

**South Carolina Department of Health and Environmental Control  
HOPWA FY 2014 Grant Year**

**Request for Applications**

**I. SCOPE OF GRANT PROPOSAL**

It is the intent of the State of South Carolina, South Carolina Department of Health and Environmental Control (DHEC) to accept grant applications to serve as a “Project Sponsor” for funds administered by DHEC for the State of South Carolina from the U.S. Department of Housing and Urban Development (HUD) “Housing Opportunities for Persons with AIDS (HOPWA) Program to three (3) service areas of the state. Project Sponsors will provide emergency housing assistance and supportive services for persons with HIV disease who are homeless or who are at risk of becoming homeless. The three (3) service areas are: (1) Anderson and Oconee counties; (2) Cherokee, Spartanburg, and Union counties; and (3) Newberry County.

**II. SPECIFICATIONS**

The Catalog of Federal Domestic Assistance program number for HOPWA is 14.241. Per 24 CFR part 574.300, these funds are designed to provide emergency housing assistance, defined as short-term rent, mortgage and utility payments, and supportive services for persons living with HIV disease who are homeless or who are at risk of becoming homeless. The Project Sponsor shall use HOPWA Program funding administered by DHEC for the State of South Carolina to provide the following services to eligible persons: emergency housing assistance, defined as short-term rent, mortgage and utility payments and supportive services for persons with HIV disease who are homeless or who are at risk of becoming homeless in accordance with the requirements of applicable HUD regulations (24 CFR part 574 – Attachment 1). Project Sponsors must provide services in the same or substantially similar manner as stated in the State of South Carolina Consolidated Plan for Housing and Community Development: 2013 Action Plan submitted to HUD (Attachment 2) and follow the SC Service Provider HOPWA Guidelines (Attachment 3 and posted on the SCDHEC HOPWA Technical Assistance website at <http://www.dhec.sc.gov/health/disease/stdhiv/docs/2007guidelines.031913.pdf>.)

**A. Background**

The Federal U.S. Department of Housing and Urban Development (HUD) “Housing Opportunities for Persons with AIDS” (HOPWA) Program funding for the State of South Carolina is administered by the SC Department of Health and Environmental Control (DHEC), STD/HIV Division. DHEC distributes the funds to regional Ryan White Care Providers and/or eligible non-profit organizations that assist persons living with HIV/AIDS. The state HOPWA program serves all areas of South Carolina with the exception of the Columbia, Greenville and Charleston Eligible Metropolitan Area (EMA) which receive HOPWA funding directly from HUD and Aiken and York Counties which are part of neighboring states’ EMAs.

**B. Purpose**

Federal funds available through this request for application are to be used for providing the following services to eligible persons: emergency housing assistance, defined as short-term rent, mortgage and utility payments, permanent housing placement and supportive services for persons with HIV disease who are homeless or who are at risk of becoming homeless.

**C. Distribution**

Through this Request for Applications, DHEC will make available FY 2014 funds (April 1, 2014 to March 31, 2015) to fund one (1) Project Sponsor to provide these services in each of (3) service areas in the state. One (1) service area includes Anderson and Oconee Counties. One (1) service area includes Cherokee, Spartanburg, and Union Counties. One (1) service area includes Newberry County. The project sponsor selected to serve Cherokee, Spartanburg, and Union counties must be located in the service area in which they are requesting funding and make services available to HIV+ residents in all of the counties in the multi-county area. The project sponsor selected to serve Anderson and Oconee Counties and Newberry County must have experience serving clients from those counties and have established referral processes for receiving client referrals from those counties.

FUNDING FOR THE PROJECT SPONSOR IS DEPENDENT UPON RECEIPT BY DHEC OF FEDERAL FUNDS.

**III. SCOPE OF WORK**

**A. Specific Tasks**

The HOPWA Project Sponsor awarded under this grant application shall:

1. Submit a projected budget using the form found in Attachment 4 and a budget narrative to DHEC at the beginning of the grant year. If a budget revision exceeds 10%, the Project Sponsor must make a written request to DHEC for approval of the revision. The budget revision will not be allowed until the Project Sponsor receives written approval from DHEC.
2. Agree to operate the program services in accordance with the requirements of applicable HUD regulations (24 CFR part 574 – Attachment 1).
3. Ensure that case managers who are employed by the Project Sponsor will be responsible for determining a participant's eligibility for the HOPWA-funded emergency housing service (as described in 24 CFR part 574.3). Eligible persons must be HIV infected and be low-income or very-low income persons as defined by HUD and/or have a need for emergency housing assistance for a short period of time.
4. Ensure that case managers will develop and assure a coordinated plan of care and attempt to secure permanent housing for clients. This would include assisting clients who are not on disability to apply for disability, assisting clients to apply for public housing assistance such as Section 8 subsidies, assisting clients to apply for the DHEC-sponsored, statewide Tenant Based Rental Assistance program, and assisting clients to apply for housing at community residential care facilities and/or long-term care facilities.
5. agree to comply with the maximum time period for short-term housing as mandated by HUD regulations: 21 weeks in a 52-week period for rent, mortgage and utility payments (ref. 24 CFR part 574.330 a).
6. Ensure that no fees are to be charged to eligible clients for activities carried under this grant agreement.

**B. General Grant Requirements**

1. The Project Sponsor will consult with the DHEC STD/HIV Program in developing programs/services and policies in order to assure compliance with HUD regulations.
2. The Project Sponsor must use Provide Enterprise for tracking and reporting program services.

**C. Funding-Related Grant Requirements**

1. A comprehensive budget using the form found in Attachment 4 and a budget narrative reflecting all program costs should be submitted to the DHEC Division of STD/HIV at the beginning of the grant year. If a budget revision exceeds 10%, the Project Sponsor must make a written request to DHEC for approval of the revision. The budget revision will not be allowed until the Project Sponsor receives written approval from DHEC.
2. The Project Sponsor may use up to seven percent of the amounts received for administrative costs. This does not include the costs of staff necessary to assess clients and provide housing assistance.
3. No funds may be used to make cash payments to intended recipients of services.
4. The provisions of the Grant Agreement are contingent upon any possible revision of State or Federal regulations and requirements governing CFDA No. 14.241, Department of Housing and Urban Development, Grant Title "Housing Opportunities for Persons with AIDS (HOPWA) Program," Award Number SCH09-F999, effective April 1, 2013 to March 31, 2014, and each year thereafter to March 31, 2019 contingent upon final grant award for each year. DHEC Point of Contact for financial information regarding payments made under this agreement: Ronnie Belleggia, Assistant Bureau Director, Bureau of Financial Management, 301 Gervais Street, Columbia, SC 29201-1708.
5. Advanced payments conditions: An initial advance payment invoice may be made for the expected amount needed for the first month of each grant award year, and subsequent invoices should reflect actual expenditures for eligible activities for the previous month. Advanced payments must be based on estimated expenditures by the recipient for no more than the next 30-day period. By the end of each grant award year, and the grant period, the total expenditures should offset the initial advance payments and this offset must be documented and submitted to DHEC with the final invoice within the grant award year.
6. The Project Sponsor, within 90 days of the execution of the contract, obtains or has on record a certificate of completion of the HOPWA Financial Management Online Training (<https://www.onecpd.info/training-events/courses/hud-hopwa-financial-management-online-training/>) by at least one of its employees.

