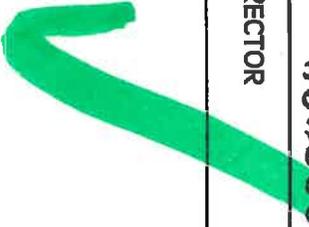


DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Myers</i>	DATE <i>4-6-09</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>106559</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Deps</i>	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____
	<input type="checkbox"/> FOIA DATE DUE _____
	<input checked="" type="checkbox"/> Necessary Action

APPROVALS <small>(Only when prepared for director's signature)</small>	APPROVE	* DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small>	COMMENT
1.			
2.			
3.			
4.			



South Carolina Department of
Alcohol and Other Drug Abuse Services

W. Lee Catoe
W. LEE CATOE
Director

MARK SANFORD
Governor

W. LEE CATOE
Director

April 3, 2009

RECEIVED

APR 06 2009

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Ms. Emma Forkner
Director
South Carolina Department
of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202

Dear Ms. Forkner:

The Department of Alcohol and Other Drug Abuse Services (DAODAS) has been working with the staff of the Department of Health and Human Services (DHHS) on the proposed Medicaid State Plan Amendment (SPA) since August 2008.

I believe that my staff has worked diligently to comply with the DHHS request to detail the impact of the SPA implementation on our agency and the substance abuse services delivered by our network of local providers. This includes a comprehensive survey of management information concerns, billing issues, training issues (since training will be crucial for 100% of the provider population), projected need and impact statements regarding policy and service delivery, and the administrative and financial impact of the SPA transition.

This work also includes the submission of a *Data Request for Behavioral Health Rehabilitation Services* for the Medicaid SPA as requested by the Milliman Actuary Agency, and more recently, my staff has been working with your Division of Behavioral Health on the Rehabilitation Services Overview to address any remaining issues as the SPA moves toward implementation.

Again, we support the DHHS effort to develop a more specific state plan for the delivery of behavioral health services. However, I must reiterate that neither DAODAS nor its local providers will be able to make all of the projected changes needed to comply with these systems issues by the proposed start date of July 1, 2009. In fact, and as we stated in our August 2008 submission, we project that at least a 21-month transitional period will be needed. In addition, the projected costs cannot be absorbed by DAODAS, considering the current state budget restraints.

I hope that this information will assist your department in convincing the Centers for Medicare and Medicaid Services to extend the implementation date for the South Carolina SPA on behavioral health services.

DAODAS

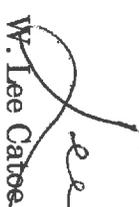
101 Executive Center Drive • Suite 215 • Columbia, South Carolina 29210
telephone (803) 896-5555 • fax (803) 896-5557 • www.daodas.state.sc.us

On another matter, I would like to arrange a meeting with you to further discuss contractual issues that our two agencies will face in fiscal year 2010, specifically the Medicaid Rehabilitative Services contract, as well as our Utilization Review effort.

Please have your assistant phone Lee Dutton, my Executive Assistant, at 896-1142 to schedule a meeting that is convenient for all concerned.

If you have any questions, please do not hesitate to contact me.

Sincerely,



W. Lee Carbo

Director

WLC/sld/jmm

On another matter, I would like to arrange a meeting with you to further discuss contractual issues that our two agencies will face in fiscal year 2010, specifically the Medicaid Rehabilitative Services contract, as well as our Utilization Review effort.

Please have your assistant phone Lee Dutton, my Executive Assistant, at 896-1142 to schedule a meeting that is convenient for all concerned.

If you have any questions, please do not hesitate to contact me.

Sincerely,


W. Lee Carbo
Director

WLC/sld/jmm

~~of
Fidelity
Dutton~~

~~Had: May 7 @ 10
May 14 @ 10~~

~~Left v mail~~

John Carr
FD No 10/1/09
per email

CONTRACT

BETWEEN

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

THE SOUTH CAROLINA DEPARTMENT OF
ALCOHOL AND OTHER DRUG ABUSE SERVICES

FOR THE FACILITATION OF

A PRIOR AUTHORIZATION AND UTILIZATION REVIEW PROCESS FOR
ALCOHOL AND OTHER DRUG ("AOD") SERVICES
PROVIDED THROUGH THE SOUTH CAROLINA MEDICAID PROGRAM

DATED AS OF

JULY 1, 2008

CONTRACTS SECTION

JUL 29 2008

RECEIVED

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**CONTRACT
BETWEEN**

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

**THE SOUTH CAROLINA DEPARTMENT OF
ALCOHOL AND OTHER DRUG ABUSE SERVICES**

**FOR THE FACILITATION OF A PRIOR AUTHORIZATION AND UTILIZATION
REVIEW PROCESS FOR ALCOHOL AND OTHER DRUG ("AOD") SERVICES
PROVIDED THROUGH THE SOUTH CAROLINA MEDICAID PROGRAM.**

This Contract is entered into as of the first day of July 2008, 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 the South Carolina Department of Alcohol and Other Drug Abuse Services, 101 Executive Center Drive, Suite 215, Columbia, South Carolina, 29210 hereinafter referred to as "SCDAODAS".

