

CONTRACT

BETWEEN

SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

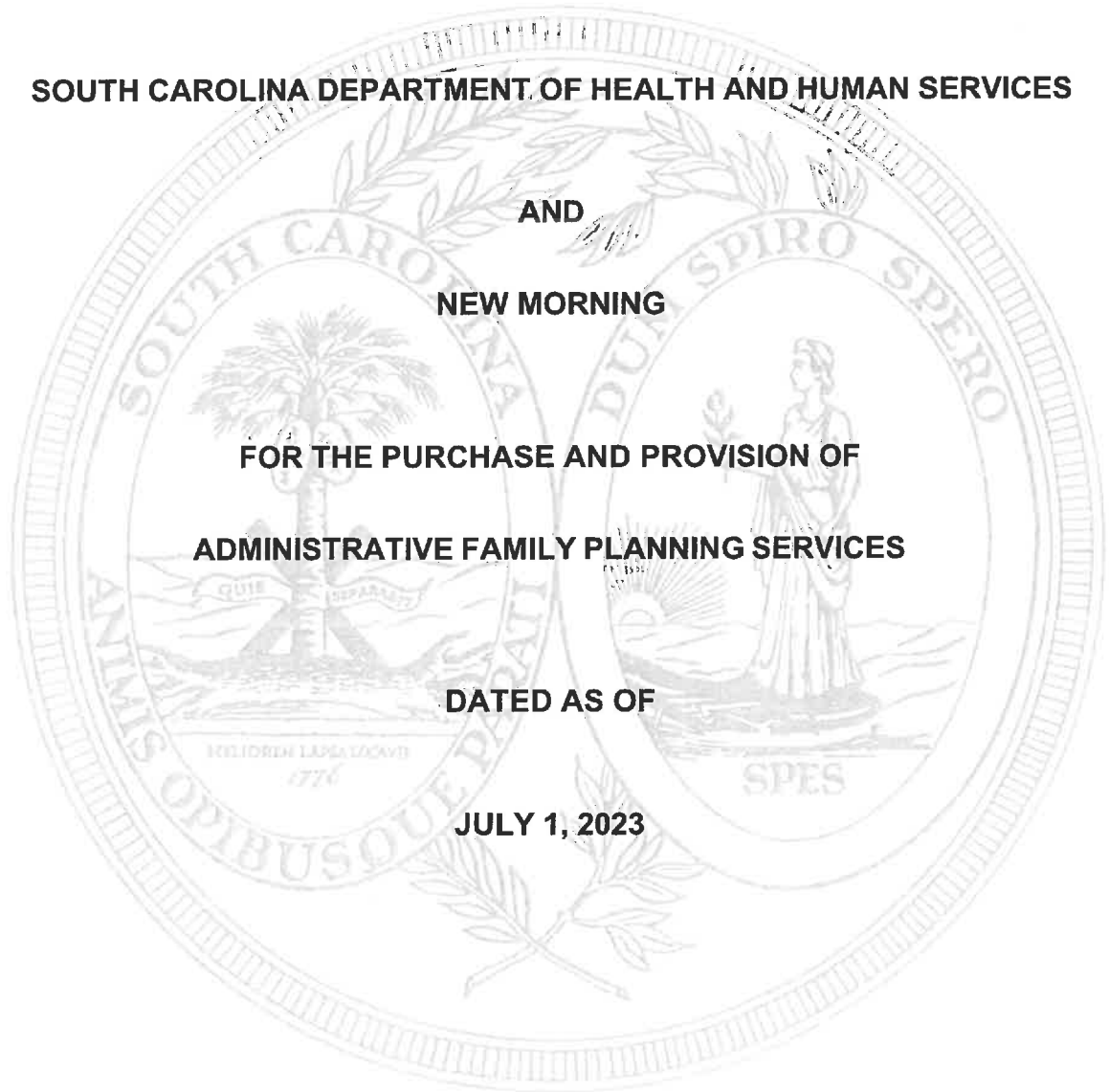
AND

NEW MORNING

**FOR THE PURCHASE AND PROVISION OF
ADMINISTRATIVE FAMILY PLANNING SERVICES**

DATED AS OF

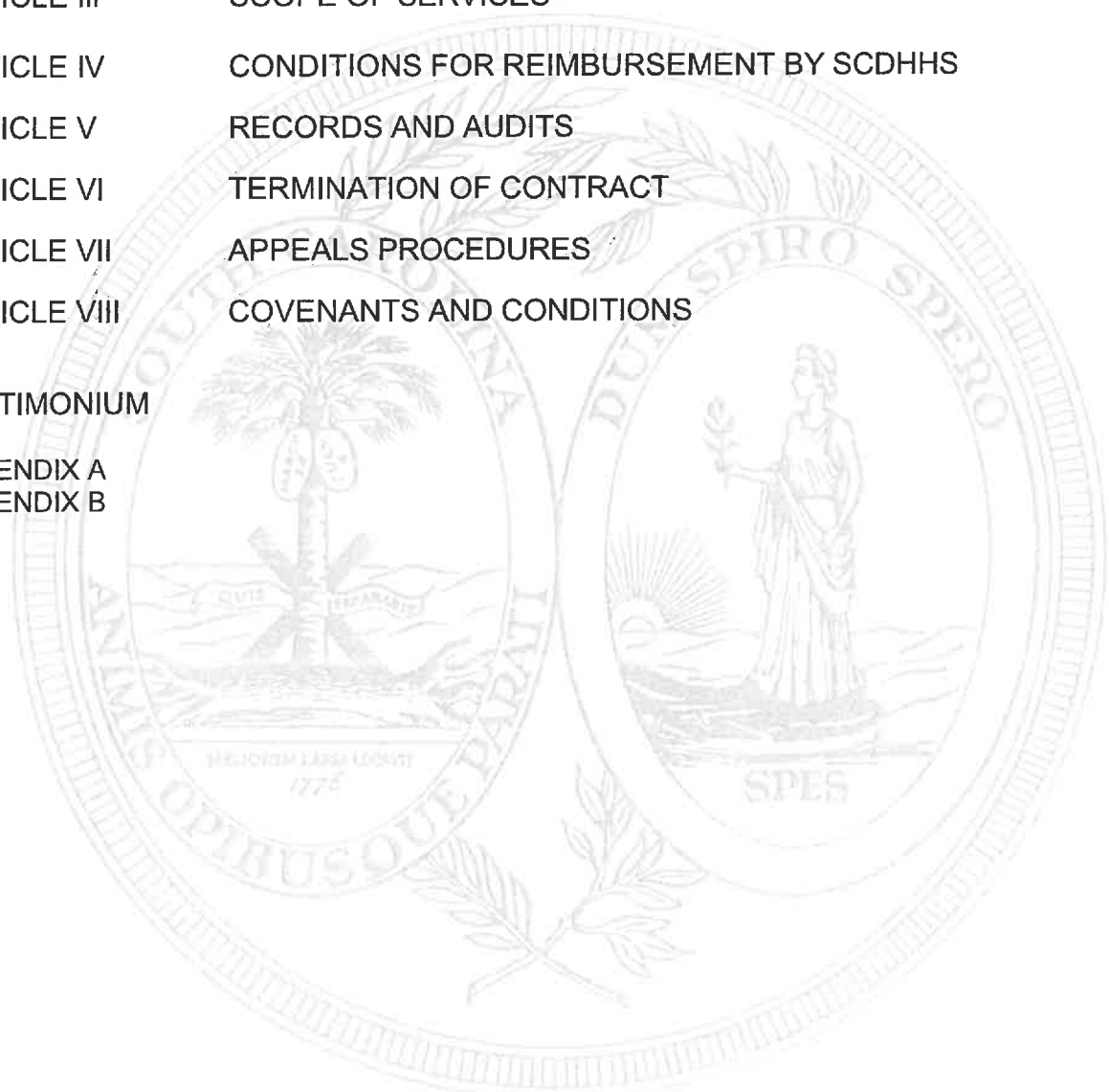
JULY 1, 2023



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CONTRACT BETWEEN
SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN
SERVICES
AND
NEW MORNING
FOR THE PURCHASE AND PROVISION OF ADMINISTRATIVE FAMILY
PLANNING SERVICES

This Contract is entered into as of the first day of July 2023, by and between the South Carolina Department of Health and Human Services, 1801 Main Street, Post Office Box 8206, Columbia, South Carolina, 29202-8206, hereinafter referred to as "SCDHHS" and New Morning, 1501 Main Street, Suite 150, Columbia, SC, 29201, hereinafter referred to as the "Contractor".

RECITALS

WHEREAS, SCDHHS is the single state agency responsible for the administration in South Carolina of a program of Medical Assistance under Title XIX of the Social Security Act and makes all final decisions and determinations regarding the administration of the Medicaid program.

WHEREAS, the United States Department of Health and Human Services has allocated funds under Title XIX of the Social Security Act to SCDHHS to perform certain administrative functions.

WHEREAS, Proviso 33.19 of the South Carolina 2023-2024 Appropriations Act authorizes SCDHHS to contract with community-based not-for-profit organizations for local projects that further the objectives of department programs.

WHEREAS, Contractor warrants and represents that it is such a community-based not-for-profit organizations.

WHEREAS, the Contractor desires to provide such administrative functions as outlined in this Contract.

NOW THEREFORE, the parties to this Contract, in consideration of the mutual promises, covenants, and stipulations set forth herein, agree as follows:

ARTICLE I

CONTRACT PERIOD

This Contract shall take effect on July 1, 2023 and shall, unless sooner terminated in accordance with Article VII, continue in full force and effect through June 30, 2024.

ARTICLE II

DEFINITION OF TERMS AND ACRONYMS

As used in this Contract, the following terms shall have the following defined meanings:

Beneficiary: A person who has been determined eligible to receive services as provided for in the South Carolina State Plan for Medical Assistance.

CMS: Centers for Medicare and Medicaid Services

Federal Financial Participation (FFP): Any funds, either title or grant, from the Federal Government.

GAO: Government Accountability Office

HIPAA: Health Insurance Portability and Accountability Act of 1996, as amended, along with its attendant regulations.