**D. Grant Reporting and Monitoring Requirements**

1. The Project Sponsor must ensure compliance with HUD reporting requirements. A Consolidated Annual Performance and Evaluation Report (CAPER) will be submitted for the HOPWA year, which is April 1 - March 31. Reports will be due to DHEC by April 30 each year. Forms for the report will be provided by DHEC. The report will include demographic information about individuals and families assisted with HOPWA funds,

administrative costs charged to the program and costs for emergency housing assistance, and supportive services, including staffing costs, and actions taken to further fair housing. The report also includes a report on the annual results of the program activities under the HOPWA client outcome goals for achieving stable housing, reducing risks of homelessness and improving access to healthcare and other support. Sub-contractors will report to the Project Sponsor and DHEC following the DHEC reporting schedule and using the DHEC reporting format.

2. Quarterly Financial Reports identifying the amount of funds received and the amount expended for each category of services provided are required to be submitted to DHEC quarterly 15 days after the end of the quarter.
3. A Mid-Year Programmatic Report showing progress in meeting the program goals and objectives, including numbers of clients served with each service are required to be submitted to DHEC after the end of the first 6 months of the grant period.
4. The Project Sponsor must maintain records for six years beyond the end date of this agreement. The Project Sponsor must agree to make available to HUD for inspection financial records to ensure proper accounting and dispersing of HOPWA funds. These records will be monitored on an ongoing basis by DHEC and are subject to an annual review by HUD.
5. The Project Sponsor must be prepared to provide, upon request by DHEC, specific documentation of expenditures included on submitted invoices. The following areas will be reviewed:
  - a. Financial Management: Financial records will be reviewed to assure compliance with generally accepted accounting requirements. The records should provide accurate, current and complete disclosure of financial results. They must identify the source and application of funds and must be supported by invoices and other source documentation.
  - b. Program Progress: Review progress in providing mortgage, rent and utility payments, providing supportive services and expending funds.
6. Records with respect to all matters covered by this agreement shall be retained by the Project Sponsor for 6 years after the end of the agreement period, and shall be available for audit and inspection at any time such audit is deemed necessary by DHEC. If audit has begun but is not completed at the end of the 6-year period, or if audit findings have not been resolved at the end of the 6-year period, the records shall be retained until resolution of the audit findings.
7. DHEC will monitor the following areas:
  - a. Beneficiaries: Review client files to determine if they are low-income persons with HIV/AIDS or their family members and have a documented financial emergency. The review will include policies and procedures regarding intake of program participants, assessing/reassessing their needs, the extent to which the program helps clients live more independently, procedures to ensure that clients are being assisted for no more than five months (21 weeks in a 52 week period) and documentation of resident length of stay, turnover and reasons for leaving.

- b. Conduct an assessment of the housing assistance and supportive services required for participants in the program. Review the provision of supportive services to participants and ensure that case management is offered to each participant. Ensure that each participant has a current Case Management Individualized Action Plan. The Project Sponsor must also comply with HUD reporting requirements as listed in the Annual Performance Report.

**E. Grant Budget**

1. The initial grant fiscal year is from April 1, 2013 through March 31, 2014. DHEC will make available fiscal year funds to fund the Project Sponsor in the designated counties intended to provide emergency housing assistance. The total annual dollar amount available will be dependent on federal funds made available. The grant will be awarded for a period of up to five (5) years.
2. Determination of award will be based on the merits of the proposed projects as put forth in the grant applications. Up to 7% of the total grant may be used for administration. Any continuation of funding is contingent upon federal funds availability. Grant award amounts are subject to change each year.
3. If awarded, the Project Sponsor will submit a budget narrative and budget form to DHEC at the beginning of each grant year. If throughout the course of a grant year a budget revision is necessary and exceeds 10% of the amount allocated for that budget item, the Project Sponsor must make a written request to DHEC for approval of the revision. The budget revision will not be authorized until the Project Sponsor receives written approval from DHEC.
4. Project Sponsors must ensure that all clients are screened at HOPWA intake for eligibility into the program.

**IV. INFORMATION FOR APPLICANTS TO SUBMIT/SCORING CRITERIA**

Applicants should submit the following information for the purpose of evaluation. To be considered for award, all proposals must include, at a minimum, responses to the information requested in this section. Scoring points associated with each section are noted in parentheses. Entities applying to be a Project Sponsor should restate each of the items listed below and provide their response immediately thereafter.

**All information should be presented in the listed order:**

Table of Contents – Provide a *one-page* table of contents document that includes all the items listed below.

1. Program Description
2. Organizational History, Experience and Qualifications
3. Community Assessment
4. Reporting and Evaluation
5. Program Budget (using the form found in Attachment 4) and a Budget Narrative\*

\*Budget must be submitted but will not be part of the scoring criteria.

1. Program Description (30 Points Total)

The applicant must clearly define the services they will provide and describe how they will be provided.

- a. Identify the services to be provided and how many people with HIV are expected to be served by each service annually.
- b. Describe the staffing your agency will employ to provide the above services.
- c. Describe the process of how the agency will provide the services, including how the agency will ensure proper and timely access to services and to ensure no duplications of delivery occur. Describe how all of the counties in the service area will be covered.
- d. Describe how your agency will receive referrals for clients in all the counties covered. If applying to provide services in the Anderson and Oconee Counties and Newberry County service areas, describe any current processes and partnerships with agencies that could refer clients from those counties.

2. Organizational History, Experience and Qualifications (30 points total)

The applicant must demonstrate the proven ability to accomplish the tasks set forth in the Scope of Work and demonstrate experience in providing specified services to persons with HIV disease and their families.

- a. Describe your organization's history, experience and qualifications proving your ability to accomplish the tasks set forth in the Scope of Work.
- b. Describe the record of service to special populations and subpopulations with HIV disease in the communities/counties to be served.
- c. Demonstrate the ability to begin provision of services on April 1, 2013.
- d. Include resumes of key personnel assigned to manage the program and what they do for the organization.

3. Community Assessment (20 points total)

The applicant must demonstrate knowledge of the service area including other HIV and housing services available and the population to be served.

- a. List the agencies and community-based organizations with which your agency will collaborate. For each organization, define its proposed scope of services, role in the region/area, and record of service to persons with HIV disease and families.
- b. Identify the populations and subpopulations of individuals with HIV disease and their families in the area to be served. The applicant agency shall consider demographic characteristics of reported AIDS cases and HIV infection, as well as other sources of information. South Carolina HIV/AIDS surveillance data is available on the web at <http://www.dhec.sc.gov/health/disease/sts/index.htm>

4. Reporting (20 points total)

The applicant must demonstrate the ability to meet state and federal reporting requirements.