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

WHEREAS, the United States Department of Health and Human Services has allocated funds under Title XIX of the Social Security Act to SCDHHS for the provision of medical and rehabilitative services in accordance with the South Carolina State Plan for Medical Assistance to eligible Medicaid recipients who abuse or are dependent upon alcohol and/or other drugs ("AOD"); and

WHEREAS, SCDHHS desires to make the most effective and efficient use of the funds used for such services and believes that this goal can be best accomplished through the coordination of treatment services; and

WHEREAS, SCDAODAS was created by the South Carolina General Assembly for the specific purpose of addressing the problems caused by AOD abuse and dependence and has experience in establishing appropriate education and treatment interventions;

WHEREAS, SCDHHS and SCDAODAS agrees that the purpose of this contract is to promote services provided by Medicaid to persons who may be eligible for them.

WHEREAS, SCDHHS and SCDAODAS agrees that the services provided under this contract are necessary for the proper and efficient administration of the State Plan.

NOW, THEREFORE, SCDHHS and SCDADODAS, in consideration of the mutual promises, covenants, and stipulations set forth herein, enter into this Contract for coordinating AOD services provided through the South Carolina Medicaid Program by developing and implementing a prior authorization and utilization review process as follows:

ARTICLE I

CONTRACT PERIOD

This Contract shall take effect on July 1, 2008 and shall, unless sooner terminated in accordance with ARTICLE VIII, continue in full force and effect through June 30, 2009.

ARTICLE II

DEFINITION OF TERMS

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

AOD: Alcohol and Other Drug.

Approved Rehabilitative Program: A program operated by the County Alcohol and Drug Abuse Authority which provides services under the direct supervision of a qualified Alcohol and Drug Abuse Professional or an affiliated physician as appropriate.

CMS: Centers for Medicare and Medicaid Services.

County Alcohol and Other Drug Abuse Authority: An Alcohol and Other Drug Abuse Program that is governed by a Board, the members of which are appointed by the local county governing authority or the legislative delegation, and which provides comprehensive community alcohol and drug abuse services to eligible residents of a geographic service area designated by SCDADODAS.

CPT-4: Listing of physicians' current procedural terminology.

SCDAODAS: South Carolina Department of Alcohol and Other Drug Abuse Services.

DWAFS: Department of Women and Family Services.

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

GAO: General Accounting Office.

HIPAA: Health Insurance Portability and Accountability Act.

ICD-9 Diagnosis Codes: Listing of International classification of diseases.

Medicaid Alcohol and Drug Rehabilitation Services Manual: The manual (as amended) establishes Medicaid policies and procedures that govern the provisions for the delivery of community services and published by SCDHHS.

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

Policies: The general principles by which SCDHHS is guided in its management of the Title XIX program, 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 recipients as provided for in the South Carolina State Plan for Medical Assistance and SCDHHS regulations.

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

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

SCDHHS: South Carolina Department of Health and Human Services

SCDHHS Appeal Regulations: Regulations promulgated in accordance with the S.C. Code Ann. §44-6-90 at S.C. Code Regs. 126-150 et seq. and S.C. Code Ann. §§1-23-310 et seq. (1976, as amended).

South Carolina State Plan for Medical Assistance: A plan, approved by the Secretary of USDHHS, which complies with 42 U.S.C.A. Section 1396a, and provides for the methodology of furnishing services to recipients pursuant to Title XIX.

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

USDHHS: United States Department of Health and Human Services.

Utilization Review: Action to determine if generally accepted guidelines for service utilization and duration are being practiced.

ARTICLE III

SCOPE OF SERVICES

A. Purpose

SCDHHS purpose in entering into this Contract is to improve the ability of the South Carolina Medicaid Program to provide quality AOD services to eligible recipients, increase those recipients' access to a broader range of "levels of care," ensure accountability by the providers of AOD services, and enhance the coordination of AOD services.

B. Key Elements

In order to accomplish the purposes of the South Carolina Medicaid Program stated above, SCDHHS is entering into this Contract with SCDAODAS in order to implement the following key elements:

1. Use of standardized patient placement criteria;
2. Pre-certification (i.e., prior authorization) of Medicaid-sponsored AOD services;
3. Comprehensive utilization review of Medicaid-sponsored AOD services; and
4. Evaluation of treatment outcomes.

C. Expected Benefits

By implementing the measures contained in this Contract, SCDHHS anticipates deriving the following benefits for the South Carolina Medicaid Program with respect to AOD services:

1. Increased provider accountability for client outcomes;
2. Expanded capability to track and monitor progress in individual cases;
3. Improved utilization of the most appropriate level of care;
4. Maximized cost efficiency in the service delivery system; and
5. Improved outcome measures.

ARTICLE IV

SCDAODAS RESPONSIBILITIES

- A. Prior Authorization (PA) Process shall be implemented as specified in the SCDADODAS utilization review (UR)/prior authorization (PA) management plan as amended (see Appendix A).
- B. Utilization Review (UR) Process shall be implemented as specified in the SCDADODAS UR/PA management plan as amended (see Appendix A).
- C. Administrative Activities
 1. Notifications to providers

SCDAODAS shall maintain and furnish to Medicaid-enrolled AOD providers appropriate and up-to-date informational materials to inform providers about the requirements, policies, and procedures of the prior authorization and utilization review activities governed by this Contract. Relevant modifications to program policies or procedures must be communicated to the providers on a timely basis.
 2. Appeals

SCDAODAS must implement a process to adjudicate recipient and provider appeals as specified in the UR/PA management plan and as further specified by applicable SCDHHS Appeal Regulations within the Code of Laws of South Carolina.
 3. Staffing levels and staff availability

DOADAS shall employ adequate staff as necessary to provide Utilization Review/Prior Authorization activities described in this Contract.

