

## **AGREEMENT**

This Agreement made and entered into this \_\_\_\_ day of **Month, year** by and between Sedgwick County, Kansas, hereinafter referred to as "County", and **Subscriber name** hereinafter referred to as "Subscriber".

WHEREAS, County maintains certain electronic data in computer databases which is available to the general public under certain circumstances; and

WHEREAS, Subscriber desires to have on-line access to the said electronic data through the use of the Internet; and

WHEREAS, County has delegated the authority to sign these agreements on behalf of the County to the Director of the Division of Information Technology and Support Services, by Resolution No. 2-2010.

NOW, THEREFORE, in consideration of the mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

### **SECTION 1: STATEMENT OF PURPOSE.**

The purpose of this Agreement is to define circumstances, responsibilities, and compensation relating to the provision to Subscriber of on-line computer access to certain data records maintained in electronic form by County.

### **SECTION 2: TERM OF AGREEMENT.**

This Agreement shall be in full force and effect for a period of five (5) years after the date of execution hereof. Thereafter, this Agreement shall be renewed for one (1) renewal term of the same length and under the same terms, provisions and conditions as provided herein.

### **SECTION 3: DEFINITION OF TERMS.**

- 1) Data records - information maintained in electronic form for communication or processing.
- 2) Client Department - a County department or agency serviced by Sedgwick County Division of Information Technology and Support Services whose data files are available to external agencies pursuant to Sedgwick County Resolution #312-1988 and as amended.
- 3) Authorized on-line access - the process by which an individual who has obtained proper clearances is permitted to obtain or change data records from a Client Department using a computer terminal.
- 4) Subscriber - any individual, group of individuals, company, or other legal entity that has been granted authorized access to electronic County data records.

#### **SECTION 4: COUNTY RESPONSIBILITIES.**

- 1) Client Departments will:
  - a. when requested, help in interpreting the meaning of data; and
  - b. have final control and responsibility for security authorization of individuals and desktops in granting access to their data.
- 2) County, by and through its Sedgwick County Division of Information Technology and Support Services, will:
  - a. process requests from Subscriber for individuals to have operator accounts created;
  - b. provide authorized on-line computer access during normal County business hours, subject to interruption of service pursuant to Section 10;
  - c. provide acceptable response time within limitations of budget constraints;
  - d. provide reasonable levels of problem determination support to help isolate problems when requested; and
  - e. prepare and submit to Subscriber a monthly flat fee invoice accurately reflecting fees associated with providing access.

#### **SECTION 5: SUBSCRIBER RESPONSIBILITIES.**

- 1) Subscriber agrees that:
  - a. Subscriber's access provided for herein is a privilege not a right, and that Client Departments may revoke access to Subscriber or any individual or group of individuals within Subscriber's employ or control.
  - b. Subscriber's access provided for herein does not grant rights to possession or ownership of data records at any time;
  - c. Sedgwick County Division of Information Technology and Support Services stores information for some client departments and agencies which County may not have final authority to disclose and that it is Subscriber's responsibility to notify each department or agency to secure proper access of information;
  - d. Subscriber will take all reasonable precaution to protect against unauthorized access to County's data records;
  - e. Subscriber will provide all equipment, software, and supplies necessary at its location to establish communications using communications protocols defined by Sedgwick County Division of Information Technology and Support Services;
  - f. Subscriber will promptly notify Sedgwick County Division of Information Technology and Support Services when an individual with authorized access leaves its employment so operator accounts under their control may be deleted or changed. Subscriber understands charges will continue for the individual(s) until written notification is received. The preferred method of notice is to send an email to: [subscriberaccess@sedgwick.gov](mailto:subscriberaccess@sedgwick.gov).

- g. Subscriber will promptly notify Sedgwick County Division of Information Technology and Support Services when an unauthorized individual accesses County's data records;
- h. Subscriber will promptly notify Sedgwick County Division of Information Technology and Support Services when an authorized user accesses or uses County's data records for unauthorized purposes;
- i. Subscriber will abide by County's reasonable regulations which may now be in force or effect or which may in the future become effective;
- j. Subscriber will recognize there is no express or implied ownership of County equipment by the payment of any fee or charge to County; and
- k. Subscriber will not sell, give or receive for the purpose of selling or offering for sale any property or service to persons listed therein any list of names and addresses contained in the data records accessed or derived from the data records accessed, as prohibited by K.S.A. 45-230.
- l. Violation of this Agreement could result in criminal charges or civil claims being brought against Subscriber.