- a. Agency must use the database software *Provide Enterprise* for service data collection and reporting.
- b. Describe the process the agency will use to collect demographic and qualitative data to meet the state and federal reporting requirements listed in the Scope of Work.
- c. Describe how the agency will evaluate services to ensure goals and objectives are met.

5. Application Submission

Applicant shall submit a signed Cover Page and Application addressing all of the above noted points.

**Attachment 1**

24 CFR part 574

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=2e66e569a471d534f7fc663ff078a13d&rgn=div5&view=text&node=24:3.1.1.3.7&idno=24#24:3.1.1.3.7.1.1.1>

## **Attachment 2**

State of South Carolina Consolidated Plan for Housing & Community Development: 2013 Annual Action Plan  
(Final Attachment is HOPWA Action Plan)

[http://www.dhec.sc.gov/health/disease/stdhiv/docs/2013%20Action%20Plan%20\(January%202013\).pdf](http://www.dhec.sc.gov/health/disease/stdhiv/docs/2013%20Action%20Plan%20(January%202013).pdf)

**Attachment 3**

SC Service Provider HOPWA Guidelines

<http://www.dhec.sc.gov/health/disease/stdhiv/docs/2007guidelines.031913.pdf>

**Attachment 4**

SC HOPWA Budget Form

[http://www.scdhec.gov/health/disease/stdhiv/hopwa\\_applications.htm](http://www.scdhec.gov/health/disease/stdhiv/hopwa_applications.htm)

**Attachment 5**

**D R A F T**

**GRANT AGREEMENT**

BETWEEN

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AND

NAME OF GRANTEE

This Grant Agreement by and between the South Carolina Department of Health and Environmental Control (hereinafter referred to as DHEC) and Name of Grantee, Inc. (hereinafter referred to as the Grantee), is for the purpose of disbursing funds in accordance with the U.S. Department of Housing and Urban Development (HUD) "Housing Opportunities for Persons with AIDS" (HOPWA) program and the DHEC Health Services, STD/HIV Division, HOPWA Program as outlined in DHEC's HOPWA FY 2014 Grant Year Request for Applications (Attachment I).

The parties to this Grant Agreement agree as follows:

A. **SCOPE OF SERVICES**

The Grantee agrees to serve as the "Project Sponsor" for \_\_\_\_\_ counties for funds administered by DHEC for the State of South Carolina from the U.S. Department of Housing and Urban Development (HUD) "Housing Opportunities for Persons with AIDS" (HOPWA) program. The Catalog of Federal Domestic Assistance program number for HOPWA is 14.241. Per 24 CFR part 574.300 these funds are designed to provide emergency housing assistance, defined as short-term rent, mortgage and utility payments, permanent housing placement and supportive services for persons with HIV disease who are homeless or who are at risk of becoming homeless. The Grantee further agrees to certify that case management and other supportive services are provided through the Ryan White Part B-funded HIV service provider in the area.

B. **TIME OF PERFORMANCE**

This Agreement shall be effective April 1, 2014, or when all parties have signed, whichever is later, and shall terminate March 31, 2019; provided, however, upon the annual availability of funds as awarded by the grantor and as disbursed in an amendment to the Grant Agreement on an annual basis. Only work done in accordance with the effective dates of this Agreement will be compensated. If either party elects not to continue this Agreement, this Agreement may be terminated as outlined in the Termination clause of this Agreement.

C. **COMPENSATION**

1. Grant Award:

DHEC agrees to reimburse the Grantee, for all allowable costs incurred as outlined in Attachment 1, on a monthly basis. Total amount paid under this Agreement does not exceed \$\_\_\_\_\_ for the time period of April 1, 2014 through March 31, 2019, including travel costs incurred. Funding shall be as outlined below:

- a.) \$\_\_\_\_\_ for HOPWA funds, Grant Award Year 2014, April 1, 2014 to March 31, 2015; and approximately \$\_\_\_\_\_ for each year thereafter, contingent upon final grant award for each year.
- b.) Total amount paid under this Agreement does not exceed \$\_\_\_\_\_ for the time period of April 1, 2014, or when all parties have signed, whichever is later, and March 31, 2019, including travel costs incurred.

2. Reimbursement Limitation:

DHEC's financial obligations to the Grantee are limited by the amount of Federal funding awarded in Section C.1., and may change from year to year in accordance with Section II.A. of the DHEC HOPWA FY 2014 Grant Year Request for Applications.

3. Source of Funds:

Compensation for performance of services will be reimbursed with funds made available from the HOPWA Grant, CFDA Number 14.241, Grant Award Title "Housing Opportunities for Persons with AIDS Performance Grant Agreement for FY20, US Department of Housing and Urban Development (HUD), effective April 1, 2014 to March 31, 2015, and each year thereafter to March 31, 2019 contingent upon final grant award for each year. DHEC's Point of Contact for financial information regarding payments made under this Agreement:

Ronnie Belleggia, Assistant Bureau Director  
Bureau of Financial Management  
301 Gervais Street  
Columbia, SC 29201-3073

Contact the DHEC STD/HIV Program directly for questions regarding invoices, required reporting, and/or as an initial point of contact for any basic Grant Agreement questions. Contact information is as follows:

Leigh Oden, HOPWA Program Manager  
SC DHEC STD/HIV Division  
Box 101106, Mills/Jarrett Complex  
Columbia, SC 29211  
Phone: (803) 898-0650

D. METHOD OF PAYMENT

The Grantee shall submit a monthly request for payment for services rendered as outlined in the Scope of Services, Section A, as follows:

1. The invoice must include the name and address of the Grantee, the Grant Agreement Number, a brief description of the Scope of Services, the period covered, an itemized listing of expenses incurred with categorical break-out sub-totals as required by the DHEC program, the total amount of the reimbursement, and supporting documentation for expenditures as required by DHEC.
2. Reimbursement shall be for actual allowable costs incurred. Only expenditures incurred during the grant period, or the budget period as pre-approved by the DHEC program, can be submitted

for reimbursement. The invoice should be received by DHEC within fifteen (15) days after the end of each month. Mail requests for payment to S.C. Department of Health and Environmental Control, Public Health Contracts, Bureau of Business Management, 301 Gervais Street, Columbia, S.C., 29201.

3. Advance payments are paid in accordance with DHEC Administration Policy B.414, "Providing Advance Payments of Federal Funds to DHEC Subrecipient Grantees (the "Policy"). In short, the following procedures should be followed. If there is a conflict in the below procedures and the Policy, the Policy controls:
  - a. An initial advance payment invoice may be made for the expected amount needed for the first month of each grant award year, and subsequent invoices should reflect actual expenditures for eligible activities for the previous month.
  - b. By the end of each grant award year, and the grant agreement period, the total expenditures should offset the initial advance payments and this offset must be documented and submitted to DHEC with the final invoice within each grant award year.
  - c. Advanced payments must be based on estimated expenditures by the recipient for no more than the next 30-day period. The Grantee should make every attempt to utilize funds as expeditiously as possible within each grant award year.