Ownership Interest: The possession of equity in the capital, the stock, or the profits of the Contractor. See 42 CFR §455.101 (2022, as amended).

Policies: The general principles by which SCDHHS is guided in its management of the South Carolina State Plan for Medical Assistance, as further defined by SCDHHS promulgations and by state and federal rules and regulations.

Program: The method of provision of Title XIX services to South Carolina Beneficiaries as provided for in the South Carolina State Plan for Medical Assistance and SCDHHS regulations.

Social Security Act: Title 42, United States Code, Chapter 7, as amended.

Social Services: Medical assistance, rehabilitation, and other services defined by Title XIX, USDHHS regulations, and SCDHHS regulations.

SCDHHS Appeal Regulations: Regulations promulgated in accordance with S.C. Code Ann. §44-6-90 (2018), S.C. Code Ann. Regs. 126-150 et seq. (2011) and S.C. Code Ann. §§1-23-310 et seq. (2005).

South Carolina State Plan for Medical Assistance (State Plan): The comprehensive written commitment by SCDHHS, submitted under section 1902(a) of the Social Security Act, to administer or supervise the administration of the Medicaid Program in accordance with federal requirements.

Title XIX (Medicaid): Title 42, United States Code, Chapter 7, subchapter XIX, as amended (42 U.S.C. §1396 et seq.).

USDHHS: United States Department of Health and Human Services

ARTICLE III
SCOPE OF SERVICES

For and in consideration of the promises herein made by SCDHHS, the Contractor agrees to provide the following:

Contractor shall lead and coordinate an evidence-based, statewide, multi-sector healthcare program to increase women's equitable access to high-quality family planning counseling and services. Contractor shall work with clinics (including but not limited to Federally Qualified Health Centers (FQHCs), Rural Health Clinics (RHCs), hospitals, and free clinics) across South Carolina to improve Beneficiaries' access to family planning services.

Contractor shall provide Quarterly Reports (QR), no later than the 15th of the first month following the end of each quarter, reporting on each category as outlined below with the exception of number of women serviced and number of Long-acting reversible contraception (LARCs) provided. Supplemental data reports shall be provided in February and August. Quarterly reporting shall commence no later than ninety (90) days after the Contract is fully executed. The Contractor shall also provide a yearly roll-up of each reporting category due no later than sixty (60) calendar days after the end of the Contract Period described in Article I above. QRs shall be submitted via email to innovations@scdhhs.gov. QRs shall be entitled, FY24 New Morning Administrative Family Planning Services Report.

