



## DIVISION OF FINANCE – PURCHASING DEPARTMENT

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### REQUEST FOR PROPOSAL RFP #24-0066 TEXT MESSAGE RECRUITING AND SCHEDULING SOLUTION

October 4, 2024

Sedgwick County, Kansas (hereinafter referred to as “county”) is seeking a firm or firms to provide a Text Message Recruiting and Scheduling Solution. If your firm is interested in submitting a response, please do so in accordance with the instructions contained within this Request for Proposal. Responses are due no later than 1:45 pm CST, Tuesday, November 19, 2024.

**All contact concerning this solicitation shall be made through the Purchasing Department.** Proposers shall not contact county employees, department heads, using agencies, evaluation committee members or elected officials with questions or any other concerns about the solicitation. Questions, clarifications and concerns shall be submitted to the Purchasing Department in writing. Failure to comply with these guidelines may disqualify the Proposer’s response.

Sincerely,

Jaimee O’Laughlin  
Purchasing Agent

JO/ks

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## **I. About this Document**

This document is a Request for Proposal. It differs from a Request for Bid or Quotation in that the county is seeking a solution, as described on the cover page and in the following Background Information section, not a bid or quotation meeting firm specifications for the lowest price. As such, the lowest price proposed will not guarantee an award recommendation. As defined in Charter Resolution No. 68, Competitive Sealed Proposals will be evaluated based upon criteria formulated around the most important features of the product(s) and/or service(s), of which quality, testing, references, service, availability or capability, may be overriding factors, and price may not be determinative in the issuance of a contract or award. The proposal evaluation criteria should be viewed as standards that measure how well a vendor's approach meets the desired requirements and needs of the county. Criteria that will be used and considered in evaluation for award are set forth in this document. The county will thoroughly review all proposals received. The county will also utilize its best judgment when determining whether to schedule a pre-proposal conference, before proposals are accepted, or meetings with vendors, after receipt of all proposals. A Purchase Order/Contract will be awarded to a qualified vendor submitting the best proposal. **Sedgwick County reserves the right to select, and subsequently recommend for award, the proposed service(s) and/or product(s) which best meets its required needs, quality levels and budget constraints.**

The nature of this work is for a public entity and will require the expenditure of public funds and/or use of public facilities, therefore the successful proposer will understand that portions (potentially all) of their proposal may become public record at any time after receipt of proposals. Proposal responses, purchase orders and final contracts are subject to public disclosure after award. All confidential or proprietary information should be clearly denoted in proposal responses and responders should understand this information will be considered prior to release, however no guarantee is made that information will be withheld from public view.

## **II. Background**

Sedgwick County, located in south-central Kansas, is one of the most populous of Kansas' 105 counties with a population estimated at more than 514,000 persons. It is the sixteenth largest in area, with 1,008 square miles, and reportedly has the second highest per capita wealth among Kansas' counties. Organizationally, the county is a Commission/Manager entity, employs nearly 2,800 persons, and hosts or provides a full range of municipal services, e.g. – public safety, public works, criminal justice, recreation, entertainment, cultural, human/social, and education.

Sedgwick County is looking to implement a Text Messaging and Scheduling solution to increase recruiting power. The solution that the county is seeking for text messaging and scheduling are to help provide two-way text communication with candidates, automated scheduling functionality, and to help in the efforts in finding a greater number of eligible and qualified candidates. The county believes that the recruitment climate has changed and is seeking ways to be more proactive and flexible with the types of communication that are used in recruiting candidates.

Sedgwick County implemented SAP SuccessFactors Recruiting and Marketing in 2019 and currently has the ability to send emails and text messages to candidates, letting them know where they are at different steps in the application process. Additionally, the county is able to email and text applicants letting them know that an interview has been requested, as well as provide dates and times available for those interviews. Sedgwick County, however, does not have the ability to carry on a conversation with applicants through those same emails and text messages, or track the messages within the recruiting system. The current SAP Recruiting system does have scheduling options available, however, those options are unable to be customized with the security features needed and required for separation by departments. The county needs to be able to track communication as well as have the ability to schedule interviews across different platforms, with different groups of employees within the county, to organize a successful interview team. Sedgwick County is currently using a messaging providing with the recruiting system that provides the messaging services and provides a text messaging short code. Sedgwick County is open to including the messaging provider as part of the proposed solution but would like the ability to continue to use the same text messaging short code that we currently have so that should be included as part of the proposal.

### III. Project Objectives

Sedgwick County, Kansas (hereinafter referred to as “county”) is seeking a firm or firms to partner with the county’s Human Resource department to provide Text Messaging Recruiting and Scheduling Services. The following objectives have been identified for this contract:

1. Acquire Text Message Recruiting and Scheduling solution meeting the parameters, conditions and mandatory requirements presented in the document.
2. Acquire an implementation partner for Text Message Recruiting and Scheduling Solution with the most advantageous overall cost to the county.
3. The implementation partner shall develop a project plan that provides guidance regarding the design and development, avoiding known pitfalls, and provide recommendations and accelerators to improve timelines as to ensure a successful integration.
4. The implementation partner shall provide implementation services meeting the professional goals of Sedgwick County and the specified timeline set in place to complete the implementation project.
5. The implementation partner shall have the expertise and knowledge to lead Sedgwick County through the implementation delivering efficient, high-quality work.
6. The implementation partner should have the ability to make changes within the project plan, when unknown situations occur, and still maintain a successful implementation.
7. The implementation partner chosen will have the best proven “track-record” in performance, service, and customer satisfaction and shall establish contract pricing for support, implementation, and training with Sedgwick County.
8. The implementation partner shall have a high level of integrity, be engaged, and committed fully to the success of the Text Message Recruiting and Scheduling solution implementation.