E. TERMS AND CONDITIONS

1. Adherence to Federal Regulations: The provisions of the Agreement are contingent upon any possible revision of State or Federal statutes, regulations, and Requirements governing Housing Opportunities for Persons with AIDS Performance Grant Agreement, CFDA Number 14.241. Any change to these Requirements that conflicts with any part of this Grant Agreement will automatically replace the conflicting provision upon its effective date.
2. Projected Budget: The Grantee will submit a projected budget and budget narrative to DHEC at the beginning of the grant year. If a budget revision exceeds 10%, the Grantee must make a written request to DHEC for approval of the revision. The budget revision will not be allowed until the Grantee receives written approval from DHEC.
3. The Grantee agrees to operate the program services in accordance with the requirements of applicable HUD regulations (24 CFR part 574).
4. Case managers who are employed by the Sub-grantees will be responsible for determining a participant's eligibility for the HOPWA-funded emergency housing service (as described in 24 CFR part 574.3). Eligible persons must be HIV infected and be low-income or very-low income persons as defined by HUD and/or have a need for emergency housing assistance for a short period of time.
5. Case managers will develop and assure a coordinated plan of care and attempt to secure permanent housing for clients. This would include assisting clients who are not on disability to apply for disability, assisting clients to apply for public housing assistance such as Section 8 subsidies, assisting clients to apply for the DHEC-sponsored, statewide Tenant Based Rental Assistance program, and assisting clients to apply for housing at community residential care facilities and/or long-term care facilities.

6. The Grantee agrees to comply with the maximum time period for short-term housing as mandated by HUD regulations: 21 weeks in a 52-week period for rent, mortgage and utility payments (ref. 24 CFR part 574.330 a).
7. The Grantee may use up to 7% of the amounts received for administrative costs. This does not include the costs of staff necessary to assess clients and provide housing assistance.
8. The Project Sponsor, within 90 days of the execution of the contract, obtains or has on record a certificate of completion of the HOPWA Financial Management Online Training (<http://www.hudhre.info/index.cfm?do=viewHopwaFinancialTraining>) by at least one of its employees.
9. Reports and Record Requirements:
  - a. The Grantee must insure compliance with HUD reporting requirements. An Consolidated Annual Performance and Evaluation Report (CAPER) will be submitted for the HOPWA year, which is April 1 -March 31. Reports from the project sponsor will be due to DHEC by April 30 each year. Forms for the report will be provided by DHEC. The report will include demographic information about individuals and families assisted with HOPWA funds, administrative costs charged to the program and costs for emergency housing assistance, and supportive services, including staffing costs. Sub-grantees or sub-contractors will report to the Grantee and DHEC following the DHEC reporting schedule and using the DHEC reporting format. The Grantee must also comply with any additional reporting requests such as mid-year HOPWA reports and quarterly financial reports.
  - b. The Grantee must maintain records for six years beyond the end date of this Grant Agreement. The Grantee must agree to make available to HUD for inspection financial records to ensure proper accounting and dispersing of HOPWA funds. These records will be monitored on an ongoing basis by DHEC and are subject to an annual review by HUD.
  - c. The Grantee must be prepared to provide, upon request by DHEC, specific documentation of expenditures included on submitted invoices. The following areas will be reviewed:
    1. Financial Management: Financial records will be reviewed to assure compliance with generally accepted accounting requirements. The records should provide accurate, current and complete disclosure of financial results. They have to identify the source and application of funds and must be supported by invoices and other source documentation.
    2. Program Progress: Review progress in providing mortgage, rent and utility payments, providing supportive services and expending funds.
  - d. Records with respect to all matters covered by this Grant Agreement shall be retained by the Grantee for 6 years after the end of the Grant Agreement period, and shall be available for audit and inspection at any time such audit is deemed necessary by DHEC. If audit has begun but is not completed at the end of the 6-year period, or if audit findings have not been resolved at the end of the 6-year period, the records shall be retained until resolution of the audit findings.
10. DHEC will monitor the following areas:

- a. Beneficiaries: Review client files to determine if they are low-income persons with HIV/AIDS or their family members, or have a documented financial emergency. The review will include policies and procedures regarding intake of program participants, assessing/reassessing their needs, the extent to which the program helps clients live more independently, procedures to ensure that clients are being assisted for no more than five months (21 weeks in a 52 week period) and documentation of resident length of stay, turnover and reasons for leaving.
- b. Conduct an assessment of the housing assistance and supportive services required for participants in the program. Review the provision of supportive services to participants and ensure that case management is offered to each participant. Ensure that each participant has a current Case Management Individualized Service Plan. The Grantee must also comply with HUD reporting requirements as listed in the Annual Performance Report.
11. DHEC may de-obligate all or a portion of the amounts approved for the HOPWA program if such amounts are not expended in a timely manner, or the proposed activity for which funding was approved is not provided.
12. Limitations of Assistance to Primarily Religious Organizations: Assistance may be provided by project sponsors that are primarily religious organizations if the organization agrees to provide eligible activities in a manner that is free from religious influences and in accordance with the following principals:
- a. It will not discriminate against any employee or applicant for employment based on religion and will not limit employment or give preference in employment to persons on the basis of religion.
- b. It will not discriminate against any person applying for eligible activities on the basis of religion and will not limit housing or other eligible activities or give preference to persons on the basis of religion.
- c. It will provide no religious instruction or counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in provision of eligible activities.
13. Nondiscrimination and Equal Opportunity: The Grantee must, within the eligible population, comply with the following requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, health status, familial status and disability. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this Grant Agreement on the grounds of race, age, health status, disability, color, sex, religion or national origin. This includes the provision of language assistance services to individuals of limited English proficiency eligible for services provided by DHEC.
- a. Fair Housing Requirements: The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100; Executive Order 11063 and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1.
- b. Discrimination on the basis of age or disability: The prohibitions against discrimination based on age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146; the prohibitions against discrimination against disabled

individuals under section 504 of the Rehabilitation of 1973 (29 U.S.C 794) and implementing regulations at 24 CFR part 8; and applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101-12213) and implementing regulations at 28 CFR part 35 (States and local government grantees) and part 36 (public accommodations requirements for certain types of short-term housing assistance).