The prior authorization process/staff must be available/accessible to affected AOD providers/hospitals during business hours Monday - Friday, 8:00 am - 6:00 pm. The Utilization Review staff must be on call 24 hours a day, seven days a week.

4. Reporting
SCDAODAS shall report on UR/PA activities as specified in the management plan (Appendix A).
5. Quality Assurance
SCDAODAS shall conduct Quality Assurance reviews of Medicaid related paid claims which do not match authorized AOD services.
SCDAODAS will forward to SCDHHS a monthly list of identified Medicaid related claims paid without authorization.
6. Access to Data
SCDHHS shall have access to any and all data, records, and reports (administrative or clinical) associated with the UR/PA activities as specified in this Contract and the UR/PA management plan.
7. Safeguarding Confidentiality

Federal regulations govern the information which must be protected when disclosing medical information from the records of alcohol and drug abuse cases and the circumstances under which this information may be disclosed in accordance with 42 CFR Part 2, Sub-parts A-E, (2004, as amended).

ARTICLE V

SCDHHS RESPONSIBILITIES

- A. SCDAODAS as Agent for PA and UR
SCDHHS hereby designates SCDAODAS to act as agent for SCDHHS in the operation of a statewide system of prior authorization and utilization review for AOD services provided through the South Carolina Medicaid Program.
- B. Provision of Information
SCDHHS will cooperate with SCDAODAS in furnishing information concerning Medicaid recipients, providers, and services as necessary to allow SCDAODAS to accomplish its responsibilities under this Contract.
- C. Compliance and Approval
Because SCDHHS is the single state agency designated to administer the South Carolina Medicaid Program, the final determination of the appropriateness of any SCDAODAS prior authorization or utilization review policies, procedures, or activities with respect to the Medicaid Program's requirements shall rest solely

with SCDHHS, and SCDHHS shall have the right to require the modification or elimination of any elements that it deems to be in conflict with such requirements.

In order to monitor compliance, SCDHHS shall have access to all SCDAODAS records associated with the prior authorization and/or utilization review, or other activities that governed by this Contract. SCDHHS shall also be afforded an adequate opportunity to review and approve/disapprove relevant SCDAODAS policies and procedures prior to implementation.

D. Technical Assistance

SCDHHS shall provide guidance on issues concerning compliance of the SCDAODAS prior authorization and utilization review policies, procedures, and activities with federal and state requirements for the Medicaid Program, and shall furnish consultation, training and technical assistance to SCDAODAS to ensure compliance with applicable requirements.

E. Funding

Funding for the activities governed by this Contract shall be provided in accordance with the budgetary information contained in Appendix B, subject to any conditions or limitations specified in this Contract. SCDAODAS shall submit monthly invoices for expenditures associated with this Contract.

ARTICLE VI

CONDITIONS FOR REIMBURSEMENT BY SCDHHS

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

A. Allowable Reimbursement

SCDAODAS shall only be reimbursed for Medicaid services provided directly to Medicaid eligible recipients under this contract. SCDAODAS shall maintain detailed documentation and be able to provide such documentation, upon request by SCDHHS or its designee, to justify the costs billed by the Contractor.

1. Administrative Costs

If SCDAODAS is providing services which benefit the general population as well as Medicaid eligibles under this contract, SCDAODAS shall provide documentation detailing the percentage of Medicaid eligibles served and shall only bill SCDHHS for that percentage of cost directly related to serving Medicaid eligible recipients. Allowable administrative costs must be directly related to the Medicaid State Plan or waiver services and not just related to coordinating or accessing non-Medicaid services, and must not include operating costs of an agency whose purpose is other than the administration of the Medicaid program. SCDAODAS shall have an approved cost allocation plan that is supported by a system with the capability to isolate costs directly related to Medicaid. Administrative costs must be in compliance with the requirements of applicable OMB Circulars.

B. Method of Reimbursement

SCDHHS agrees to reimburse SCDAODAS for services provided under this contract based on actual documented cost. SCDAODAS shall be responsible for all costs that are not in accordance with SCDHHS policies, procedures, and contract requirements.

SCDHHS shall reimburse SCDAODAS in an amount not to exceed the total dollar amount, which incorporated in Appendix B. Under no circumstances shall SCDAODAS be reimbursed for an amount exceeding Two Hundred Seventy-one Thousand, Five Hundred Dollars (\$271,500).

Invoices must be itemized and reference the contract number. Monthly invoices must be submitted to:

Bureau of Fiscal Affairs
South Carolina Department of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29203-8206

All June monthly or quarterly billings must be submitted by July 5th for fiscal month 13 processing either as actual expenditures or best estimate. All final billings must be received within ninety (90) days of the end of the contract period. Any invoices received after this period will not be paid without the approval of the SCDHHS Deputy Director for Medical Support Services. The provider must submit all claims within 12 months of the date of service.