### IV. Submittals

Carefully review this Request for Proposal. It provides specific technical information necessary to aid participating firms in formulating a thorough response. Should you elect to participate with an electronic response, the RFP number must be entered in the subject line and email the entire document with supplementary materials to:

[Purchasing@sedgwick.gov](mailto:Purchasing@sedgwick.gov)

Should you elect to participate with a physical response, the response must be sealed and marked on the lower left-hand corner with the firm name and address, bid number, and bid due date. Submit one (1) original **AND** one (1) electronic copy (.PDF/Word supplied on a flash drive) of the entire document with any supplementary materials to:

**Jaimee O’Laughlin**  
Sedgwick County Purchasing Department  
100 N. Broadway, Suite 610  
Wichita, KS 67202

SUBMITTALS are due **NO LATER THAN 1:45 pm CST, TUESDAY, November 19, 2024**. If there is any difficulty submitting a response electronically, please contact the Purchasing Technicians at [purchasing@sedgwick.gov](mailto:purchasing@sedgwick.gov) for assistance. Late or incomplete responses will not be accepted and will not receive consideration for final award. If you choose to send a hard copy of your proposal, Sedgwick County will not accept submissions that arrive late due to the fault of the U.S. Postal Service, United Parcel Service, DHL, FedEx, or any other delivery/courier service.

Proposal responses will be acknowledged and read into record at Bid Opening, **which will occur at 2:15 pm CST on the due date**. No information other than the respondent’s name will be disclosed at Bid Opening. We will continue to have Bid Openings for the items listed currently. If you would like to listen in as these proposals are read into the record, **please dial our Meet Me line @ (316) 660-7271 at 2:15 pm.**

## V. Scope of Work

Items listed in this section are requirements to completion of services under this contract. Contractor shall furnish labor, parts, material, and equipment necessary to perform the following:

### A. Applicant Communications

1. Allow for all standard email notifications that are part of the SAP standard SuccessFactors Recruiting module to be able to be sent as text messages. Allow for conversational text with these.
  - a. Examples might be job alerts, application accepted, text to apply link to application.
2. Allow for all standard emails and email triggers that can be sent as part of the SAP standard SuccessFactors Recruiting module to be able to be sent as text messages. Allow for conversational text with these.
  - a. Example email triggers through the candidate pipeline, offer letter notifications, new hire notifications that include attachments such as images or pdf documents.
3. Allow applicant communications that are automated text responses to be generated based on an applicant's place in the pipeline or a category placement in the candidate pipeline.
4. Allow for one-on-one text communication between the applicant and an identified user that is tracked within the system.
5. Allow for recurring marketing campaigns that can be sent through email, text messaging, text campaigns, and bulk messaging and allows the county to gain insights into the performance of those campaigns through reporting analytics.
6. The ability to text to apply for open and eligible requisitions.
7. The ability to allow for two-way texting with an identified user or an allowed user and for that communication to be tracked within the system.
8. The ability for two-way text messaging to be received real-time once the employee applies to a requisition.
  - a. The expectation is the vendor would also incorporate services, or provide services, that provides the messaging service platform.
9. The ability for Conversational AI bot recruiting software that automates work and communication between Sedgwick County and candidates to start as early as the Career Site and continue through the application process.
  - a. Conversational ATS for ease of communication with high-volume hiring managers.
  - b. 1:1 interview scheduling, mass communication campaigns, and reminders that integrate with calendar apps such as Google Calendar, Outlook, etc.
  - c. Contact with candidates from any source and without recruiters using personal devices.
  - d. Video conferencing tools such as Microsoft Teams, Zoom, Microsoft Outlook 2019 and 2016
10. Allow for QR code and text-to-apply to begin the application process.
  - a. Sedgwick County currently has a short code that they prefer to continue to use and would need to carry it forward with any future service provider.
11. The ability to include connections to social media and job boards to include, but not limited to, Indeed, LinkedIn, and WhatsApp.
  - a. Ability to retain current short code whether for SMS, marketing campaigns, or any other communication channels to ensure that the code remains valid and effective.
    - i. Identify where the short code is used, such as SMS campaigns, two-factor authentication (2FA), or other services.
    - ii. Document how and where the short code is utilized to ensure continuity and avoid service disruptions.
    - iii. Ensure the current short code usage complies with industry regulations and guidelines (e.g., the Telephone Consumer Protection Act (TCPA) in the U.S., GDPR in Europe).
    - iv. Maintain an active agreement with current short code provider, which includes renewal terms and compliance with their policies, or move to short code provider with integration partner.
    - v. Keep track of renewal dates to avoid losing the short code. Set reminders for renewal well in advance and start the renewal process before the short code expires to ensure a smooth transition.
    - vi. Maintain records of all short code assignments, usage statistics, and communications related to the short code.
    - vii. Develop a backup plan in case of issues with the short code, including alternative codes or channels.

- viii. Monitor and analyze the performance and effectiveness of the short code. To include, but not limited to, tracking metrics like engagement rates, delivery rates, and response times.
  - ix. Confirm that the short code is correctly integrated with your systems and platforms (e.g., CRM, marketing tools).
  - x. Regularly test the short code to ensure it's working as expected and that there are no disruptions in service.
  - xi. Address any technical issues promptly. Work with your provider's support team to resolve problems quickly.
  - xii. Ensure that any changes to your systems or services do not affect the functionality of the short code.
  - xiii. Keep internal teams informed about the short code's status and any changes that might impact operations.
  - xiv. If necessary, communicate with users about any changes or updates related to the short code to maintain transparency.
  - xv. Periodically review short code's effectiveness and relevance to determine if it continues to meet Sedgwick needs or if adjustments are required.
  - xvi. Be prepared for potential changes in regulations, technology, or business needs that might affect the use or retention of the short code.
12. The ability to automatically screen applicants upon application submission.
13. Allow for FAQs that should be able to be answered or responded to via text communication.