- c. Employment opportunities: The requirements of section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C 1701(u)) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects).
  - d. Minority and women's business enterprises: The requirements of Executive Orders 11625, 12432, and 12138 apply to grants under this part. Consistent with HUD's responsibilities under these Orders, the consortia and/or project sponsor must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.
  - e. Affirmative outreach: The Grantee must adopt procedures to ensure that all persons who qualify for the assistance, regardless of their race, color, religion, sex, age, national origin, familial status, or disability know of the availability of the HOPWA program, including facilities and services accessible to persons with a handicap, and maintain evidence of implementation of the procedures.
  - f. Disability requirements: The Grantee must not discriminate against persons with AIDS or related diseases based on an additional disability of such persons in violation of the Fair Housing Act or Section 504 of the Rehabilitation Act of 1973. In addition, the Grantee must comply with the reasonable modification requirement of the Fair Housing Act, the reasonable accommodation requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, and the accessibility requirements of the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, and implementing regulations. See 42 U.S.C. 3604(f) and 24 CFR 100.203-100.205; 29 U.S.C. 794 and 24 CFR part 8; and 28 CFR parts 35 and 36.
14. Amendments: Any other change to this Agreement is considered an amendment to the Agreement, which must be mutually agreed to and executed in the same manner as the original Agreement.
15. Audit – Single or Program Specific:
- a. All Grantees (sub-recipients), except for profit entities, that expend \$500,000 or more in Federal awards from all sources during their fiscal year shall have a single or program, specific audit conducted for that fiscal year in accordance with the provisions of Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, dated June 27, 2003.
  - b. The Audit shall be completed and submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period. The Grantee agrees to send one copy of any audit conducted under the provisions of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, dated June 27, 2003, to **SC DHEC, Office of Internal Audits, 2600 Bull Street, Columbia, SC 29201.**
  - c. Entities which are audited as part of the State of South Carolina Statewide Single Audit are not required to furnish a copy of that audit report to SC DHEC's Office of Internal Audits.

- d. Non-Federal entities that expend less than \$500,000 a year in total Federal awards, from all sources, are exempt from the Federal audit requirements of OMB Circular A-133 for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).
- e. A Grantee is prohibited from charging the cost of an audit to Federal Awards if the Grantee expended less than \$500,000 from all sources of Federal funding in the Grantee's fiscal year. If the Grantee expends less than \$500,000 in Federal funding from all sources in the Grantee's fiscal year, but obtains an audit paid for by non-Federal funding, then DHEC requests a copy of that audit be sent to **SC DHEC STD/HIV Division, HOPWA Program Manager, Box 101106, Mills/Jarrett Complex, Columbia, SC 29211.**
- f. As a sub-recipient, if you utilize an indirect cost rate, you must provide a copy of the approved indirect cost rate letter from your Federal cognizant agency, OR an indirect cost rate reviewed and approved by an external auditor in accordance with GAAP. Otherwise, only direct charges will be allowed under the terms and conditions of this grant.
16. **Audit – Limited Scope:** Grantees who are not required to obtain a single or program specific audit may be required to obtain limited scope audits if the quarterly compliance reports, site visits and other information obtained by DHEC raise reasonable concern regarding compliance with grant conditions. Such engagements may not be paid for by SC DHEC pass through funds.
17. **Business Associate Agreement:** The Grantee must sign DHEC Form 0854, Business Associate Agreement between South Carolina Department of Health and Environmental Control and Grantee (see Attachment II).
18. **Certification of State Employee Status:** By signing this Grant Agreement, the Grantee certifies that he/she is not now nor has been within the last two years an employee of a South Carolina State Agency.
19. **Completion of Services:** Any funds paid by DHEC and not used for completion of services shall be returned to DHEC.
20. **Confidentiality:**
- a. The Grantee agrees to abide by DHEC's Confidentiality Policy, which states that all information about personal facts and circumstances of DHEC employees, clients, or members of the public is confidential and will not be disclosed without written authorization of the individual to which it pertains, unless disclosure is required by law, or otherwise required in accordance with this agreement and released to the Grantee after DHEC Office of General Counsel review. If confidential information is disclosed pursuant to a properly completed authorization, documentation of the disclosure and a copy of the authorization must be maintained and made available for DHEC inspection and audit. In addition, confidential agency information and action shall not be disclosed unless DHEC authorizes the disclosure in writing, or the disclosure is required by law.
- b. The types of information that generally must be kept confidential include, but are not limited to, personal information about job applicants, DHEC employees, DHEC clients or members of the public, such as names, photographs, birth dates, social security numbers, addresses, telephone numbers, medical or disability information, education level, financial status and information, credit information, driver's license numbers, account or identification numbers issued by

government agencies or private financial institutions, employment history, other identifying information, or confidential business information.

- c. The Family Privacy Protection Act may place additional restrictions on the collection and disclosure of personal information. Information that is otherwise available to the public under the Freedom of Information Act may be released in accordance with State law.
  - d. Protected Health Information about DHEC clients generally cannot be disclosed without proper authorization by the client or his/her parent or legal guardian, or pursuant to a specific exception under the Health Insurance Portability and Accountability Act (45 CFR Parts 160 and 164).
  - e. The Grantee and the Grantee's employees/agents are required to sign DHEC's Confidentiality Agreement (DHEC form #0321, see Attachment III). Alternatively, if the Grantee desires to rely upon an existing Confidentiality Agreement signed by its employees/agents, a copy of the Confidentiality Agreement must first be provided to the DHEC Grants Program for evaluation, and the Grantee must provide written verification that all employees/agents who may have access to DHEC confidential information in the course of performing this agreement have executed the Confidentiality Agreement. The Grantee must ensure that confidential information released to the Grantee's employees/agents is limited to the information minimally necessary in order to meet its obligations under this agreement.
  - f. Unauthorized disclosure of confidential information may result in termination of this agreement and may be grounds for fines, penalties, imprisonment, injunctive action, civil suit, or debarment from doing business with the State. Unauthorized disclosure of confidential information not consisting of protected health information must be immediately reported to the DHEC Contracts Manager, 2600 Bull Street, Columbia, SC 29201
21. Copyright: Ownership of all copyrightable or patentable subject matter developed, created, or invented under this contract shall belong to DHEC. To the extent permitted under federal copyright law, any such copyrightable work shall be considered a work made for hire. To the extent any such work may not be considered a work made for hire under federal copyright law, Contractor irrevocably assigns and agrees to assign all right, title, and interest in such work to DHEC. Contractor irrevocably assigns and agrees to assign all right, title, and interest in any invention or other patentable subject matter to DHEC. Contractor shall execute without additional compensation any additional documents DHEC may reasonably require to effectuate or perfect such rights, including, without limitation, additional assignments, copyright registration applications, patent applications, affidavits, and other documents and instruments.
22. Debarment: Grantee certifies that it has not been debarred or suspended under OMB Circular A-133 Compliance Supplement or otherwise from doing business with any governmental entity
23. Dispute: The Agreement, any dispute, claim, or controversy relating to the agreement and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. All disputes, claims, or controversies relating to the Agreement shall be resolved in accordance with the South Carolina Procurement Code, Section 11-35-10 et seq., or in the absence of jurisdiction, only in the Court of Common Pleas for, or a Federal court located in Richland County, South Carolina.
24. Discrimination: No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to any activities carried out under this Agreement on the grounds of race, age, health status, disability, color, sex, religion or national origin. This includes

the provision of language assistance services to individuals of limited English proficiency eligible for services provided by SC DHEC.