C. Cost Report

In lieu of filing an annual cost report, SCDAODAS shall incorporate the following certification statement in each of its monthly reimbursement requests:

I do solemnly swear (or affirm) that I have examined the information contained in this request or report. That all information has been prepared from the books and records of SCDAODAS. That the aforesaid information is true and correct to the best of my knowledge and belief; and, that no other request for reimbursement from other federal and/or state funds has been made nor has any other reimbursement been received, applied for, nor will they be applied for, for the services herein described. That SCDAODAS has on file the proper documentation to support this request for reimbursement. And, that the costs represented are true costs incurred during the period of this request.

This statement must be signed and dated by a finance person dually authorized by SCDAODAS.

D. Public Funds as the State Share of Federal Financial Participation (if applicable)

To be considered as the State's share in claiming FFP, public funds must meet the conditions specified in accordance with Federal Regulation 42 CFR 433.51 (2004), as amended.

E. Donations (if applicable)

SCDAODAS agrees to comply with 42 CFR 433 Subpart B, (2004), as amended, regarding any and all donations made by SCDAODAS pursuant to this contract.

ARTICLE VII

RECORDS AND AUDITS

A. Accuracy of Data and Reports

The SCDAODAS agrees that all statements, reports and claims, financial and otherwise, shall be certified as true, accurate, and complete, and the SCDAODAS shall not submit for payment purposes those claims, 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

SCDAODAS 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 SCDAODAS further agrees to retain all financial and programmatic records, supporting documents, statistical records and other records of recipients relating to the delivery of care or service under this contract, and as further required by SCDHHS, for a period of three (3) years after last payment made under this contract (including any amendments and/or extensions to the contract). If any litigation, claim, or other actions involving the records have been initiated prior to the expiration of the three (3) 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 three (3) 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 Office of the Attorney General, 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 the contract) and for a period of three (3) years after last payment under this contract, the SCDAODAS 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, USDHHS, GAO, the State Auditor's Office, the Office of the Attorney General, and/or the designees of any of the above shall have the right to audit, review, examine and make copies, excerpts or transcripts from all records, contact and conduct private interviews with the SCDAODAS's recipients 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 three (3) 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 three (3) 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 SCDAODAS shall be furnished a written notice containing the adjustment for each exception and a statement of the amount disallowed for each exception. Either 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 SCDAODAS by certified mail. Audit disallowances shall be accepted as final unless appealed within thirty (30) calendar days after mailing of notice of disallowance in accordance with SCDHHS appeals procedures. Payment shall be made upon notice of disallowance regardless of the filing of an appeal. Should SCDHHS, through negotiations with State or Federal auditors, reduce the amount of the disallowance, then any such amount previously paid by SCDAODAS will be reimbursed to SCDAODAS upon receipt of the funds by SCDHHS.

2. Disallowances - Appeals

In the event the SCDAODAS 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 (1976, as amended) 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.

In the event the SCDAODAS fails to file an appeal within thirty (30) calendar days of the challenged agency action or decision, any issue which could have been raised in such an appeal shall be final and not subject to challenge by SCDAODAS in any other administrative or judicial proceeding.

3. Disallowed Sums, Set-off

Any provision for appeal notwithstanding, the SCDAODAS and SCDHHS agree that, should any audit(s) result in disallowance to the SCDAODAS all funds due SCDHHS are payable on notice. 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 SCDAODAS under any previous contract and/or this or future contracts. In the event there is no previous

contractual relationship between the SCDADODAS and SCDHHS, the disallowance shall be due immediately upon notice.

ARTICLE VIII

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 (1976, as amended), and 45 CFR Part 82, (2006, as amended), this contract is subject to immediate termination, suspension of payment, or both if the SCDADODAS 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 and 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 and terminated by SCDHHS at any time within the contract period if the SCDADODAS, 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 SCDADODAS has failed to comply with the maintenance and inspection of records requirements of any previous contract between the parties.

E. Contravention for Collection of Payments (If applicable.)

This contract may be canceled and terminated by SCDHHS at any time should the SCDADODAS fail to meet the specific conditions for collection of payments in accordance with Article V, of this contract.

F. Termination for Loss of Licensure or Certification (If applicable.)

In the event that the SCDADODAS 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 SCDADODAS 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 by Either Party

Either party may terminate this contract upon providing the other party with thirty (30) days written notice of termination. Such termination shall be sent by Certified Mail, Return Receipt Requested, and be effective thirty (30) days after the date of receipt.

H. Notice of Termination

In the event of any termination of the 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 terminated pursuant to Sections C, D and/or G of this Article, termination shall be effective thirty (30) days after the date of receipt unless otherwise provided by law. If terminated pursuant to Sections A, B or E of this Article, termination shall be effective upon receipt of such notice.

ARTICLE IX 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) days of receipt of written notice of SCDHHS's action or decision which forms the basis of the appeal. Administrative appeals shall be in accordance with SCDHHS's regulation R. 126-150, et seq., Code of Laws of South Carolina (1976), Volume 27, as amended, and in accordance with the Administrative Procedures Act, §§1-23-310, et seq., Code of Laws of South Carolina (1976), as amended. Judicial review of any final SCDHHS administrative decisions shall be in accordance with § 1-23-380, Code of Laws of South Carolina (1976), as amended.