### **Integration & Compliance**

1. Integration with the SuccessFactors Recruiting system.
  - a. Ability to access Text Services through Sedgwick County's Applicant Tracking System, SuccessFactors Recruiting.
2. Comply with state and federal regulations pertaining to opt in and out options.
  - a. Comply with the Telephone Consumer Protection Act (TCPA) with opt in and out options for applicants.
3. SMS computer-based texting with shared inbox capabilities.
  - a. Ability to respond to applicant text messages from a shared inbox on computer.
4. Security
  - a. Secure applicant information.
  - b. Limit access to text communications by department/recruiter.
  - c. Cryptographic protocols and algorithms with strong keys used to protect and encrypt sensitive data.
  - d. Secure practices including design, architecture, implementation, test, release preparation, shipment, operations, and support.
  - e. Credentials protected during transfer by secure channels or protocols. Any mechanisms provided for authentication are sufficiently strong and free of vulnerabilities.
  - f. Delivers fixes and/or advisories related for security vulnerabilities publicly known or reported by external sources.
  - g. Regularly scans static code and open-source components for vulnerabilities, and at a minimum, patches according to CVSSv3 or industry required standard.
5. Disaster Recovery capabilities in place for products where contractual commitments exist.
6. Must provide data encryption in transit and at rest, CJIS and HIPAA compliance.
7. Complies with European Union requirements for data privacy.
8. Complies with relevant AICPA standards for internal controls over financial reporting and for information system security, availability, processing integrity, and confidentiality or privacy.
9. Tested for functional correctness using real-life business scenarios of customers.
10. Complies with the fulfillment of notice and attribution requirements for open-source products.

## **Operations & Deployment**

1. Achieves operational performance levels of 99.5% or greater.
2. Minimal service interruption and quick restoration of service in the event of a disruption.
3. Utilizes a multi-tenant architecture with complete isolation and encryption of customer account data, policy and configuration settings.
4. Auditable logging and tracing capabilities to aid in debugging and troubleshooting.
5. Downloaded and deployed at scale on devices (e.g. mobile applications, intelligent agents, etc.).
6. Assistance provided to enable all target users to install configure and use the solution.

## **System Management**

1. Data Management
  - a. Text communications retained for three (3) years
  - b. Ability to purge information after three (3) years
2. Text message stats/data
  - a. Text recruitment to hires.
  - b. Response rates
  - c. Response times
  - d. Candidate drop-off
3. Survey Options
  - a. Satisfaction surveys

## **Scheduling**

Ability to email or text candidate and schedule an interview and synch with calendar with both Sedgwick County Interviewers and Candidate.

1. Manually or automatically book interviews for Sedgwick interviewers (or any interviewers), to use a combination of scheduling tools and calendar management techniques.
  - a. The ability to manually define and compare available times of both interviewers and candidates to choose a mutually convenient time to schedule the interview.
    - i. If the candidates phone number is available, and they prefer texting, the ability/option to send a brief message suggesting potential interview times.
  - b. Use calendar applications (Google Calendar, Outlook, etc.) that sends a link to candidates, allowing both candidates and interviewers the ability to select available times from a shared calendar and creates a calendar event for the candidate and interviewers that includes the interview date, time, location (or video conferencing link), and any other relevant details.
  - c. Confirmation receipt of the calendar invite with all parties and the ability to send reminders as the interview date approaches to ensure everyone is prepared, available, and avoids double booking.
  - d. Manage Changes and rescheduling by allowing easy rescheduling and notifying all participants automatically.
    - i. Interview delete notification.
    - ii. Interview cancellation to Interviewers and Organizers.

## **Survey and Feedback**

Ability to obtain, track, analyze, and report on the candidate experience survey feedback. Track, analyze, and report on candidate experience via a candidate experience survey to aid in improving the hiring process.

### **1. Collecting Feedback**

- a. Use a survey platform that allows the ability to gather and store responses easily. Ensure the tool can export data in formats like CSV or Excel for further analysis.
- b. Set up automated email invitations or triggers to ensure surveys are sent out and collected systematically.
- c. Use the survey tool's dashboard to monitor response rates and track feedback.
- d. Integrate the survey tool with Sedgwick systems for centralized tracking.

- e. Calculate average scores, percentages, and distributions for quantitative survey questions (e.g., Likert scale ratings).
- f. Look for trends over time to identify patterns or recurring issues.
- g. Review open-ended responses to identify common themes or recurring comments.
- h. Use text analysis tools to categorize and quantify qualitative feedback.
- i. Compare feedback for assessment.
- j. Analyze feedback based on different variables such as job role, department, or interview stage to pinpoint specific areas for improvement.

## **2. Reporting**

- a. Create Reports:
  - i. Summary Reports: Include key metrics, trends, and common themes. Use charts, graphs, and tables to present data clearly.
  - ii. Detailed Analysis: Provide in-depth analysis of specific issues or feedback categories.
- b. Share Findings:
  - i. Data Reporting and Visualization: The ability to collect and export the data to use for statistical purposes and to report on trends and track the feedback with visualizations of the data in a dashboard in a graphical view.

## **B. Project Management**

Include the following information in this subsection: Describe the approach to managing the implementation of the proposed system, addressing at a minimum the following components of project management:

1. Project communications
  - a. Statement of Work that breaks down the system implementation by tasks and delineates responsibilities within each task. Tasks should include configuration, testing and interface development, and deployment.
  - b. Address project management services including creating and maintaining a detailed deployment plan, along with a detailed task list.
2. Schedule management
  - a. Realistic and readable implementation project schedule that starts at contract signing. The schedule should describe tasks to be performed by the county as well as by the implementation partner.
3. Issue management
  - a. Describe how the implementation partner will help the county, or other external customers who interface with the county information systems, to identify potential changes in business processes because of changes in application software.
4. Scope management
5. Risk management
6. Quality assurance

## **C. Training**

In this subsection, the implementation partner should describe how they would provide the following types of training programs, along with appropriate documentation. The county prefers a virtual training model during which county ERP staff and SMEs will be trained.

1. A training program for county's project implementation team that includes the training necessary to understand the overall system architecture, interface configurations, data import/export capabilities, and workflow configuration options, etc.
2. A training program for application administrators that includes the training necessary to configure, tailor, monitor, and administer the technical and functional aspects of the system.