25. Drug-free Workplace: By signing this grant agreement, Grantee certifies that it will comply with all applicable provisions of the Drug-free Workplace Act, South Carolina Code of Laws, Section 44-107-10 et. seq. as amended.
26. Equipment: Title to any equipment, goods, software, or database whose acquisition cost is borne wholly or in part by this Grant Agreement shall vest in DHEC upon acquisition, and will be transferred to the Grantee upon the end of the successful completion of the Grant Agreement for use in continued support of the effort of the work as outlined in the Grant Agreement.
27. Federal Funding Accountability and Transparency Act:
  - a. As a recipient of FFATA funds you are required to report the following minimum data elements to DHEC. Additional data elements may be required by subsequent OMB guidance or regulation.

(DO NOT ENTER THIS INFORMATION IN THE FEDERAL REPORTING DATABASE, ONLY REPORT IT BACK TO DHEC. DHEC BUREAU OF FINANCIAL MANAGEMENT IS RESPONSIBLE FOR REPORTING THIS INFORMATION TO THE FEDERAL GOVERNMENT)

1. Data Universal Numbering System (DUNS) 9 digit number
  2. Grant Agreement number
  3. Subrecipient name as registered in the Central Contractor Registration
  4. Amount of award received
  5. Total Amount of Grant Agreement award
  6. Date Grant Agreement was signed by both parties
  7. Total Grant Agreement period
  8. Physical location of primary place of performance
    - a. State
    - b. Population
    - c. City
    - d. Congressional District
    - e. County
    - f. Area of Benefit (i.e., state, county, city, school district)
  9. Top 5 most highly compensated officers and their compensation
- b. Submit the required data to the HOPWA Program Manager, SCDHEC, STD/HIV Division, Box 101106, Columbia, SC 29211.
28. HIPAA Training: Before participating in any DHEC clinical activity or rendering any service to DHEC under this Agreement, Contractor and its employees/agents will be educated and trained regarding the Health Insurance Portability and Accountability Act of 1996 and related Regulations pertaining to the privacy and security of protected health information (the HIPAA Privacy Rule). Contractor will provide documentation of successful completion of this training to the Contracts Manager before initiating performance of this Agreement. If this training has not been conducted, or documentation of training has not been provided, Contractor and its employees/agents will be required to receive necessary instruction using DHEC's e-learning system before initiating performance of this Agreement.

29. Liability: The Grantee shall be responsible for any liability for loss of damage to person or property arising from acts of the Grantee or his employees in performance of this Agreement. Each of the parties agrees to maintain professional, malpractice and general liability insurance, and may be required to provide the other with satisfactory evidence of such coverage. Neither party will provide individual coverage for the other party's employees, with each party being responsible for coverage of its respective employees. The Grantee agrees and understands that neither the Grantee, its employees nor agents is covered by any professional or tort liability insurance maintained by SC DHEC.
30. License/Accreditation: The parties agree that during the term of this Agreement, each party shall maintain its respective Federal and state licenses, certifications, and accreditations required for the provision of services therein. The Grantee will immediately notify DHEC if a board, association, or other licensing authority takes any action to revoke or suspend the license, certification, or accreditation of the Grantee or Grantees's employees or agents providing or performing services under this Grant Agreement.
31. Anti-lobbying Certification:
- a. Contractors and grantees, including subcontractors, sub grantees, and sub recipients, who receive federal funds pursuant to this agreement, are prohibited from using any of the grant funds to engage in lobbying activities, and must adhere to applicable statutes and regulations as a condition of receiving the federal funds. These prohibited activities include both direct and "grass roots" lobbying at the federal, state, and local levels, legislative and executive functions. This rule is found at 24 CFR part 87. By accepting this award, the Contractor certifies that it will file quarterly updates about the use of lobbyists if material changes occur in their use.
  - b. No part of any grant or contract funds will be used to pay the salary or expenses of any person related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government. This prohibition shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
  - c. 31 U.S.C. § 1352 certification (45 CFR Part 93).  
The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief, that:
    - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to 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 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.

- ii. If any funds other than Federally appropriated funds have been paid or will be paid to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

32. Conflict of Interest: In addition to the conflict of interest requirements in OMB Circular A-102 and 24 CFR 85.36 (b)(3), no person who is an employee, agent, consultant, officer, or elected or appointed official of Grantee and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any other contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. HUD may grant exceptions to this exclusion as provided in CFR 24 part 574.625 (b).
33. Minority Business: The Grantee must agree to make positive efforts to use small and minority owned businesses and individuals. DHEC Form 128 is for use in providing this information.
34. Preventing and Reporting Fraud, Waste and Abuse:
  - a. SCDHEC has procedures and policies concerning the prevention and reporting of fraud, waste and abuse (FWA) in agency-funded programs, including but not limited to those funded by Federal grants such as Medicaid. No agency employee, agent, or Grantee shall direct, participate in, approve, or tolerate any violation of Federal or state laws regarding FWA in government programs.
  - b. Federal law prohibits any person or company from knowingly submitting false or fraudulent claims or statements to a federally funded program, including false claims for payment or conspiracy to get such a claim approved or paid. The False Claims Act includes "whistleblower" remedies for employees who are retaliated against in their employment for reporting violations of the Act. Under State law, persons may be criminally prosecuted for false claims made for health care benefits, for Medicaid fraud, for insurance fraud, or for using a computer in a fraud scheme or to obtain money or services by false representations. Additional information regarding the Federal and state laws prohibiting false claims and SC DHEC's policies and procedures regarding false claims may be obtained from the agency's Contracts Manager or Bureau of Business Management.

- c. Any employee, agent, or grantee of SCDHEC who submits a false claim in violation of Federal or state laws will be reported to appropriate authorities.
  - d. If the Grantee, Grantee's agents or employees have reason to suspect FWA in agency programs, this information should be reported in confidence to the agency. A report may be made by writing to the Office of Internal Audits, SCDHEC, 2600 Bull Street, Columbia, South Carolina 29201; or by calling the Agency Fraud, Waste and Abuse Hotline at 803-896-0650 or toll-free at 1-866-206-5202. The Grantee is required to inform Grantee's employees of the existence of DHEC's policy prohibiting FWA and the procedures for reporting FWA to the agency.
35. Subcontracting: None of the work or services covered by this Grant Agreement shall be subcontracted without the prior written approval of DHEC. DHEC must then also examine any subsequent contracts or grant agreements. Sub-Grantees or sub-contractors are also subject to all of the terms and conditions described in this Grant Agreement.
36. Termination: Subject to the provisions contained below:
- a. This Grant Agreement may be terminated by DHEC providing written notice of that intent to the other party at least thirty (30) days in advance. This Grant Agreement may be terminated by the Grantee by providing written notice of that intent to DHEC at least sixty (60) days in advance; provided, however, DHEC may approve or agree to or direct a shorter period of time, in its sole discretion, but the Grantee must receive at least 30 days written notice.
  - b. Funds for this Grant Agreement are payable from Federal appropriations. In the event sufficient appropriations are not made to pay the charges under this Grant Agreement, it shall terminate without any further obligation by DHEC.
  - c. DHEC may terminate this Grant Agreement for cause, default or negligence on the part of the Grantee at any time without thirty days advance written notice.
37. Travel expenses:
- a. The Contractor's travel expenses, including room and board, incurred in connection with the services described in the Scope of Services will be limited to reimbursement at the standard State rate in effect during the period of this agreement and will be included within the maximum amount of the contract.
  - b. The State of South Carolina's standard rate for hotels will be at the established federal Government Services Administration rate or below for the area of travel. These rates can be found at <http://www.gsa.gov>.
  - c. The Contractor must submit lodging receipts showing a zero balance when seeking reimbursement. Prior to submitting any invoices for contractual reimbursements of out-of-state travel, Contractor must submit a written request for approval of out-of-state travel and receive written approval of out-of-state travel. The request for approval must include a breakdown of all proposed travel expenses including, but not limited to, airfare, registration, and lodging and an explanation of how the travel is related to the activities described in the Scope of Services.
38. Indemnification: "Claims" in this provision means a claim, demand, suit, cause of action, loss or liability. Notwithstanding any limitation in this Contract, and to the fullest extent permitted by law, Contractor shall defend and hold DHEC harmless, its officers, directors, agents, and employees