ARTICLE X

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 SCDAODAS 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 (U.S.C. 7401, et seq.).
2. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto, 45 CFR Part 80 (2004, as amended). In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d

et. seq.) and its implementing regulation at 45 CFR Part 80, SCDAODAS 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 (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 handicap in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto (45 CFR Part 84, 2004, 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, P.E. 97-35, which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.
7. Americans with Disabilities Act, (42 U.S.C. Sections 12101 et seq.), and regulations issued pursuant thereto, 49 CFR Parts 37 and 38 (2004, as amended).
8. Drug Free Workplace Acts, S.C. Code Ann. §§44-107-10 et seq. (1976, as amended), and the Federal Drug Free Workplace Act of 1988 as set forth in 45 CFR Part 82 (2006, as amended).

B. Employees of SCDAODAS

No services required to be provided under this contract shall be provided by anyone other than the SCDAODAS or SCDAODAS 's subcontractor (with the approval of SCDHHS).

C. Information on Persons Convicted of Crimes

The SCDAODAS 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), or the Social Services Block Grant program as set forth in 42 CFR 455.106 (2004, as amended). Failure to comply with this requirement may lead to termination of this contract.

D. Safeguarding Information

The SCDAODAS shall safeguard the use and disclosure of information concerning applicants for or recipients of Title XIX services in accordance with 42 CFR Part 431, Subpart F, (2004, as amended), SCDHHS's regulations R. 126 - 170, et seq., Code of Laws of South Carolina (1976), Volume 27, as amended, 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.

E. 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".

F. 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 Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract. This restriction is applicable to all subcontractors.

G. Reporting of Fraudulent Activity

If at any time during the term of this contract, the SCDAODAS becomes aware of or has reason to believe by whatever means that, under this or any other program administered by SCDHHS, a recipient of or applicant for services, an employee of the SCDAODAS or SCDHHS, and/or subcontractor or its employees, have 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 Provider directly to SCDHHS.

H. 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 U or this Article.

I. Governing Law

It is mutually understood and agreed that this contract shall be governed by the laws of the State of South Carolina and federal laws as they pertain to the performance of services provided under this contract.

J. 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.

K. Non-Waiver of Breach

The failure of SCDHHS at any time to require performance by the SCDADODAS of any provision of this contract or the continued payment of the SCDADODAS 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.

L. Non-Waiver of Rights

SCDHHS and the SCDADODAS hereby agree that the execution 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 Contract between the parties. Any such claims, rights, or obligations are hereby preserved, protected, and reserved.

M. Non-Assignability

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

N. Venue of Actions

Any and all suits or actions for the enforcement of the obligations of this contract and for any and every breach thereof, or for the review of a SCDHHS final agency decision with respect to this contract or audit disallowances, and any judicial review sought thereon and brought pursuant to the S.C. Code Ann. §1-23-380 (1976, as amended) shall be instituted and maintained in any court of competent jurisdiction in the County of Richland, State of South Carolina.

O. Place of Suit

Any action at law, suit in equity, or judicial proceeding for the enforcement of this contract or any provision thereof shall be instituted only in the courts of the State of South Carolina.

P. Amendment

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

Q. 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 SCDADODAS, 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 SCDADODAS 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.

R. Extension

At 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 for a period not to exceed four one year periods; provided, however, that any rate adjustment(s) shall be negotiated and set forth in writing and signed by both parties pursuant to Section U of this Article.

S. Subcontracts

Unless otherwise expressly authorized in writing, all services to be provided hereunder shall be provided by the SCDADODAS directly and no subcontract for the provision of such services shall be entered into by the SCDADODAS without the written approval of SCDHHS. Any subcontracts must be submitted to SCDHHS for written approval before reimbursement shall be made for services rendered thereunder.

T. 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.

U. 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 SCDADODAS shall take necessary steps to insure or protect its recipients, itself, and its personnel. The SCDADODAS agrees to comply with all applicable local, state, and federal occupational and safety acts, rules, and regulations.

V. Procurement Code

When applicable, the SCDADODAS must comply with the terms and conditions of the South Carolina Consolidated Procurement Code in the acquisition of equipment and supplies and in all subcontracts.

W. Titles

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

X. 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.

Y. Equipment (If applicable)

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 SCDADODAS 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.

Z. HIPAA Business Associate

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

AA. Release of Reports

The SCDADODAS understands and agrees that all reports and assessments prepared by SCDADODAS pursuant to this contract, including drafts, must be submitted to SCDHHS for review and approval by SCDHHS. The SCDADODAS 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.

BB. 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 including, but not limited to, diskettes, CDs, DVDs, USB flash drives, laptops, PDAs, Blackberrys, cell phones, portable audio/video devices (such as iPods, and MP3 and MP4 players), and personal organizers. Portable devices that perform computing, data manipulation or data transmission are called intelligent portable devices.

IN WITNESS WHEREOF, SCDHHS and SCDADODAS, by their authorized agents, have executed this Contract as of the first day of July 2008.