3. A training solution to support the training of end-users in the functionality of the various proposed system modules.
  - a. Identify who and how many resources require training.
  - b. Identify the timing of the training.
  - c. Describe the software needed to complete the training.
  - d. Identify any required content for training materials to be provided to trainees.
  - e. Identify any experience/skill requirements for the individual(s) delivering the training.
4. Post implementation training.
5. Multimedia presentations and documentation of training made available following actual training (e.g., PowerPoint presentations, videos, etc.).

**D. Cost of Work**

All costs for each item referred to in the proposal must be identified in this subsection. While overall costs may be dependent on the county purchasing all components of the proposal, costs should be broken out by component and noted in the appropriate sectioned response.

1. Costs must be unbundled and separately listed. Proposals that do not detail specific costs will be considered non-responsive.
2. The implementation partner shall bear the onus of any cost related errors.
3. All interface costs must be included. Note that the costs associated with interfaces shall include all costs associated with the development, testing, and deployment of the defined interface.
4. The county reserves the right to conduct negotiations with implementation partners on pricing and payment terms.
5. Costs proposals should include the following components:
  - a. Implementation Costs – Describe and list all costs that would be associated with implementation of the system, including but not limited to the following:
    - i. Installation of Hardware/Software
    - ii. System Integration
    - iii. Project Management
    - iv. Training
    - v. Data Conversion
6. Travel
7. Any other costs (please describe):
  - a. Optional Costs – Describe and list all optional cost items associated with the system.
  - b. Total One-Time Costs – Present a summary of all one-time costs for the system.
  - c. Recurring Costs – Provide a 10-year cost schedule that presents the annual cost for maintenance and service warranty.
  - d. Include options to renew after 10 years.
  - e. Payment Schedule – Provide a proposed payment schedule.

**F. Acceptance Testing**

1. The implementation partner will perform basic acceptance testing before end user testing is initiated and will work with the department to create an acceptance testing plan. Both parties shall agree to the plan in writing and the plan must be completed prior to county acceptance of the solution.
2. Implementation partners responding to this request should have resources available within their organization and include a bucket of hours for support when needed in their proposal.
3. Security Role creation and updates will be the responsibility of Sedgwick County with support, if necessary, from the selected implementation partner.
4. Any and all security information must be documented and provided to Sedgwick County.

5. Sedgwick County will assign an internal project manager to work with the implementation partner's project manager to ensure tasks and milestones are completed on time.
6. Employee training and organizational change management efforts will be a shared responsibility between Sedgwick County and the selected implementation partner.

## VI. Sedgwick County's Responsibilities

- Provide information, as legally allowed, in possession of the county, which relates to the county's requirements or which is relevant to this project.
- Designate a person to act as the county Contract Manager with respect to the work to be performed under this contract.
- Conduct final inspection and approve payment.
- County reserves the right to make inspections at various points of the project. Contractor agrees to openly participate in said inspections and provide information to the county on the progress, expected completion date and any unforeseen or unexpected complications in the project.

## VII. Proposal Terms

### A. Questions and Contact Information

Any questions regarding this document must be submitted via email to Jaimee O'Laughlin at [Jaimee.O'Laughlin@sedgwick.gov](mailto:Jaimee.O'Laughlin@sedgwick.gov) by 1:45 pm CDT, October 18, 2024. Any questions of a substantive nature will be answered in written form as an addendum and posted on the purchasing website at <https://www.sedgwickcounty.org/finance/purchasing/requests-for-bid-and-proposal/> under the Documents column associated with this RFP number by 1:45 pm CDT, November 1, 2024. Firms are responsible for checking the website and acknowledging any addenda on their proposal response form.

### B. Minimum Firm Qualifications

This section lists the criteria to be considered in evaluating the ability of firms interested in providing the service(s) and/or product(s) specified in this Request for Proposal. Firms must meet or exceed these qualifications to be considered for award. Any exceptions to the requirements listed should be clearly detailed in proposer's response.

Proposers shall:

1. Have a minimum of five (5) years' experience in providing services similar to those specified in this RFP.
2. Have experience in managing projects of comparable size and complexity to that being proposed.
3. Have knowledge of and comply with all currently applicable, and as they become enacted during the contract term, federal, state and local laws, statutes, ordinances, rules and regulations. All laws of the State of Kansas, whether substantive or procedural, shall apply to the contract, and all statutory, charter, and ordinance provisions that are applicable to public contracts in the county shall be followed with respect to the contract.
4. Municipal and county government experience is desired, however, the county will make the final determination based on responses received and the evaluation process.
5. Have the capacity to acquire all bonds, escrows or insurances as outlined in the terms of this RFP.
6. Provide project management (as required) and quality control procedures.
7. Have appropriate material, equipment and labor to perform specified services.
8. Park only in designated areas and display parking permit (if provided).
9. Wear company uniform or ID badge for identification purposes.

C. [Evaluation Criteria](#)

The selection process will be based on the responses to this RFP. County staff will judge each response as determined by the scoring criteria below. Purchasing staff are not a part of the evaluation committee.

Component	Points
A. Vendor Qualifications and Experience	40
B. Scope of Work Responses	25
C. SAP Standard Integration	10
D. Record of Performance on Similar Implementation Projects Including Feedback from References	15
E. Pricing	10
<b>Total Points</b>	<b>100</b>

Assume the following cost proposals (**examples only**)

- A. \$50,000.00
- B. \$38,000.00
- C. \$49,000.00

Company B with a total price of \$38,000.00 is the low offer. Take the low offer and divide each of the other offers into the low offer to calculate a percentage. This percentage is then multiplied by the number of points available for the cost. In this case, 10 points are allocated to cost.

- A. \$38,000.00 divided by \$50,000.00 =.76                      .76\*10                      7.6 points
- B. \$38,000.00 divided by \$38,000.00 =1.00                      1.00\*10                      10 points
- C. \$38,000.00 divided by \$49,000.00=.77                      .77\*10                      7.7 points

Any final negotiations for services, terms and conditions will be based, in part, on the firm’s method of providing the service and the fee schedule achieved through discussions and agreement with the county’s review committee. The county is under no obligation to accept the lowest priced proposal and reserves the right to further negotiate services and costs that are proposed. The county also reserves the sole right to recommend for award the proposal and plan that it deems to be in its best interest.