A. To improve the provision of Quality Family Planning Services for Beneficiaries, Contractor shall provide, and report as specified with all reporting due by July 30, 2024:

1) The Contractor shall provide four (4) full-time equivalent (FTE) Health Systems Managers who will provide one-on-one monthly interaction with FQHC, RHC, and hospital partner(s). Choose Well clinical partners shall increase access to high-quality family planning services for Beneficiaries. These staff liaisons shall work with clinical partners to develop work plans that support quality improvement efforts. These staff liaisons shall have master's level degree in education and be Lean Six Sigma certified.

Reporting Measures:

- Overall percentage of months Contractor's Health System Managers met with clinical partners.

This calculation shall be performed by dividing the number of meetings with FQHC, RHC, and hospital partners by the sum of the months each FQHC, RHC, and hospital partner is affiliated with Contractor during the reporting period. The target for this

measure shall be for the Contractor to meet with eighty percent (80%) of partners on a monthly basis.

- The Contractor shall, through clinical partners, provide contraceptive services to female Beneficiaries during the Contract Period.

The target for this task is to serve eighty thousand (80,000) women per year.

- The Contractor shall focus its efforts on clinical partners that do not have existing funding for LARCs while they provide services to patients during the Contract Period.

The target for this task is to distribute six thousand (6,000) LARCs during the Contract Period.

2) The Contractor shall provide one (1) FTE Patient Advocate who shall work one-on-one with Beneficiaries to link them to family planning appointments at clinical partners and link Medicaid-eligible individuals to the Medicaid application process to secure insurance for services.

Reporting Measure:

- Number of appointment requests referred to providers by Patient Advocate;
- Number of Patient Advocate contacts referred for Medicaid application; and
- Target: Assist one hundred (100) patients per month.

3) The Contractor shall provide one (1) FTE Data Manager to work with FQHC, RHC, hospital partners, free medical, and safety net clinic partners to ensure quality data collection and provide data support for accountability of funding received under this Contract.

Reporting Measure:

- A narrative of activities of the Data Manager shall include developing measures, designing reporting instruments, communicating processes, and reporting requirements, collecting data, and analyzing partner data conducted during the Contract Period.

4) The Contractor shall provide two (2) FTE Training Coordinator who shall develop and implement trainings for clinical partners to strengthen quality of family planning service provision. Training development and implementation will include on-line and face-to-face training opportunities focused on Center for Disease Control's (CDC's) Quality Family Planning Recommendations. All trainings shall include and be eligible for professional continuing education

credit.

Reporting Measure:

- Number of attendees in quality family planning-focused trainings to strengthen quality of care with the target of at least five hundred (500) attendees participating in New Morning trainings that support Quality Family Planning during the Contract Period.
- The Contractor shall no later than thirty (30) calendar days in advance of training submit training materials to SCDHHS for approval. Training materials shall be submitted via email entitled, FY24 New Morning Training Plan to innovations@scdhhs.gov.

5) The Contractor shall provide the following educational opportunities to strengthen access and quality of family planning care to Beneficiaries: a) twenty (20) web-based trainings on family planning care to improve clinician and clinic staff competency, b) twenty-five (25) LARC insertion and removal trainings, and c) one (1) face-to-face Reproductive Health Summit including web development/placement, continuing education accreditation, meeting space, in-state travel, printing (as needed), and other allowable costs associated with trainings.

Reporting Measures:

- Number of attendees at web-based trainings, LARC insertion and removal trainings and the Reproductive Health Summit, and course names and dates developed for twenty (20) web-based trainings.

6) The Contractor shall provide outreach and education to include maintenance of NoDrama.org educational website and associated call center for linkage to clinical partners and a Patient Advocate to facilitate appointments and support Medicaid-eligible individuals' application for Medicaid.

Reporting Measures:

- Report number of unique visits to the NoDrama.org website; Target one hundred eighty thousand (180,000) unique visits to the website during the Contract Period.
- Number of appointment requests through NoDrama.org website received during the Contract Period; Target four thousand (4,000) requests received during the Contract Period.
- Number of appointment requests made through NoDrama.org website and connected directly to a Choose Well clinical partner for care during the Contract Period: Target seventy-five percent (75%) of appointment

requests during the Contract Period.

- Report on expenditures associated with the NoDrama.org website during the Contract Period.

B. To increase access to Medicaid application process for Medicaid eligible individuals, the Contractor shall provide six (6) FTE Medicaid Application Specialists to support six (6) designated FQHC organizations to aid uninsured eligible women in applying for Medicaid.

Reporting Measure:

- Number of patients seen by Application Specialists;
- Number of Medicaid Applications submitted; and
- Number of Medicaid Applications approved.

ARTICLE IV

CONDITIONS FOR REIMBURSEMENT BY SCDHHS

SCDHHS agrees to purchase from the Contractor and to pay for the services provided pursuant to this Contract in the manner and method herein stipulated:

A. Method of Payment

For the duration of this Contract, SCDHHS shall pay Contractor an amount up to but not to exceed Five Million Dollars (\$5,000,000) based on the cost of the deliverables outlined in Article III A and B.

Contractor shall invoice SCDHHS in arrears on the same schedule as the submittal of the deliverables for A and B outlined in Article III. Such invoice shall contain sufficient detail to enable SCDHHS to tie the expenses to Article III.

SCDHHS shall issue payment for a complete and accurate invoice in accordance with its accounts payable policies and as required by the South Carolina Consolidated Procurement Code. See Appendix A for invoice template.

The Contractor shall submit the invoice to:

Accounting Operations/Accounts Payable
South Carolina Department of Health and Human Services
1801 Main Street | Post Office Box 8206
Columbia, South Carolina 29202-8206

Email invoices to invoices@scdhhs.gov and Nitesh.pariikh@scdhhs.gov

B. Public Funds as the State Share of Federal Financial Participation

To be considered as the State's share in claiming FFP, public funds must meet the conditions specified in accordance with 42 CFR § 433.51 (2021, as amended).

C. Donations

The Contractor agrees to comply with 42 CFR Part 433, Subpart B (2021, as amended), regarding any and all donations made by the Contractor pursuant to this Contract.