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

"SCDHHS"

SOUTH CAROLINA
DEPARTMENT OF ALCOHOL AND
OTHER DRUG ABUSE SERVICES
"SCDAODAS"

BY: Emma Forkner
Emma Forkner
Director

BY: W. Lee Catloe
W. Lee Catloe
Director

W. Lee Catloe
Print Name

WITNESSES:

Sharon Stumler
Shondalyn Kelly

WITNESSES:

Erinnett Eddy
Candlyn W. Chittwood

APPENDIX A

DAODAS UTILIZATION REVIEW/PRIOR AUTHORIZATION MANAGEMENT PLAN

On July 1, 1997, the South Carolina Department of Health and Human Services (Contract) and the South Carolina Department of Alcohol and Other Drug Abuse Services (DAODAS) implemented a state wide system to coordinate all alcohol and other drug (AOD) treatment services that are critical to serving Medicaid recipients with alcohol or drug related problems.

AOD abuse treatment services rendered by Medicaid enrolled AOD providers and inpatient hospitals (for Diagnostic Related Groups 433; and 521-523) will require prior authorization from DAODAS. Prior Authorization is the process of obtaining prior approval as to the appropriateness of a service. In addition to inpatient hospital services requiring prior authorization, the Severity of Illness/Intensity of Service (SIIS) criteria will be revised. The SIIS criteria are used by Medicaid to ensure that inpatient hospital services are medically appropriate.

To receive reimbursement, specific AOD services/codes must be authorized through the prior authorization process. The specific AOD services/codes rendered by Medicaid enrolled AOD providers which require prior authorization are mutually agreed to by SCDHHS and DAODAS as defined in the Medicaid Alcohol and Drug Rehabilitation Service Manual (as amended) which is hereby incorporated by reference. Inpatient hospital services (for Diagnostic Related Groups 433; and 521-523) must complete the prior authorization process.

A. Prior Authorization Process

DAODAS will continue to provide a PA/UR process as outlined in this section.

1. Providers are responsible for obtaining prior authorization for services they will provide.
2. To obtain prior authorization for services, providers should call 1-800-374-1390 or (803) 896-5988 for calls within the Columbia area. Phone coverage will be provided 24 hours a day, seven days per week.
3. The Utilization Review Case Manager (URCM) of DAODAS will screen the medical/clinical information provided, using appropriate American Society of Addiction Medicine Patient Placement Criteria (ASAM-PPC-2).
4. If criteria are met, the services will be approved. Prior Authorization information will be maintained by DAODAS, and is retrievable by DHHS or DAODAS. To receive reimbursement, the provider should submit a claim to MCCS at the following address:

Medicaid Claims Receipt
Post Office Box 1412

Columbia, South Carolina 29202-1412

5. If the reviewer disagrees with the treatment option requested by the provider, the reviewer and provider will discuss the request in a collaborative manner using appropriate resources in an effort to establish the most appropriate treatment option.

6. If the provider is still not satisfied, the provider can appeal the decision.

B. Appeals

There are two types of DAODAS appeals - clinical and medical.

1. The first step in a clinical appeal will be reviewed by the DAODAS' Utilization Review Coordinator. If the provider is still not satisfied, the provider can request an external appeal. The first step in a medical appeal will be reviewed by the DAODAS Medical Director. If the provider is still not satisfied, the provider can request an external appeal.

2. Requests for a DAODAS external appeal should be made in writing within ~~thirty (30) days of an adverse decision to:~~

Director
South Carolina Department of
Alcohol and Other Drug Abuse Services
101 Executive Center Drive, Saluda Building, Suite 215
Columbia, South Carolina 29210-8413

1. Carolina Medical Review (Peer Review Organization) will process DAODAS' external appeals. Providers will receive written notification of decisions.

3. If the provider receives approval on appeal, the DAODAS URCM will forward authorization of services to SCDHHS, MCCS for entry into the appropriate recipient file. To receive reimbursement, the provider should submit a claim to MCCS.

4. If an external appeal is denied, the provider may request a reconsideration of the denial decision by submitting a written request to Contract which outlines the rationale for the request. A reconsideration may be requested whether the case is pre-procedure or post-procedure reviewed. Written request should be sent to:

Medicaid Reconsideration (AOD)
Department of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202-8206

5. If a case is denied on reconsideration, that determination is considered to be a binding, final agency action. (EXCEPTION: Under the limited circumstances described below for "Recipient Appeals," a further appeal may be pursued by the recipient.)
6. The provider must notify the recipient in a timely manner of all decisions rendered during the appeals process.

A. Recipient Appeals

The provider must inform a Medicaid recipient of his/her right to appeal any decision related to the prior authorization process. The recipient must follow the procedure outlined in the Medicaid Alcohol and Drug Rehabilitation Services Manual.

In addition, if a provider appeals a decision and the recipient is dissatisfied with the final agency action in that appeal, then the recipient (or his/her designated representative) may request a fair hearing IF (1) the amount in controversy exceeds \$200; and (2) the request for a fair hearing is submitted, in writing, within sixty(60) days from the date of the final agency action in the provider's appeal. Requests for fair hearings under these circumstances must be submitted to the following address:

Appeals and Hearings
South Carolina Department of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202-8206

D. Special Conditions

1. DAODAS will abide by the following special Physicians Enhanced Program (PEP) conditions throughout the Contract period.
Medicaid recipients who are PEP members, and need inpatient AOD hospital services, must have prior authorization from their PEP primary care provider (PCP). The Local County AOD Provider should coordinate outpatient AOD services with the PEP provider. However, authorization of services other than AOD inpatient (Level IV) hospital care must still be obtained by contacting Utilization Review at DAODAS.
2. Health Maintenance Organization (HMO) Program.
DOADAS will work with HMO's as defined within the HMO program.