The county reserves the right to reject all proposals. All proposals, including supporting documentation shall become the property of Sedgwick County. All costs incurred in the preparation of this proposal shall be the responsibility of the firm making the proposals. Sedgwick County reserves the right to select, and subsequently recommend for award, the proposed service which best meets its required needs, quality levels and budget constraints.

D. [Request for Proposal Timeline](#)

The following dates are provided for information purposes and are subject to change without notice. Contact the Purchasing Department at (316) 660-7255 to confirm any and all dates.

Distribution of Request for Proposal to interested parties	<b>October 4, 2024</b>
Questions and Clarifications submitted via email by 5:00 pm CDT	<b>October 18, 2024</b>
Addendum Issued by 5:00 pm CDT	<b>November 1, 2024</b>
Proposal due before 1:45 pm CST	<b>November 19, 2024</b>
Evaluation Period	<b>November 20, 2024 – January 24, 2025</b>
Board of Bids and Contracts Recommendation	<b>January 30, 2025</b>
Board of County Commission Award	<b>February 5, 2025</b>

E. [Contract Period and Payment Terms](#)

A contractual period will begin following Board of County Commissioners (BoCC) approval of the successful firm(s) and continue for a period of two (2) years with three (3) one (1) year options to renew.

County may cancel its obligations herein upon thirty-day (30) prior written notice to the other party. It is understood that funding may cease or be reduced at any time, and in the event that adequate funds are not available to meet the obligations hereunder, either party reserves the right to terminate this agreement upon thirty (30) days prior written notice to the other. Payment will be remitted following receipt of monthly detailed invoice.

Payment and Invoice Provisions

<https://www.sedgwickcounty.org/media/55477/payment-and-invoice-provisions.pdf>

F. [Insurance Requirements](#)

Liability insurance coverage indicated below must be considered as primary and not as excess insurance. If required, Contractor's professional liability/errors and omissions insurance shall (i) have a policy retroactive date prior to the date any professional services are provided for this project, and (ii) be maintained for a minimum of 3 years past completion of the project. Contractor shall furnish a certificate evidencing such coverage, with County listed as an additional insured including both ongoing and completed operations, except for professional liability, workers' compensation and employer's liability. **Certificate shall be provided prior to award of contract.** Certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited, or restricted until thirty (30) days after County receives written notice of such change. All insurance must be with an insurance company with a minimum BEST rating of A-VIII and licensed to do business in the State of Kansas (**must be acknowledged on the bid/proposal response form**).

**NOTE:** If any insurance is subject to a deductible or self-insured retention, written disclosure must be included in your proposal response and also be noted on the certificate of insurance.

It is the responsibility of Contractor to require that any and all approved subcontractors meet the minimum insurance requirements.

<b>Workers' Compensation:</b>	
Applicable coverage per State Statutes	
<b>Employer's Liability Insurance:</b>	\$500,000.00
<b>Commercial General Liability Insurance (on form CG 00 01 04 13 or its equivalent):</b>	
Each Occurrence	\$1,000,000.00
General Aggregate, per project	\$2,000,000.00
Personal Injury	\$1,000,000.00
Products and Completed Operations Aggregate	\$2,000,000.00
<b>Automobile Liability:</b>	
Combined single limit	\$500,000.00
<b>Umbrella Liability:</b>	
Following form for both the general liability and automobile	
<input type="checkbox"/> Required/ <input checked="" type="checkbox"/> Not Required	
Each Claim	\$1,000,000.00
Aggregate	\$1,000,000.00
<b>Professional Liability/ Errors &amp; Omissions Insurance:</b>	
<input checked="" type="checkbox"/> Required/ <input type="checkbox"/> Not Required	
Each Claim	\$1,000,000.00
Aggregate	\$1,000,000.00
<b>Pollution Liability Insurance:</b>	
<input type="checkbox"/> Required/ <input checked="" type="checkbox"/> Not Required	
Each Claim	\$1,000,000.00
Aggregate	\$1,000,000.00
<b>Cyber/ Network Security and Privacy Liability Insurance</b>	
<input checked="" type="checkbox"/> Required/ <input type="checkbox"/> Not Required	
Single limit to cover civil, regulatory and statutory damages, contractual damage, as well as data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information.	
Each Claim	\$1,000,000.00
Aggregate	\$1,000,000.00

**Special Risks or Circumstances:**

*Entity reserves the right to modify, by written contract, these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.*

**IF CONTRACTOR IS PROVIDING CONSTRUCTION SERVICES:**

*In addition to the above coverages, Contractor shall also provide the following:*

<b>Builder's Risk Insurance:</b>	In the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising the total value for the entire Project on a replacement cost basis without optional deductibles. Entity, Contractor, and all Subcontractors shall be included as named insureds.
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### G. Indemnification

To the fullest extent of the law, the provider, its subcontractor, agents, servants, officers or employees shall indemnify and hold harmless Sedgwick County, including, but not limited to, its elected and appointed officials, officers, employees and agents, from any and all claims brought by any person or entity whatsoever, arising from any act, error, or omission of the provider during the provider's performance of the agreement or any other agreements of the provider entered into by reason thereof. The provider shall indemnify and defend Sedgwick County, including, but not limited to, its elected and appointed officials, officers, employees and agents, with respect to any claim arising, or alleged to have arisen from negligence, and/or willful, wanton or reckless acts or omissions of the provider, its subcontractor, agents, servants, officers, or employees and any and all losses or liabilities resulting from any such claims, including, but not limited to, damage awards, costs and reasonable attorney's fees. This indemnification shall not be affected by any other portions of the agreement relating to insurance requirements. The provider agrees that it will procure and keep in force at all times at its own expense insurance in accordance with these specifications.