(hereafter DHEC) from any Claims made by a third party for bodily injury, sickness, disease or death, or for injury to or destruction of tangible property arising out of or in connection with any act or omission of Contractor, in whole or in part, in the performance of professional services pursuant to this Contract. Further, Contractor shall defend and hold DHEC harmless from any claims against DHEC by a third party as a result of the Contractor's breach of this Contract, including any breach of confidentiality by a person to whom the Contractor disclosed confidential information in violation of this Contract. The Contractor shall not be liable for any Claims by a third party proven to have arisen or resulted solely from the negligence of DHEC. This indemnification shall include reasonable expenses including attorney's fees incurred by defending such Claims. DHEC shall provide timely written notice to the Contractor of the assertion of the Claims alleged to be covered under this clause. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancellation, or expiration of the Contract.

The parties to this Grant Agreement hereby agree to any and all provisions of the Agreement by affixing their respective signatures below and avowing that each has the authority to enter into this binding agreement for the entity referenced above his or her signature.

<b>SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL</b>	<b>NAME OF GRANTEE</b>
BY:	BY:
NAME: Lisa F. Waddell, MD, MPH Director for Preventive Services	NAME: TITLE:
DATE:	DATE:
WITNESS:	WITNESS:

**MAILING ADDRESS:**

**FEDERAL IDENTIFICATION NO.:**

\_\_\_\_\_

*This is a draft copy of a grant agreement, for informational purposes. Awarded applicant would be required to sign a grant agreement with SCDHEC before any billable services could be provided. A grant agreement*

*will be mailed to awarded applicant for signature after the award posting period has ended.*

**ATTACHMENT I**

**S.C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL'S  
HOPWA FY 2014 GRANT YEAR REQUEST FOR APPLICATION**

[http://www.scdhec.sc.gov/health/disease/stdhiv/hopwa\\_applications.htm](http://www.scdhec.sc.gov/health/disease/stdhiv/hopwa_applications.htm)

**DRAFT**

**ATTACHMENT II**

**S.C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
GRANTEE BUSINESS ASSOCIATE AGREEMENT**

**DRAFT**

# BUSINESS ASSOCIATE AGREEMENT

BETWEEN

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AND

---

## I. PURPOSE

The South Carolina Department of Health and Environmental Control (hereafter referred to as "Covered Entity") and \_\_\_\_\_ (hereafter referred to as "Business Associate") desire to enter into this Business Associate Agreement (hereafter, "BA Agreement" or "the Agreement") for the purpose of protecting the privacy and security of clients' health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including all pertinent regulations (45 CFR Part 160 and Part 164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

## II. DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meanings as set forth in HIPAA and HITECH. A change to HIPAA or HITECH which modifies any defined term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement.

- a. Breach. "Breach" shall have the meaning given under HITECH Section 13400, 42 U.S.C § 17921, and 45 CFR §164.402.
- b. Data Aggregation. "Data Aggregation" shall have the meaning given under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.
- c. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.
- d. Disclose and Disclosure shall have the meaning given in 45 CFR §160.103.
- e. Electronic Protected Health Information. "Electronic Protected Health Information" (referred to below as EPHI) shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103.
- f. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended, and related HIPAA regulations (45 CFR Parts 160-164.)
- g. HITECH. "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
- h. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- i. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information codified at 45 CFR Part 160 and Part 164, Subparts A and E and any other applicable provisions of HIPAA, or amendments thereto, including HITECH.
- j. Protected Health Information. "Protected Health Information" (referred to below as PHI) shall have the same definition contained in 45 CFR §160.103. For purposes of this Agreement, PHI is limited to the information created or received by Business Associate from or on behalf of Covered Entity. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.
- k. Required By Law. "Required By Law" shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR §164.103, and any additional requirements created under HITECH.

- l. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services or his/her designee.
- m. Security Incident. "Security Incident" shall have the meaning given in 45 CFR §164.304.
- n. Security Standards. "Security Standards" shall mean the Standards for the Protection of Electronic Protected Health Information that are codified at 45 CFR Part 160 and Part 164, Subparts A and C, and any other applicable provision of HIPAA, or amendments thereto, including HITECH.
- o. Unsecured PHI. "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in Section 13402 of HITECH.
- p. "Use" or "Uses" shall have the meaning given in 45 CFR §160.103.

### **III. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE**

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Contract # \_\_\_\_\_, or as otherwise provided by law, if such use or disclosure would not violate the Privacy Rule or the Security Standards if done by Covered Entity.
- b. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, and may disclose PHI for those purposes provided that as to any such disclosure: 1) the disclosure is required by law; or 2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.
- c. Business Associate will notify the Covered Entity of any breach of confidentiality or security by a person to whom the Business Associate has disclosed PHI pursuant to this Section, and will mitigate and/or assist the person and the Covered Entity in mitigating any harmful effects resulting from the breach of information.
- d. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- e. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).
- f. Business Associate may disclose PHI to any of its subcontractors for use in fulfilling the obligations of this Agreement as long as the subcontractor agrees in writing to the restrictions and conditions in this Agreement with respect to PHI.
- g. Business Associate may disclose PHI to another entity as authorized by the Covered Entity in a separate written agreement or amendment to this agreement, if such disclosure of PHI would not violate the Privacy Rule or HITECH if done by Covered Entity itself.
- h. Business Associate, upon entering into an agreement using PHI for any of its functions and activities on behalf of the Covered Entity or in its general operations, will make available that agreement to the Covered Entity upon request.

### **IV. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI**

- a. Business Associate shall comply with the Confidentiality provision contained in Contract # \_\_\_\_\_ and any Confidentiality Agreement signed by the Business Associate pursuant to that Contract for so long as this BA Agreement remains in effect.
- b. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate will not use PHI in any manner that would constitute a violation of the Privacy Rule, Security Standards, HIPAA, or HITECH if so used by Covered Entity.