By executing this agreement, the Subscriber certifies the Subscriber does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

#### **SECTION 6: BILLING AND PAYMENT.**

- 1) Sedgwick County Division of Information Technology and Support Services will submit to Subscriber a flat fee monthly invoice for providing access pursuant to the County's online subscriber fee schedule.
- 2) Rates shall be set by County for various services and may be adjusted from time to time, at the County's sole discretion.
- 3) Subscriber will pay all properly submitted invoices within thirty (30) days of the date of the invoice.
- 4) Returned check will result in a \$30.00 fee and a requirement to make all future payments by credit card only.
- 5) Billing will be for full-month increments only. No partial month credits will be given. For example, if the service begins on October 1 then the entire month is due and owing as of that date.

#### **SECTION 7: SEVERABILITY CLAUSE.**

If any provision of this Agreement shall be declared to be illegal, void or unenforceable by a court of competent jurisdiction, the other provisions shall not be affected but shall remain in full force and effect.

## **SECTION 8: SUSPENSION AND TERMINATION.**

At County's option, Subscriber access under this Agreement may be suspended immediately for no more than 10 (ten) consecutive days upon the occurrence of any of the following:

- 1) Subscriber's non-payment in violation of Section 6 hereof;
- 2) Subscriber's violation of K.S.A. 21-5839 or K.S.A. 45-230, as amended;
- 3) Subscriber's failure to indemnify County pursuant to Section 9 hereof;
- 4) Subscriber's allowance of unauthorized access prohibited hereby;
- 5) Subscriber's material breach of any term, provision or condition of this Agreement; and
- 6) County's determination that resources devoted to Subscriber are required by County for its internal operation.

At either party's option, this Agreement may be terminated at any time after the first six months hereof upon 5 (five) business days' advance written notice to the other party. County has the discretion to waive the 5 (five) days' written notice for a Subscriber termination. County's terminations must be approved and signed by the County Manager pursuant to Charter Resolution 68. Any County written notice of termination must be mailed with a return receipt request. Subscriber understands charges will accrue until termination. If the services are cancelled, all past due amounts must be paid in full before the Subscriber can reinstate service.

## **SECTION 9: INDEMNIFICATION AND HOLD HARMLESS PROVISIONS.**

Subscriber hereby releases, indemnifies and holds harmless County, its officers, agents, employees and departments of liability for any and all damages resulting from any act or omission on part of the subscriber, incorrect or misinterpretation of data or any other liability from information obtained from data records pursuant hereto. Subscriber further agrees to and does hereby indemnify and save County harmless from any and all liability as a result of Subscriber's willful violation of any law or regulation pertaining hereto with particular reference to provisions of K.S.A. 21-5839 and K.S.A. 45-230, as amended.

## **SECTION 10: INTERRUPTION OF SERVICE.**

County shall use its best efforts to provide adequate and uninterrupted service under the terms hereof. However, County shall not be liable for interruption of service when the same shall be due to circumstances beyond the control of County, its agents, servants, or employees, including but not limited to equipment malfunction and periodic maintenance of County's computer system.

## **SECTION 11: ASSIGNMENT.**

This Agreement may not be assigned by Subscriber without the prior written consent of County and any such assignment without prior written consent of County shall be null and void.

**SECTION 12: NOTICES.**

All notices shall be in writing and shall be directed to the parties hereto as shown below:

To County: Director, of Division of Information Technology and Support Services  
Munger Building - First Floor  
538 N. Main  
Wichita, KS 67203  
Email: [subscriberaccess@sedgwick.gov](mailto:subscriberaccess@sedgwick.gov)

To Subscriber: Contact Name  
Business Name  
Street Address  
City, State, Zip Code

**SECTION 13: CONSTRUCTION.**

This Agreement shall be construed in accordance with the laws of the State of Kansas.

**SECTION 14: PARAGRAPH HEADINGS.**

The paragraph headings are inserted in this Agreement for convenience only and shall not be used in interpreting this Agreement.

**SECTION 15: ENTIRE AGREEMENT.**

This Agreement constitutes the complete and exclusive statement of the agreement between the parties hereto. No amendment, waiver or alteration of this Agreement shall be effective unless signed by and authorized officer of each of the parties hereto. Neither County nor Subscriber shall be bound by any oral agreement or representation.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

DIRECTOR OF, DIVISION OF INFORMATION  
TECHNOLOGY AND SUPPORT SERVICES  
OF SEDGWICK COUNTY, KANSAS

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Mike Elpers

APPROVED AS TO FORM:

Subscriber

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Kirk W. Sponsel  
Assistant County Counselor

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Name  
Title

ATTEST:

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Kelly B. Arnold  
County Clerk