ARTICLE V

RECORDS AND AUDITS

A. Accuracy of Data and Reports

The Contractor shall certify that all statements, reports, and claims, financial and otherwise, are true, accurate, and complete. Contractor shall not submit for payment any claims, invoices, statements, or reports which it knows, or has reason to know, are not properly prepared or payable pursuant to federal and state law, applicable regulations, this Contract, and SCDHHS policy.

1. Maintenance of Records

The Contractor must maintain an accounting system with supporting fiscal records adequate to assure that claims for funds are in accordance with this Contract and all applicable laws, regulations, and policies. The Contractor further agrees to retain all financial and programmatic records, supporting documents, and statistical records and other records of Beneficiaries relating to the delivery of care or service under this Contract, and as further required by SCDHHS, for a period of five (5) years after last payment made under this Contract (including any amendments and/or extensions to this Contract). If any litigation, claim, or other actions involving the records have been initiated prior to the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it or until the end of the five (5) year period, whichever is later. This provision is applicable to any subcontractor and must be included in all subcontracts.

2. Inspection of Records

At any time during normal business hours and as often as SCDHHS, the State Auditor's Office, the State Attorney General's Office, GAO, and USDHHS, and/or any of the designees of the above may deem necessary during the Contract Period (including any amendments and/or extensions to this Contract) and for a period of five (5) years after last payment under this Contract, the Contractor shall make all program and financial records and service delivery sites open to the representatives of SCDHHS, GAO, the State Auditor, the State Attorney General's Office, USDHHS, and/or any designees of the above. SCDHHS, the State Auditor's Office, the State

Attorney General's Office, GAO, USDHHS, and/or their designee(s) shall have the right to audit, review, examine and make copies, excerpts, or transcripts from all records, contact, and conduct private interviews with the Contractor's Beneficiaries and employees, and do on-site reviews of all matters relating to service delivery as specified by this Contract. If any litigation, claim, or other action involving the records has been initiated prior to the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it or until the end of the five (5) year period, whichever is later. This provision is applicable to any subcontractor and must be included in all subcontracts.

B. Audits

In the event an audit is performed, and the audit report contains audit exceptions or disallowances, it is agreed by the parties hereto that the following procedures shall be used in making the appropriate audit adjustment(s):

1. Notice of Exceptions and Disallowances

Upon completion of an audit, the Contractor shall be furnished a written notice containing the adjustment for each exception and a statement of the amount disallowed for each exception. SCDHHS, the State Auditor's Office, or their designee shall make this determination. Such notice shall further state the total sum disallowed as a result of the audit and that payment is due to SCDHHS in the full amount of the sums disallowed. Notice will be sent to the Contractor by certified mail return receipt requested.

2. Disallowances - Appeals

In the event the Contractor disagrees with the audit exceptions and disallowances, it may seek administrative appeal of such matters in accordance with the SCDHHS appeals procedures. Judicial review of any final agency decision pursuant to this Contract shall be in accordance with S.C. Code Ann. §1-23-380 (2005) and shall be the sole and exclusive remedy available to either party except as otherwise provided herein. Provided, however, any administrative appeal shall be commenced by written notice as required by the SCDHHS appeals procedures.

Thirty (30) calendar days after mailing of the notice of disallowance, all audit disallowances shall become final unless an appeal in accordance with SCDHHS appeals procedures has been filed. Payment shall be due and should be made upon notice of disallowance regardless of the filing of an appeal. Should the amount of the disallowance be reduced for any reason, SCDHHS will reimburse the Contractor for any excess amount previously paid. Additionally, any issue which could have been raised in an appeal shall be final and not subject to challenge by the Contractor in any other administrative or judicial proceeding if no appeal is filed within thirty (30) calendar days of the notice of determination.

3. Disallowed Sums, Set-off

Any provision for appeal notwithstanding, the Contractor and SCDHHS agree that, should any audit(s) result in disallowance to the Contractor all funds due SCDHHS are payable upon notice to the Contractor of the

disallowance. SCDHHS is authorized to recoup any and all funds owed to SCDHHS by means of withholding and/or offsetting such funds against any and all sums of money for which SCDHHS may be obligated to the Contractor under any previous contract and/or this or future contracts. In the event there is no previous contractual relationship between the Contractor and SCDHHS, the disallowance shall be due and payable immediately upon notice to the Contractor of the disallowance.

4. Interest Provision

The Contractor and SCDHHS further agree that, in addition to the amount disallowed by audit being repaid to SCDHHS in accordance with this Section, the Contractor shall pay interest on the disallowed amount with said interest accruing from the thirtieth (30th) calendar day following the date of receipt by the Contractor of the final audit report. The interest to be paid by the Contractor to SCDHHS shall be at the current prime rate plus two percentage (2%) points as established on the thirtieth (30th) calendar day following the issuance of the final report.

C. Ownership Information

In accordance with 42 CFR §455.104 (2022, as amended), the Contractor agrees to provide full and complete ownership and disclosure information with this Contract and to report any ownership changes within thirty-five (35) calendar days to SCDHHS, Division of Contracts. Failure by the Contractor to disclose this information may result in termination of this Contract.

D. Information Related to Business Transactions

The Contractor agrees to furnish to SCDHHS information related to significant business transactions as set forth in 42 CFR 455.105 (2022, as amended). Failure to comply with this requirement may result in termination of this Contract.

ARTICLE VI

TERMINATION OF CONTRACT

A. Termination for Lack of Funds

The parties hereto covenant and agree that their liabilities and responsibilities, one to another, shall be contingent upon the availability of federal, state, and local funds for the funding of services and that this Contract shall be terminated if such funding ceases to be available. SCDHHS shall have the sole responsibility for determining the lack of availability of such federal, state, and local funds.

B. Termination for Noncompliance with the Drug Free Workplace Acts

In accordance with S. C. Code Ann. §44-107-60 (2018), and 2 CFR Part 182 (2022, as amended), this Contract is subject to immediate termination, suspension of payment, or both if the Contractor fails to comply with the terms of the State or Federal Drug Free Workplace Act.

C. Termination for Breach of Contract

This Contract may be canceled or terminated by either party at any time within the Contract Period whenever it is determined by such party that the other party has materially breached or otherwise materially failed to comply with its obligations hereunder.

