receiving funds, it has complied with the terms of the "PILOT PROGRAM FOR ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS", and has informed its employees in writing and in the predominant native language of the workforce, that by working on any Federal award, the employees are subject to the whistleblower rights and remedies of the pilot program.**

**NON-DEBARMENT CERTIFICATION AND WARRANTY**

The Recipient of Funds acknowledges that KDHE is required to verify that the Recipient of Funds has not been suspended, debarred or otherwise excluded from receiving federal funds. Verification may be accomplished by 1) checking the Excluded Parties List System (EPLS) maintained by the General Services Administration; 2) obtaining a certification from the entity; or 3) by adding a clause or condition to the transaction.

**The Recipient of Funds, as a condition of receiving funds, certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency, or by any department or agency of the State of Kansas.**