E. Reporting

1. DAODAS shall provide copies to SCDHHS of any reports generated to achieve the following:

Purpose:

- To provide quality AOD care
- To increase accessibility to a broader range of "levels of care"
- To ensure accountability

Key Elements:

- Standardized Patient Placement Criteria
- Pre-certification of all Medicaid sponsored AOD services
- Utilization Review
- Outcome Evaluation

Benefits:

- Increase the accountability for client outcomes
- Expand the capability to track and monitor individual case progress
- Improve utilization of the most appropriate level of care
- Maximize cost efficiency of service delivery systems
- Improve outcomes measures

Services requiring prior authorization:

- Inpatient Hospital Services (Diagnostic Related Groups 433: and 521-523)
- AOD services/codes mutually agreed to by SCDHHS and DAODAS as defined in the Medicaid Alcohol and Drug Rehabilitation Service Manual (as amended)

2. DAODAS will perform a reconciliation of paid claims monthly utilizing the claims data provided by SCDHHS. DAODAS will supply monthly reports to Medicaid providers indicating errors to allow the providers to make any payment adjustments necessary.

F. Utilization Review/Prior Authorization Staff

DAODAS shall employ adequate staff as necessary to provide Utilization Review/Prior Authorization activities described in this Contract.

The prior authorization process/staff must be available/accessible to affected AOD providers/hospitals during business hours Monday - Friday, 8:00 am - 6:00 pm. The Utilization Review staff must be on call 24 hours a day, seven days a week.

APPENDIX B
FY 2008 BUDGET

AOD PRIOR AUTHORIZATION AND UTILIZATION REVIEW
JULY 1, 2008 - JUNE 30, 2009

TOTAL	TOTAL	TOTAL
STATE (SCDHHS)	FEDERAL	TOTAL
\$ 135,750	\$ 135,750	\$ 271,500

These are estimates for budget purposes only.



APPENDIX C

HIPAA BUSINESS ASSOCIATE

A. Purpose:

The South Carolina Department of Health and Human Services (COVERED ENTITY) and the SCDAODAS (AGENCY) are both governmental entities and will protect the privacy of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and other applicable laws, in performing their respective governmental functions, activities, or services pursuant to their Contract. It is understood that both parties may be Covered Entities as defined under HIPAA. It is further agreed that in addition to the Contract, HIPAA may otherwise permit the parties to share Protected Health Information (e.g. for Treatment, Payment, etc.). No term or obligation of a party under this Appendix is applicable if in conflict with the statutory obligations of the respective party.

B. Definitions (other terms used but not defined shall have the same meaning as in the HIPAA Privacy Rule)

1. Individual means the same as "individual" in 45 CFR § 164.501 and includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
2. Privacy Rule means the HIPAA Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 160 and Part 164, Subparts A and E).
3. Protected Health Information (PHI) means the same as the term protected health information in 45 CFR § 164.501, limited to information received by AGENCY from COVERED ENTITY.
4. Required By Law means the same as "required by law" in 45 CFR § 164.501, and other law applicable to the PHI disclosed pursuant to the Contract.
5. Secretary means the Secretary of the Department of Health and Human Services or designee.
6. Security Standards shall mean the Security Standards at 45 C.F.R. Part 160 and Part 164, as may be amended.
7. Electronic PHI shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103.
8. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system or its current meaning under 45 C.F.R. § 164.304.

C. AGENCY Agrees to:

1. Not use or disclose PHI other than as permitted or required by the Contract, as Required By Law, or is otherwise necessary for either or both of the parties to comply with its respective statutory obligations.
2. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the Contract.
3. Mitigate to the extent practicable, any harmful effect known to AGENCY, if it uses/disclosures PHI in violation of the Contract.
4. Immediately report to COVERED ENTITY any breaches in privacy or security that compromise PHI. Security and/or privacy breaches should be reported to:

South Carolina Department of Health and Human Services
Office of General Counsel
Post Office Box 8206
Columbia, South Carolina 29202-8206
Phone: (803) 898-2795
Fax: (803) 255-8210

~~The Report should include a detailed description of the breach and any measures that have been taken by the BUSINESS ASSOCIATE to mitigate the breach.~~

SCDHHS may impose a fine of \$300 per day from the date that the BUSINESS ASSOCIATE knew or should have known of any breach in privacy or security that compromises PHI to the date that SCDHHS becomes aware of the breach.

SCDHHS may impose a fine of up to \$25,000 for any negligent breach in privacy or security that compromises PHI.

5. Ensure that any agent/subcontractor to whom it provides PHI, agrees to the same AGENCY restrictions/conditions herein.
6. If AGENCY has PHI in a designated record: (1) provide access at COVERED ENTITY request to PHI to COVERED ENTITY or, as directed by COVERED ENTITY, to an individual in order to meet the requirements under 45 CFR § 164.52; (2) make any amendment(s) to PHI in a Designated Record Set that COVERED ENTITY directs or agrees to pursuant to 45 CFR § 164.526.
7. Make available to COVERED ENTITY, its books, records and policies/procedures relating to use/disclosure of PHI received from AGENCY, or at COVERED ENTITY's request, to the Secretary, in a time and manner designated by the COVERED ENTITY or the Secretary, for purposes of the Secretary determining COVERED ENTITY's compliance with the Privacy Rule.
8. Document AGENCY disclosures of PHI other than disclosures back to COVERED ENTITY, and related information as would be required for COVERED ENTITY to respond to a request for an accounting of PHI disclosures in accordance with 45 CFR § 164.528.