D. Termination for Breach of Previous Contracts or Non-Payment of Previous Audit Exceptions

This Contract may be canceled or terminated by SCDHHS at any time within the Contract Period if the Contractor, after exhaustion of all administrative and judicial appeals, has failed to make payment in full to SCDHHS for audit disallowances pursuant to any previous contract between the parties or if the Contractor has failed to comply with the maintenance and inspection of records requirements of any previous contract between the parties.

E. Insolvency

This Contract is voidable and subject to immediate termination by SCDHHS upon the Contractor's insolvency, including the filing of bankruptcy proceedings. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to SCDHHS. This notification shall be furnished within five (5) calendar days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed and the identity of the court in which the bankruptcy petition was filed. This obligation remains in effect until final payment under this Contract.

F. Termination for Loss of Licensure or Certification

In the event that the Contractor loses its license to operate or practice from the South Carolina Department of Health and Environmental Control or the appropriate licensing agency, this Contract shall terminate as of the date of delicensure. Further, should the Contractor lose its certification to participate in the Title XVIII and/or Title XIX program, as applicable, this Contract shall terminate as of the date of such decertification.

G. Termination for Unauthorized Use of Professional Employer Organization

This Contract may be canceled or terminated by SCDHHS at any time within the Contract Period should the Contractor engage the use of a professional employer organization or organization group to perform any services required under this Contract without the express written consent of SCDHHS, in accordance with Article IX, Section W.

H. Termination by Either Party

Either party may terminate this Contract upon providing the other party with thirty (30) calendar days written notice of termination.

I. Notice of Termination

In the event of any termination of this Contract under this Article, the party

terminating the Contract shall give notice of such termination in writing to the other party. Notice of termination shall be sent by certified mail, return receipt requested. If this Contract is terminated pursuant to Sections C, D and/or H of this Article, termination shall be effective thirty (30) days after the date of receipt unless otherwise provided by law. If this Contract is terminated pursuant to Sections A, B, E, and/or G of this Article, termination shall be effective upon receipt of such notice. If this Contract is terminated pursuant to Section F of this Article, terminations shall be effective upon the date set forth in the notice.

ARTICLE VII

APPEALS PROCEDURES

If any dispute shall arise under the terms of this Contract, the sole and exclusive remedy shall be the filing of a Notice of Appeal within thirty (30) calendar days of receipt of written notice of SCDHHS' action or decision which forms the basis of the appeal. Administrative appeals shall be in accordance with SCDHHS' regulations at S.C. Code Ann. Regs. 126-150, et seq., (2011) and in accordance with the Administrative Procedures Act, S.C. Code Ann. §§1-23-310, et seq. (2005). Judicial review of any final SCDHHS administrative decisions shall be in accordance with S.C. Code Ann. §1-23-380, (2005).

ARTICLE VIII

COVENANTS AND CONDITIONS

In addition to all other stipulations, covenants, and conditions contained herein, the parties to this Contract agree to the following covenants and conditions:

A. Applicable Laws and Regulations

The Contractor agrees to comply with all applicable federal and state laws and regulations including constitutional provisions regarding due process and equal protection of the laws and including, but not limited to:

1. All applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. §7401, et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251, et seq.).
2. Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. §2000d et seq.) and regulations issued pursuant thereto, (45 CFR Part 80, 2022, as amended), which provide that the Contractor must take adequate steps to ensure that persons with limited English skills receive free of charge the language assistance necessary to afford them meaningful and equal access to the benefits and services provided under this Contract.
3. Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. §2000e) in regard to employees or applicants for employment.
4. Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. §794), which prohibits discrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto (45 CFR Part 84, 2022, as amended).
5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 et

seq.), which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.

6. The Omnibus Budget Reconciliation Act of 1981, as amended Pub. L. No. 97-35, § 1908(a)(2), 95 Stat. 483, 542 (1981), which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.
7. The Americans with Disabilities Act, (42 U.S.C. §12101 et seq.), and regulations issued pursuant thereto.
8. The Drug Free Workplace Acts, S.C. Code Ann. §§44-107-10 et seq. (2018), and the Federal Drug Free Workplace Act of 1988 as set forth in 2 CFR Part 182 (2022, as amended).
9. Section 6002 of the Solid Waste Disposal Act of 1965 as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6962).

B. Employees of Contractor

No services required to be provided under this Contract shall be provided by anyone other than the Contractor or with the prior approval of SCDHHS in accordance with Section V., the Contractor's subcontractor.

C. Information on Persons Convicted of Crimes

The Contractor agrees to furnish SCDHHS or to the USDHHS information related to any person convicted of a criminal offense under a program relating to Medicare (Title XVIII), Medicaid (Title XIX), the Social Services Block Grant program (Title XX) or the State Children's Health Insurance Program (Title XXI) as set forth in 42 CFR 455.106 (2022, as amended). Failure to comply with this requirement may lead to termination of this Contract.

D. Insurance

The Contractor shall maintain, throughout the performance of its obligations under this Contract, a policy or policies of Worker's Compensation insurance with such limits as may be required by law, and a policy or policies of general liability insurance insuring against liability for injury to, and death of, persons and damage to, and destruction of, property arising out of or based upon any act or omission of the Contractor or any of its subcontractors or their respective officers, directors, employees or agents. Such general liability insurance shall have limits sufficient to cover any loss or potential loss resulting from this Contract. The Contractor shall be the named insured on the insurance policies required by this Section.

It shall be the responsibility of the Contractor to require any subcontractor to secure the same insurance as prescribed herein for the Contractor. In addition, the Contractor shall indemnify and save harmless SCDHHS from any liability arising out of the Contractor's untimely failure in securing adequate insurance coverage as prescribed herein. All such coverage shall remain in full force and effect during the initial term of the Contract and any renewal thereof.

E. Proof of Insurance

Any time, at the request of SCDHHS or its designee, the Contractor shall provide proof of insurance as required in the insurance section of this Article whereby the Contractor shall be the named insured on the insurance policy or policies.

F. Safeguarding Information

The Contractor shall safeguard the use and disclosure of information concerning applicants for or Beneficiaries of Title XIX services in accordance with 42 CFR Part 431, Subpart F, (2022, as amended), SCDHHS' regulations at S.C. Code Ann. Regs. 126 - 170, et seq., (2011), and all other applicable state and federal laws and regulations and shall restrict access to, and use and disclosure of, such information in compliance with said laws and regulations.

G. Political Activity

None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office, or otherwise in violation of the provisions of the "Hatch Act".