### H. Confidential Matters and Data Ownership

The successful proposer agrees all data, records and information, which the proposer, its agents and employees, which is the subject of this proposal, obtain access, remains at all times exclusively the property of Sedgwick County. The successful proposer agrees all such data, records, plans and information constitutes at all times proprietary information of Sedgwick County. The successful proposer agrees that it will not disclose, provide, or make available any of such proprietary information in any form to any person or entity. In addition, the successful proposer agrees it will not use any names or addresses contained in such data, records, plans and information for the purpose of selling or offering for sale any property or service to any person or entity who resides at any address in such data. In addition, the successful proposer agrees it will not sell, give or otherwise make available to any person or entity any names or addresses contained in or derived from such data, records and information for the purpose of allowing such person to sell or offer for sale any property or service to any person or entity named in such data. Successful proposer agrees it will take all reasonable steps and the same protective precautions to protect Sedgwick County's proprietary information from disclosure to third parties as with successful proposer's own proprietary and confidential information. Proposer agrees that all data, regardless of form that is generated as a result of this Request for Proposal is the property of Sedgwick County.

### I. Proposal Conditions

<https://www.sedgwickcounty.org/media/31338/proposal-tc.pdf>

Sample Contract

<https://www.sedgwickcounty.org/media/67402/sample-contract-kws-13024.pdf>

Contract Provisions for FEMA Projects (If Applicable)

<https://www.sedgwickcounty.org/media/67302/sedgwick-county-federal-grant-contract-provisions.pdf>

Suspension and Debarment

<https://www.sedgwickcounty.org/finance/purchasing/suspension-and-debarment/>

### **VIII. Required Response Content**

All proposal submissions shall include the following:

1. Firm profile: the name of the firm, address, telephone number(s), contact person, year the firm was established, and the names of the principals of the firm.
2. The firm's relevant experience, notably experience working with government agencies.
3. At minimum, three (3) professional references, besides Sedgwick County, with email addresses, telephone numbers, and contact persons where work has been completed within the last three (3) years.
4. A disclosure of any personal or financial interest in any properties in the project area, or any real or potential conflicts of interest with members of the Sedgwick County Board of County Commissioners or county staff.
5. A description of the type of assistance that will be sought from county staff, including assistance required from the county to lessen the costs of this project.
6. Proof of insurance meeting minimum insurance requirements as designated herein.
7. Sample of software license agreement and sample of support agreement.
8. Those responses that do not include all required forms/items may be deemed non-responsive.
9. Non-Employee User Agreement.
10. Acknowledge receipt of Business Associate Addendum.

**IX. Response Form**

**REQUEST FOR PROPOSAL**

**RFP #24-0066**

**TEXT MESSAGE RECRUITING AND SCHEDULING SOLUTION**

The undersigned, on behalf of the proposer, certifies that: (1) this offer is made without previous understanding, agreement or connection with any person, firm, or corporation submitting a proposal on the same project; (2) is in all respects fair and without collusion or fraud; (3) the person whose signature appears below is legally empowered to bind the firm in whose name the proposer is entered; (4) they have read the complete Request for Proposal and understands all provisions; (5) if accepted by the county, this proposal is guaranteed as written and amended and will be implemented as stated; and (6) mistakes in writing of the submitted proposal will be their responsibility.

NAME \_\_\_\_\_

DBA/SAME \_\_\_\_\_

CONTACT \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY/STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_ HOURS \_\_\_\_\_

STATE OF INCORPORATION or ORGANIZATION \_\_\_\_\_ COMPANY WEBSITE \_\_\_\_\_

ADDRESS \_\_\_\_\_ EMAIL \_\_\_\_\_

NUMBER OF LOCATIONS \_\_\_\_\_ NUMBER OF PERSONS EMPLOYED \_\_\_\_\_

TYPE OF ORGANIZATION: Public Corporation \_\_\_\_\_ Private Corporation \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_  
Partnership \_\_\_\_\_ Other (Describe): \_\_\_\_\_

BUSINESS MODEL: Small Business \_\_\_\_\_ Manufacturer \_\_\_\_\_ Distributor \_\_\_\_\_ Retail \_\_\_\_\_  
Dealer \_\_\_\_\_ Other (Describe): \_\_\_\_\_

Not a Minority-Owned Business: \_\_\_\_\_ Minority-Owned Business: \_\_\_\_\_ (Specify Below)  
\_\_\_\_ African American (05) \_\_\_\_ Asian Pacific (10) \_\_\_\_ Subcontinent Asian (15) \_\_\_\_ Hispanic (20)  
\_\_\_\_ Native American (25) \_\_\_\_ Other (30) - Please specify \_\_\_\_\_

Not a Woman-Owned Business: \_\_\_\_\_ Woman-Owned Business: \_\_\_\_\_ (Specify Below)  
\_\_\_\_ Not Minority -Woman Owned (50) \_\_\_\_ African American-Woman Owned (55)  
\_\_\_\_ Asian Pacific-Woman Owned (60) \_\_\_\_ Subcontinent Asian-Woman Owned (65) \_\_\_\_ Hispanic Woman Owned (70)  
\_\_\_\_ Native American-Woman Owned (75) \_\_\_\_ Other – Woman Owned (80) – Please specify \_\_\_\_\_

ARE YOU REGISTERED TO DO BUSINESS IN THE STATE OF KS: \_\_\_\_\_ Yes \_\_\_\_\_ No

UEI (UNIQUE ENTITY IDENTIFIER) NO. \_\_\_\_\_

INSURANCE REGISTERED IN THE STATE OF KS WITH MINIMUM BEST RATING OF A-VIII: \_\_\_\_\_ Yes \_\_\_\_\_ No

**ACKNOWLEDGE RECEIPT OF ADDENDA:** All addendum(s) are posted to our RFB/RFP web page and it is the vendor's responsibility to check and confirm all addendum(s) related to this document by going to [www.sedgwickcounty.org/finance/purchasing.asp](http://www.sedgwickcounty.org/finance/purchasing.asp) .