9. Provide to COVERED ENTITY or an individual, as designated by COVERED ENTITY, information collected in accordance with Section C.8 above, to permit COVERED ENTITY to respond to a request for an accounting in accordance with 45 CFR § 164.528.

10. Encrypt all PHI stored on portable devices. Portable devices include all transportable devices that perform computing or data storage, manipulation or transmission including, but not limited to, diskettes, CDs, DVDs, USB flash drives, laptops, PDAs, Blackberrys, cell phones, portable audio/video devices (such as iPODs, and MP3 and MP4 players), and personal organizers. Portable devices that perform computing, data manipulation or data transmission are called intelligent portable devices.

11. Otherwise, not re-disclose COVERED ENTITY PHI except as permitted by applicable law.

D. Permitted Uses and Disclosures by AGENCY:

1. Except as limited in the Contract, AGENCY may use PHI to perform its governmental functions, activities, or services, provided that such use would not violate the Privacy Rule if done by COVERED ENTITY or its privacy practices. Unless otherwise permitted in the Contract or Required by Law, AGENCY may not disclose/re-disclose PHI except to COVERED ENTITY.

2. Except as limited in the Contract, AGENCY may use/disclose PHI for internal management and administration of the AGENCY or to carry out the legal responsibilities of the AGENCY, as needed for AGENCY to provide its services under the Contract.

3. Except as limited in the Contract, AGENCY may use PHI to provide Data Aggregation services to COVERED ENTITY as permitted by 42 CFR §164.504(e)(2)(i)(B).

4. AGENCY may use PHI to report violations to appropriate Federal/State authorities consistent with § 164.502(j)(1).

E. COVERED ENTITY Agrees To:

1. Notify AGENCY of any limitation(s) in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect AGENCY's use or disclosure of PHI.

2. Notify AGENCY of any changes in, or revocation of, permission by individual to use or disclose PHI, to the extent that such changes may affect AGENCY's use or disclosure of PHI.

3. Notify AGENCY of any restriction to the use or disclosure of PHI that COVERED ENTITY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect AGENCY's use or disclosure of PHI.

4. Not request AGENCY to use/disclose PHI in any manner not permitted by the Privacy Rule if done by COVERED ENTITY.

F. Term and Termination

1. The Terms of this Appendix shall be effective upon signing of the Contract and shall terminate when all of the PHI provided by COVERED ENTITY to AGENCY, or created or received by AGENCY on behalf of COVERED ENTITY, is returned to COVERED ENTITY, or, if it is infeasible to return PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
2. Upon its knowledge of a material breach by AGENCY, COVERED ENTITY shall either:
 - a. Allow AGENCY to cure the breach or end the violation and terminate the Contract if AGENCY does not cure the breach or end the violation within the time specified by COVERED ENTITY;
 - b. Immediately terminate the Contract if AGENCY has breached a material term of this Appendix and cure is not possible; or
 - c. If neither termination nor cure is feasible, COVERED ENTITY shall report the violation to the Secretary.

3. Effect of Termination,

- a. Except as provided in paragraph (2) below, upon termination of the Contract, AGENCY shall return all PHI received from COVERED ENTITY, or created or received by AGENCY on behalf of COVERED ENTITY. This provision applies to PHI in the possession of AGENCY subcontractors/agents. AGENCY shall retain no copies of the PHI.
- b. If AGENCY determines that returning the PHI is infeasible, AGENCY shall notify COVERED ENTITY of the conditions that make return infeasible. Upon mutual agreement that PHI return is infeasible, AGENCY shall extend the protections of this Appendix to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return infeasible, for so long as AGENCY maintains such PHI.

G. Security Compliance

This Section shall be effective on the applicable enforcement date of the Security Standards. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity, and will require that its agents and subcontractors to whom it provides such information do the same. Further, Business Associate agrees to comply with Covered Entity's security policies and procedures. Business Associate also agrees to provide Covered Entity with access to and information concerning Business Associate's security and confidentiality policies, processes, and practices that affect Electronic PHI provided to or created by Business

Associate pursuant to the Agreement upon reasonable request of the Covered Entity. Covered Entity shall determine if Business Associate's security and confidentiality practices, policies, and processes comply with HIPAA and all regulations promulgated under HIPAA. Additionally, Business Associate will immediately report to Covered Entity any Security Incident of which it becomes aware.

H. Miscellaneous

1. A reference to the Privacy Rule means the section as in effect or as amended.
2. The Parties agree to amend this Appendix as may be needed to comply with the requirements of HIPAA and other applicable law.
3. The respective rights and obligations of AGENCY under Section F.3 shall survive the termination of the Contract.
4. Any ambiguity in this Appendix shall be resolved to permit the parties to comply with HIPAA and other applicable law.