H. Restrictions on Lobbying

In accordance with 31 U.S.C. §1352, funds received through this Contract may not be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. This restriction is applicable to all subcontractors.

I. Debarment/Suspension/Exclusion

The Contractor agrees to comply with all applicable provisions of 2 CFR Part 180 (2022, as amended) as supplemented by 2 CFR Part 376 (2022, as amended), pertaining to debarment and/or suspension and to require its subcontractors to comply with these same provisions to ensure that no party receiving funds from this Contract are listed on the government-wide exclusions in the System for Award Management (SAM).

J. Reporting of Fraudulent Activity

If at any time during the term of this Contract, the Contractor becomes aware of or has reason to believe by whatever means that, under this or any other program administered by SCDHHS, a Beneficiary of or applicant for services, an employee of the Contractor or SCDHHS, and/or subcontractor or its employees, has improperly or fraudulently applied for or received benefits, monies, or services pursuant to this or any other Contract, such information shall be reported in confidence by the Contractor directly to SCDHHS.

K. Integration

This Contract shall be construed to be the complete integration of all understandings between the parties hereto. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment executed and approved pursuant to Section S of this Article.

L. Governing Law

It is mutually understood and agreed that this Contract shall be governed by the laws of the State of South Carolina both as to interpretation and performance.

M. Severability

Any provision of this Contract prohibited by the laws of the State of South Carolina shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Contract.

N. Non-Waiver of Breach

The failure of SCDHHS at any time to require performance by the Contractor of any provision of this Contract or the continued payment of the Contractor by SCDHHS shall in no way affect the right of SCDHHS to enforce any provision of this Contract; nor shall the waiver by SCDHHS of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

O. Non-Waiver of Rights

SCDHHS and the Contractor hereby agree that the execution of and any performance pursuant to this Contract does not constitute a waiver, each to the other, of any claims, rights, or obligations which shall or have arisen by virtue of any previous agreement between the parties. Any such claims, rights, or obligations are hereby preserved, protected, and reserved.

P. Non-Assignability

No assignment or transfer of this Contract or of any rights hereunder by the Contractor shall be valid without the prior written consent of SCDHHS.

Q. Legal Services

No attorney-at-law shall be engaged through use of any funds provided by SCDHHS pursuant to the terms of this Contract. Further, with the exception of attorney's fees awarded in accordance with S.C. Code Ann. §15-77-300 (2005), SCDHHS shall under no circumstances become obligated to pay an attorney's fee or the costs of legal action to the Contractor. This covenant and condition shall apply to any and all suits, legal actions, and judicial appeals of whatever kind or nature to which the Contractor is a party.

R. Attorney's Fees

In the event that SCDHHS shall bring suit or action to compel performance of or to recover for any breach of any stipulation, covenant, or condition of this Contract, the Contractor shall and will pay to SCDHHS such attorney's fees as the court may adjudge reasonable in addition to the amount of judgement and costs.

S. Amendment

No amendment or modification of this Contract shall be valid unless it shall be in writing and signed by both parties hereto.

T. Amendment Due to The Unavailability of Funds

SCDHHS shall have the right to amend the total dollar amount reimbursed under this Contract, without the consent of the Contractor, when the amendment is due to the unavailability of funds and SCDHHS is responsible for providing the matching funds. SCDHHS shall have the sole authority to determine the percentage of any reduction in the dollar amount of this Contract. The amendment shall become effective thirty (30) days from the date of written notification from SCDHHS informing the Contractor of the reduction/amendment or upon the signature of both parties thereto, whichever is earlier. SCDHHS shall have the sole authority for determining lack of availability of such funds.

U. Extension

Prior to the end of the term of this Contract, SCDHHS shall have the option to extend or renew this Contract upon the same terms and conditions as contained herein, so long as the total Contract Period, including the extension, does not exceed five (5) years; provided, however, that any rate adjustment(s) shall be negotiated and set forth in writing and signed by both parties pursuant to Section S of this Article.

V. Subcontracts

Unless otherwise expressly authorized in writing, all services to be provided hereunder shall be provided by the Contractor directly and no subcontract for the provision of such services shall be entered into by the Contractor without the prior written approval of SCDHHS. Any subcontracts must be submitted to SCDHHS for written approval before reimbursement shall be made for services rendered thereunder. Subcontracts under this Contract shall be in writing and shall be subject to the terms and conditions of this Contract. The Contractor shall be solely responsible for the performance of any subcontractor.

W. Professional Employer Organization

The Contractor shall not engage the services of any professional employer organization or organization group pursuant to S.C. Code Ann. §§40-68-10, et seq. (2011) to perform any services required under the terms and conditions of this Contract without the express written consent of SCDHHS. Unauthorized use of a professional employer organization or organization group by the Contractor to fulfill the terms and conditions of this Contract may result in termination of the Contract.

X. Copyrights

If any copyrightable material is developed in the course of or under this Contract, SCDHHS shall have a royalty free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for SCDHHS purposes.

Y. Safety Precautions

SCDHHS and USDHHS assume no responsibility with respect to accidents, illnesses, or claims arising out of any activity performed under this Contract. The Contractor shall take necessary steps to insure or protect Beneficiaries, itself, and its personnel. The Contractor agrees to comply with all applicable local, state, and federal occupational and safety acts, rules, and regulations.

Z. Procurement Code

When applicable, the Contractor must comply with the terms and conditions of the South Carolina Consolidated Procurement Code.

AA. Titles

All titles used herein are for the purpose of clarification and shall not be construed to infer a contractual construction of language.

BB. Equipment

Equipment is defined as an article of tangible property that has a useful life of more than one year and an acquisition cost of Five Thousand Dollars (\$5,000) or more. Title to all equipment purchased with funds provided under this Contract shall rest with the Contractor as long as the equipment is used for the program for which it was purchased. When the equipment is no longer required for the program for which it was purchased, SCDHHS shall be notified, and instructions will be issued by SCDHHS pertaining to the disposition of the property.

CC. HIPAA Business Associate

Individually identifiable health information is to be protected in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). See Appendix B.

DD. Release of Reposts.

The Contractor understands and agrees that all reports and assessments prepared by Contractor pursuant to this Contract, including drafts, must be submitted to SCDHHS for review and approval by SCDHHS. The Contractor may not release or disclose, in any form, a report or assessment (including drafts) to any person/entity without the expressed, written consent of SCDHHS.