NO. \_\_\_\_\_, DATED \_\_\_\_\_; NO. \_\_\_\_\_, DATED \_\_\_\_\_; NO. \_\_\_\_\_, DATED \_\_\_\_\_

In submitting a proposal, vendor acknowledges all requirements, terms, conditions, and sections of this document. Proposal submission format should be by order in which sections are listed throughout the document. All minimum and general requirements should be specifically addressed and detailed in proposer's response. **Exceptions to any part of this document should be clearly delineated and detailed.**

Signature \_\_\_\_\_ Title \_\_\_\_\_

Print Name \_\_\_\_\_ Dated \_\_\_\_\_



# Sedgwick County Non-Employee Information Technology Usage Agreement

Anyone that is not a Sedgwick County employee who will access Sedgwick County information technology in the course of their work for Sedgwick County ("Non-employee personnel") are required to sign this document before accessing any Sedgwick County information technology system. "Information technology" includes any computer, network, Internet access, electronic mail and voice message systems, facsimile devices, or other electronic systems used by Sedgwick County.

1. Non-employee personnel have no expectation of privacy in any electronic communications, use of Sedgwick County property, or Internet access. Sedgwick County reserves the right to review, audit, or monitor any information technology used by non-employee personnel.
2. Non-employee personnel shall use only accounts authorized by the Sedgwick County Chief Information Officer (CIO).
3. Non-employee personnel may access only those resources for which they are specifically authorized.
4. Non-employee personnel are personally responsible for safeguarding their account and log-on information. Passwords shall adhere to the following.
  - a. Passwords shall remain confidential.
  - b. Passwords shall be changed at least every 90 days.
  - c. Passwords shall be at least eight characters long.
  - d. Passwords shall contain characters from at least three of the following four classes: (i) English upper case letters, A, B, (ii) English lower case letters, a, b, (iii) Westernized Arabic numerals, 0, 1, 2, and (iv) Non-alphanumeric (special characters) such as punctuation symbols.
  - e. Passwords shall not contain your user name or any part of your full name.
  - f. Passwords shall never be displayed, printed, or otherwise recorded in an unsecured manner.
5. Non-employee personnel are not permitted to script their user IDs and/or passwords for log-on access.
6. Non-employee personnel are not permitted to allow another person to log-on to any computer utilizing their, if provided, personal account, nor are they permitted to utilize someone else's account to log-on to a computer. Authorized system or service accounts may be used by multiple authorized people.
7. Non-employee personnel may not leave their workstation logged onto the network while away from their area. Non-employee personnel may elect to lock the workstation rather than logging off when leaving for very short time periods.
8. Non-employee personnel shall maintain a log, left with the computer, of all software loaded onto any Sedgwick County computer. The software must have been approved in writing in advance by the CIO.
9. Non-employee personnel shall execute only applications that pertain to their specific contract work.
10. Non-employee personnel shall promptly report log-on problems or any other computer errors to the Helpdesk (316-660-9811).
11. Non-employee personnel shall promptly notify the County Helpdesk if they have any reason to suspect a breach of security or potential breach of security.
12. Non-employee personnel shall promptly report anything that they deem to be a security loophole or weakness in the computer network to the County Helpdesk.
13. Non-employee personnel shall not install or use any type of encryption device or software on any Sedgwick County hardware, which has not been approved in writing in advance by the CIO.
14. Non-employee personnel shall not attach any device to the Sedgwick County network without prior written approval in advance from the CIO.
15. Non-employee personnel may not remove any computer hardware, data or software from a Sedgwick County building for any reason, without prior written approval from the CIO.
16. Non-employee personnel shall not delete, disable, or bypass any authorized encryption device, or anti-virus or other software program, installed on Sedgwick County hardware.
17. Non-employee personnel shall not attach any network or phone cables to any Sedgwick County device without written approval from the CIO.
18. Non-employee personnel may not copy any data and/or software from any Sedgwick County resource for personal use.
19. Non-employee personnel may not utilize Sedgwick County computer systems or networks for any of the following reasons:
  - a. Game playing;
  - b. Internet surfing not required for their work activity;
  - c. Non-work related activity.
  - d. Any illegal activity.
  - e. Downloading of files from non-County resources. If files are needed for your work, contact Sedgwick County IT personnel.
20. Non-employee personnel are prohibited from intercepting or monitoring network traffic by any means, including the use of network sniffers, unless authorized in writing in advance by the CIO.
21. Non-employee personnel may not give out any Sedgwick County computer information to anyone. Exception: other non-employee personnel needing the information to complete authorized tasks and who have signed this agreement. Information includes but is not limited to: IP addresses, security configurations, etc.
22. All data storage media shall be erased or destroyed prior to disposal.
23. All portable media used must be FIPS 140-2 compliant media encrypted with hardware encryption using AES 256 algorithm.
24. Non-employee personnel may not remove, modify, erase, destroy or delete any computer software without the written approval in advance of the CIO.
25. Non-employee personnel shall not attempt to obtain or distribute Sedgwick County system or user passwords.
26. Non-employee personnel shall not attempt to obtain or distribute door passcodes/passkeys to secured rooms at any Sedgwick County facility for which they are not authorized.
27. All equipment issued to non-employee personnel will be returned in good condition to Sedgwick County upon termination of the Sedgwick County/non-employee Personnel relationship.
28. Non-employee personnel may not use Sedgwick County information technology to send or receive threatening, obscene, abusive, sexually explicit language or pictures.
29. Non-employee personnel are prohibited from causing Sedgwick County to break copyright laws.
30. Use by non-employee personnel of any Sedgwick County information technology will acknowledge acceptance of the above-referenced policies. Any non-employee who violates any of these policies shall be subject to disciplinary action, including total removal from the Sedgwick County project as well as being subject to Kansas civil and criminal liability. Disciplinary action may include Sedgwick County requesting the non-employee be considered for demotion, suspension and termination.

\_\_\_\_\_  
Non-employee personnel's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company's/Agency's name, printed

\_\_\_\_\_  
Non-employee personnel's name, printed

\_\_\_\_\_  
Purpose – reason you are signing the form

Revision Date: 12/13/2018

\_\_\_\_\_  
Sedgwick County Sponsor – employee and department

## HIPAA RULES

### BUSINESS ASSOCIATE ADDENDUM

#### DEFINITIONS

1.1 The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

#### Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Sedgwick County.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

#### OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

##### **Business Associate agrees to:**

2.1 not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law;

2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;

2.3 report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, as further provided for in Par. 12.1, *et seq.*;

2.4 mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;

2.5 in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

2.6 make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;

2.7 make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.526;

2.8 make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules; and

2.9 maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528.