EE. Portable Devices

All Protected Health Information (PHI) stored on portable devices must be encrypted. Portable devices include all transportable devices that perform computing or data storage, manipulation, or transmission.

FF. Indemnification-Third Party Claims

Notwithstanding any limitation in this Contract, the Contractor shall defend and indemnify SCDHHS and all its respective officers, agents, and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arises out of, or result in any way from, any defect in goods or services acquired hereunder or from any act or omission of the Contractor, its subcontractors, their employees, workmen, servants, or agents. The Contractor shall be given written notice of any suit or claim. SCDHHS shall allow the Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. SCDHHS shall allow the Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any deferred settlement payments are the sole liability of) the Contractor, and (ii) the settlement imposes no non-monetary obligation upon SCDHHS. The Contractor shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without prior written consent of SCDHHS. SCDHHS shall reasonably cooperate with the Contractor defense of such suit or claim. The obligations of this paragraph shall survive termination of this Contract.

GG. Contractor Responsibility

If under the terms of this Contract Contractor makes any decisions, determinations or takes any actions on behalf of SCDHHS, then Contractor shall be responsible for evidentiary support of its decisions, determinations or actions in any proceeding or claim asserted against SCDHHS related to such decision, determination, or action. If required by SCDHHS, Contractor shall be responsible for retaining legal counsel to provide such defense diligently and capably. This responsibility includes, but is not limited to, any appeals before the SCDHHS Division of Appeals and Hearings.

HH. Open Trade

During the Contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person, or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in S.C. Code Ann. §11-35-5300 (Supp. 2022).

II. Counterparts

This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. The parties agree that this Contract may be delivered by facsimile or electronic mail with a copied signature having the same force and effect of a wet ink signature.

JJ. Incorporation of Schedules/Appendices

All schedules/appendices referred to in this Contract are attached hereto, are expressly made a part hereof, and are incorporated as if fully set forth herein.

IN WITNESS WHEREOF, SCDHHS and the Contractor, by their authorized agents, have executed this Contract as of the first day of July 2023.

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

NEW MORNING

“SCDHHS”

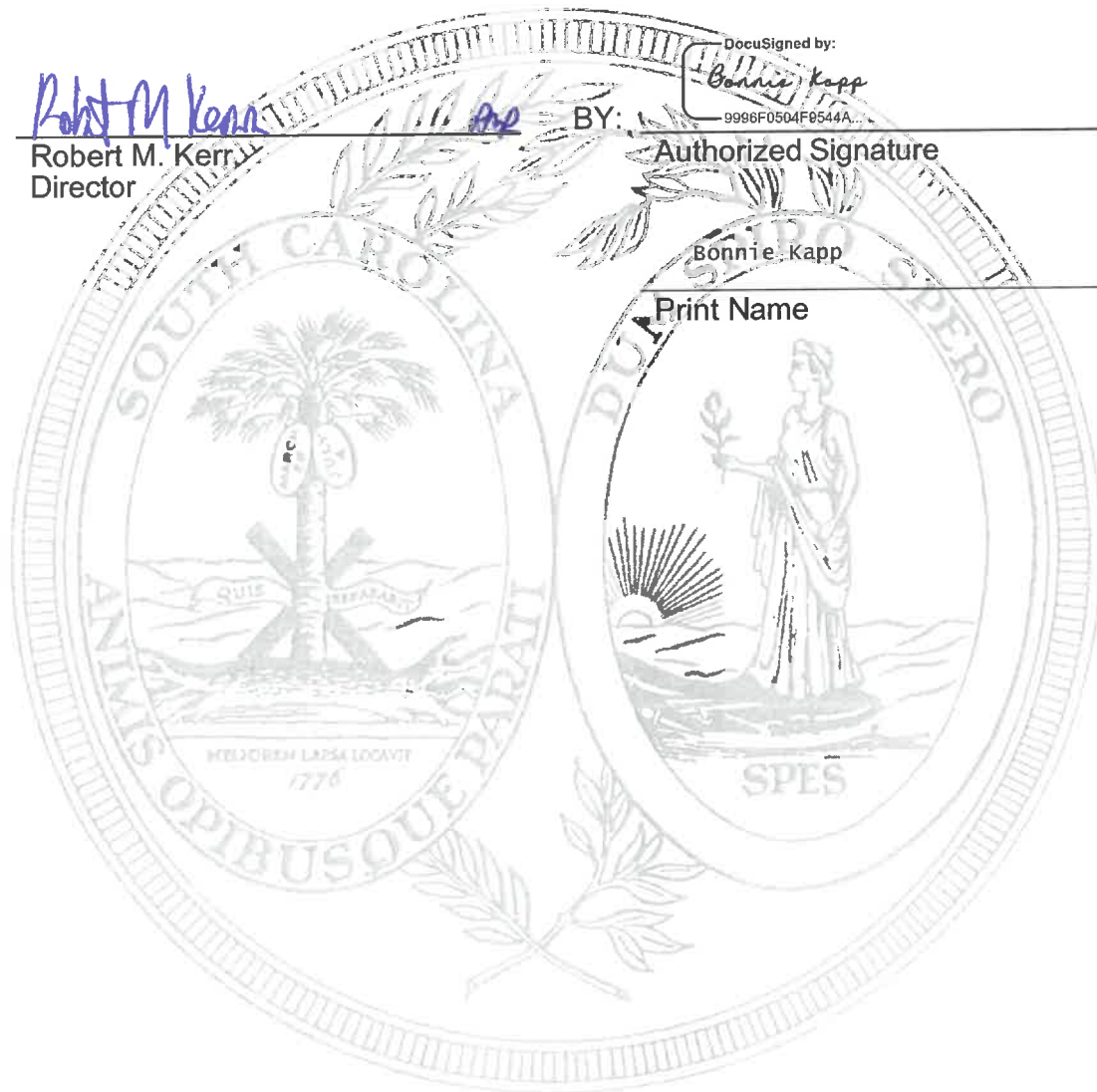
“CONTRACTOR”

BY: Robert M. Kerr
Robert M. Kerr
Director

DocuSigned by:
Bonnie Kapp
9986F0504F8544A...
BY: _____
Authorized Signature

Bonnie Kapp

Print Name



APPENDIX A

SCDHHS Invoice Instructions and Template

This page includes the information that should be included in your invoice. On the following page, there is an invoice template that will guide you to guarantee that all required components are included. To ensure that we can pay your invoice as quickly as possible, please be sure to follow these instructions:

- 1) The invoice should be printed on your agency's letterhead and ensure that the letterhead includes your agency's full address.
- 2) The invoice should be addressed to South Carolina Department of Health and Human Services.
- 3) The invoice should be signed and dated by the agency's officer.
- 4) You will need to provide information for the following sections:
 - a) Contract Number: This is your SCDHHS contract number. (Your contract number is listed on the lower left-hand corner of your contract).
 - b) Dated: This is the date that you submit the invoice to SCDHHS.
 - c) Invoice number: This should be numbered based on your agency's policy and procedure around your invoice system (ex. 2023-1390) so that it can be tracked as part of your invoicing system.
 - d) Recipient: This is your agency's name. (Be sure to list your agency's name exactly as it is stated in your contract.)
 - e) Amount of Contract: The amount of money you are requesting.

SCDHHS Contract Number:

Dated:

Period: July 1, 2023, to June 30, 2024

Authorization: Proviso 33.19 of the 2023-2024 Appropriations Act

Invoice Number:

Recipient:

For: The purchase and provision of administrative family planning services.

Amount of Invoice: \$

SCDHHS shall issue payment for complete and accurate invoices in accordance with its accounts payable policies and as required by the South Carolina Consolidated Procurement Code. The Contractor shall submit the quarterly invoices.

Statement of Assurance: Contractor affirms that this invoice is for funds that will and/or have been used totally for the purpose outlined in the above-referred and more defined in the above noted Contract. The Contractor also certifies that all statements, reports, and claims, financial and otherwise, are true, accurate, and complete. Contractor is aware that it shall not submit for payment any claims, invoices, statements, or reports which it knows, or has reason to know, are not properly prepared or payable pursuant to federal and state law, applicable regulations, the Contract under which this invoice is submitted, and/or any and all SCDHHS Policies.

**APPENDIX B
HIPAA BUSINESS ASSOCIATE AGREEMENT**

A. Purpose

The South Carolina Department of Health and Human Services (Covered Entity) and Business Associate agree to the terms of this Agreement for the purpose of protecting the privacy of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in performing the functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract between the parties.

B. Definitions

General Statement

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, 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, and in reference to the party to this Agreement, shall mean New Morning.
- (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 SCDHHS.
- (c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (d) Security incident. "Security incident" shall generally have the same meaning as the term "security incident" at 45 CFR 164.304.

C. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) 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 the Agreement;

(c) Submit system and program information to the Privacy Official, upon request, to document and verify compliance with federal and state privacy rules and regulations;

(d) Report to the Privacy Official of the 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 within 72 hours of discovery;

(e) Notwithstanding the requirements of 45 CFR 164.410, Business Associate shall notify the Privacy Official of the Covered Entity of potential breaches within 72 hours of discovery and keep the Privacy Official of the Covered Entity informed in their breach determination process;

(f) Unless otherwise directed by Covered Entity, Business Associate shall be responsible for the cost incurred by the Covered Entity for breach notifications to individuals, the US DHHS Office of Civil Rights (OCR), the media, and Consumer Affairs. Information for breach notifications shall be submitted within 15 days of discovery to the Privacy Official of the Covered Entity by email to privacyoffice@scdhhs.gov;

(g) For breaches resulting from the action or inaction of Business Associate, or its subcontractors, surrounding the use, receipt, storage, and/or transmission of PHI and PII under this Agreement, be responsible for any and all costs, damages, liabilities, expenses, fines, and/or penalties;

(h) In accordance with 45 CFR 164.502(e)(1) 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, to include reporting and notification requirements, that apply to the Business Associate with respect to such information;

(i) All reporting or notifications requirements pursuant to letters (d), (e), (f), (g) and (h) above, should be submitted using the "Incident Reporting for Business Associates" form, addressed to the Privacy Official of the Covered Entity, by email to privacyoffice@scdhhs.gov. Additional contact information for the Privacy Official is:

South Carolina Department of Health and Human Services
Office of Civil Rights & Privacy
Post Office Box 8206
Columbia, SC 29202-8206
Phone: (803) 898-2034
Fax: (803) 255-8276

(j) 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;

(k) 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;

(l) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity, or an individual if directed by Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(m) Notify Covered Entity within five (5) business days of receipt of any request covered under paragraphs (j), (k) or (l) above;

(n) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(o) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

D. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose protected health information as necessary to perform the services set forth in the Contract to which this Agreement is appended, including, if applicable, authorization to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c) and follow additional guidance provided by US DHHS in "Guidance Regarding Methods for De-identification of protected health information in accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule" found at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html>.

(b) Business Associate may use or disclose protected health information as required by law.

(c) Business Associate agrees to limit uses, disclosures, and requests for protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request according to the HIPAA Privacy Rule.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

(e) Business Associate may disclose protected health information for the proper management and administration of the 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 individual 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 individual, and the individual notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(f) Business Associate may not disclose or duplicate protected health information identified by Covered Entity as provided by the Social Security Administration (SSA) without written approval and permission from SSA. If the need for such disclosure and/or duplication arises, Business Associate must notify Covered Entity and work with Covered Entity to obtain approval and permission from SSA.

E. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of and shall terminate on the effective and termination dates of the Contract to which this Agreement is appended, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. 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 thirty (30) calendar days.

(c) Obligations of Business Associate Upon Termination.

(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.

(2) In the event that Business Associate determines that returning or destroying the protected health information is not practical or possible, Business Associate

shall notify Covered Entity of the conditions and reasons return of the protected health information is not practical or possible. Upon concurrence by Covered Entity that return is not practical, Business Associate shall:

- i. 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;
- ii. 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;
- iii. 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; and
- iv. 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 Section D of this Appendix.

(3) Business Associate shall obtain or ensure the destruction of protected health information created, received, or maintained by any subcontractors.

(4) Business Associate shall transmit the protected health information to another Business Associate of the Covered Entity at termination, upon receipt of a written request from the Covered Entity.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

F. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(c) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

Authorized Contract Representative (Print): Bonnie Kapp

Authorized Contract Representative (Sign): Bonnie Kapp
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