### **PERMITTED USES AND DISCLOSURES BY ASSOCIATE**

3.1 Except as otherwise limited in this Agreement, Business Associate may only Use or Disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the purposes of the contractual relationship, if such Use or Disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the Minimum Necessary policies and procedures of the Covered Entity.

### **SPECIFIC USE AND DISCLOSURE PROVISIONS**

4.1 Except as otherwise limited in this Agreement, Business Associate may Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the contractual or legal responsibilities of the Business Associate.

4.2 Business Associate may Use or Disclose Protected Health Information as Required By Law.

4.3 Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.

4.4 Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

4.6 Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

### **OBLIGATIONS OF COVERED ENTITY**

5.1 Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.

5.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to Use or Disclose Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.

5.3 Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

## **PERMISSIBLE REQUESTS BY COVERED ENTITY**

6.1 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity. If necessary in order to meet the Business Associate's obligations under the Agreement, the Business Associate may Use or Disclose Protected Health Information for Data Aggregation, management and administrative activities, or contractual or legal responsibilities of Business Associate.

## **TERM**

7.1 *Term.* The Agreement shall be effective as of date of execution of the Agreement by the parties, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, has been returned to Covered Entity or, at Covered Entity's option, is destroyed, or, if it is infeasible to destroy Protected Health Information, the protections are extended to such information, in accordance with the termination provisions in this Agreement.

## **MISCELLANEOUS**

8.1 A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

8.2 The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules.

8.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

8.4 In addition to any implied indemnity or express indemnity provision in the Agreement, Business Associate agrees to indemnify, defend and hold harmless the Covered Entity, including any employees, agents, or Subcontractors against any actual and direct losses suffered by the Indemnified Party(ies) and all liability to third parties arising out of or in connection with any breach of this Agreement or from any negligent or wrongful acts or omissions, including failure to perform its obligations under the HIPAA Rules, by the Business Associate or its employees, directors, officers, Subcontractors, agents, or other members of its workforce. Accordingly, upon demand, the Business Associate shall reimburse the Indemnified Party(ies) for any and all actual expenses (including reasonable attorney's fees) which may be imposed upon any Indemnified Party(ies) by reason of any suit, claim, action, proceeding or demand by any third party resulting from the Business Associate's failure to perform, Breach or other action under this Agreement.

## **SECURITY RULE REQUIREMENTS**

9.1 Business Associate agrees, to the extent any Protected Health Information created, received, maintained or transmitted by or in electronic media, also referred to as electronic protected health care information, as defined by 45 CFR § 160.103, that it will only create, maintain or transmit such information with appropriate safeguards in place.

Business Associate shall therefore: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health care information; ensure that any agent, including Subcontractors, to whom it provides such information shall agree to also implement reasonable and appropriate safeguards to protect the information; and report to the Covered Entity any Security Incident, as that term is defined by 45 CFR § 164.304, of which it becomes aware.

## **TERMINATION**

10.1 Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

## **EFFECT OF TERMINATION**

11.1 Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

Provided however, Business Associate may retain Protected Health Information if necessary for management and administration purposes or to carry out its legal responsibilities after termination of the Agreement.

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;

continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at in this Agreement which applied prior to termination;

return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities; and

provided, however, that nothing in this section 11.1 shall apply in the case of PHI remaining in its possession which Business Associate determines it is not feasible to return or destroy. Business Associate shall extend the protection of this Agreement to such PHI and limit further uses and disclosure of such PHI.

The obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

## **NOTIFICATION OF BREACH**

12.1 To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses, or Discloses Unsecured Protected Health Information, it shall, following the discovery of a Breach of such information, notify the Covered Entity of such Breach. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, Used, accessed, acquired, or Disclosed during such Breach. The Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in notification to the Individual under 45 C.F.R. § 164.404(c) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.

12.2 For purposes of this section, a Breach shall be treated as discovered by the Business Associate as of the first day on which such Breach is known to such Business Associate (including any person, other than the Individual committing the breach, that is an employee, officer, or other agent of such associate) or should reasonably have been known to such Business Associate (or person) to have occurred by the exercise of reasonable diligence.

12.3 Subject to section 12.4, all notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach by the Business Associate involved in the case of a notification required under section 12.2. The Business Associate involved in the case of a notification required under section 12.2, shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

12.4 If a law enforcement official determines that a notification or notice required under this section would impede a criminal investigation or cause damage to national security, such notification or notice shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a Disclosure covered under such section.

If a law enforcement official states to the Business Associate that any notification or notice would impede a criminal investigation or cause damage to national security, the Business Associate shall:

- (a) If the statement is in writing and specifies the time for which a delay is required, delay such notification or notice for the time period specified by the official; or
- (b) If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification or notice temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in (a) is submitted during that time.

### **PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.**

13.1 Except as provided in section 13.2, the Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Covered Entity has obtained from the Individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Individual.

13.2. Section 13.1 shall not apply in the following cases:

- (a) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- (b) The purpose of the exchange is for research (as described in sections 164.501 and 164.512(i) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.
- (c) The purpose of the exchange is for the treatment of the Individual, subject to any regulation that the Secretary may promulgate to prevent Protected Health Information from inappropriate access, Use, or Disclosure.
- (d) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations in section 164.501 of title 45, Code of Federal Regulations.
- (e) The purpose of the exchange is for remuneration that is provided by the Covered Entity to the Business Associate for activities involving the exchange of Protected Health Information that the Business Associate undertakes on behalf of and at the specific request of the Covered Entity pursuant to the Agreement.
- (f) The purpose of the exchange is to provide an Individual with a copy of the Individual's Protected Health Information pursuant to section 164.524 of title 45, Code of Federal Regulations.
- (g) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (a) through (f).