- c. Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of PHI or EPHI other than as provided by this Agreement, and shall implement administrative, physical, and technical safeguards to comply with the Security Standards as required by 45 CFR Sections 164.308, 164.310, 164.312 and 164.316 in order to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, to the same extent as if Business Associate were a Covered Entity, pursuant to HITECH Section 13401, 42 U.S.C. § 17931. These safeguards are required regardless of the mechanism used to transmit the information.
- d. Business Associate shall adopt the effective and appropriate technical safeguards and technology and methodology standards provided in any guidance issued by the Secretary pursuant to HITECH Sections 13401-13402, 42 U.S.C. §§ 17931-17932.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or of a Breach of Unsecured PHI, pursuant to 45 CFR § 164.530(f) and HITECH § 13402.
- f. Business Associate shall notify Covered Entity by the most expedient manner within one business day of any use or disclosure of PHI or EPHI not authorized by this Agreement or in violation of any applicable federal or state laws or regulations of which Business Associate becomes aware, or of any suspected or actual Security Incident or Breach, unless delayed in accordance with 45 CFR § 164.412. Business Associate shall notify Covered Entity immediately upon the law enforcement delay being lifted.
- g. In addition to the notification required by IV.f, Business Associate will provide written notification of a Breach of Unsecured PHI to Covered Entity without unreasonable delay and in no event later than 5 calendar days after discovery of the Breach. A Breach of Unsecured PHI shall be treated as discovered by the Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Notification of a Breach of Unsecured PHI required by this paragraph shall comply with HITECH Section 13402, 42 U.S.C. § 17932, and 45 CFR § 164.410. The Breach notice shall include, to the extent possible, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the Breach. Business Associate shall provide Covered Entity with the following information at the time of the Breach notification or promptly thereafter as soon as information becomes available:
1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known, and the nature of the non-permitted use or disclosure;
  2. A description of the unsecured PHI that was involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  3. Who made the non-permitted use or disclosure;
  4. Who received the non-permitted use or disclosure;
  5. Any steps individuals should take to protect themselves from potential harm resulting from the Breach; and
  6. What Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further breaches.
- h. Business Associate shall ensure that any agent or subcontractor to whom it provides PHI received from Covered Entity, or that creates, receives, maintains, or transmits PHI on behalf of Business Associate, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including this paragraph, and agrees to implement reasonable and appropriate safeguards to protect such PHI, including the safeguards required by paragraph IV.c and IV.d above with respect to PHI. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of such violation.

- i. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to fulfill the requirements of 45 CFR § 164.524 if the Business Associate has PHI in a designated record set. If Business Associate receives a request directly from an Individual, Business Associate will direct the Individual to the Covered Entity.
- j. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, if Business Associate has PHI in a Designated Record Set. Business Associate shall not amend PHI received from the Covered Entity or created and/or provided to the Business Associate on behalf of the Covered Entity unless the amendment is directed by or consented to by the Covered Entity. If an Individual requests an amendment of PHI directly from Business Associate or any of its agents or subcontractors, Business Associate will direct Individual to Covered Entity. The Business Associate shall provide a copy of the amended PHI to the Covered Entity.
- k. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate agrees to collect and maintain disclosure information as it relates to PHI including: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the written request for disclosure under 45 CFR § 164.502(a)(2)(ii) or 164.512, if any. Business Associate will maintain records related to disclosures of PHI for at least six (6) years after the date of the disclosure. The provisions of this subparagraph shall survive termination of this Agreement.
- l. Business Associate will provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section IV.k of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. In addition, Business Associate agrees to make PHI available for purposes of accounting of disclosures as required by Section 164.528 of the Privacy Rule and Section 13405(c)(3) of HITECH, 42 U.S.C. § 17935(c)(3). If the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing.
- m. Business Associate shall comply with any requests for restrictions on certain disclosures of PHI pursuant to Section 164.522 of the Privacy Rule to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity.
- n. Business Associate shall comply, pursuant to HITECH and its implementing regulations, with all additional requirements of the Privacy Rule, including those contained in 45 CFR 164.502(e) and 164.504(e)(1)(ii) at such time as the requirements are applicable to Business Associate, pursuant to HITECH Section 13404, 42 U.S.C. § 17934.
- o. If applicable, and if requested by Covered Entity, Business Associate will provide a copy of Covered Entity's Notice of Privacy Practices to the client at the time of first contact, and maintain documentation of the client's receipt of the Notice.
- p. Business Associate shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining compliance with the Privacy Rule. Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- q. Business Associate and its agents and subcontractors may only request, use, or disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure pursuant to this agreement and

consistent with Covered Entity's minimum necessary policies and procedures. Except as otherwise permitted by HIPAA standards, until the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," when using or disclosing PHI or responding to a request for PHI, Business Associate and its agents or subcontractors must limit such PHI, to the extent practicable, to a Limited Data Set, or if more information than a Limited Data Set is required, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request. After the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," Business Associate and its agents or subcontractors shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, and shall comply with the Secretary's guidance on what constitutes "minimum necessary." See HITECH Section 13405, 42 U.S.C. § 17935.

- r. Business Associate shall provide Covered Entity reasonable access to its premises for review and demonstration of its internal practices and procedures for safeguarding PHI of Covered Entity for purposes of determining that Business Associate has complied with this Agreement and HITECH; provided that 1) the Parties mutually agree in advance upon the scope, location and timing of such access, and 2) Covered Entity shall protect confidential and proprietary information of Business Associate to which Covered Entity has access.
- s. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- t. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the Agreement or other arrangement, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate must terminate the Agreement or other arrangement if feasible, or, if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- u. Business Associate acknowledges that if it violates any of the requirements provided under this Business Associate Agreement, Business Associate will be subject to the same civil and criminal penalties that a Covered Entity would be subject to if such Covered Entity violated the same requirement.
- v. The additional requirements of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference are incorporated into this Agreement.
- w. Business Associate will contact the Covered Entity's Privacy Officer at (803) 898-3318 at any time clarification or guidance is needed regarding compliance with the terms of this Agreement.
- x. Business Associate shall not use or disclose PHI for fundraising or marketing purposes.
- y. Business Associate may not enter into any agreements with its agents or subcontractors pertaining to its obligations under this Agreement without the express written consent of Covered Entity.

#### **V. DUTIES OF COVERED ENTITY**

- a. If applicable, Covered Entity shall provide the Business Associate with a copy of its policies and procedures implementing the Privacy Rule, including the Notice of Privacy Practices.
- b. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI, within a reasonable period of time after Covered Entity becomes aware of such changes to or revocation of permission.

- d. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 CFR § 164.522 and HITECH § 13405(a), 42 USC § 17935(a), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- e. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## **VI. TERM AND TERMINATION**

- a. Term. The Term of this Agreement shall be effective as of \_\_\_\_\_, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall do any of the following:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and Contract # \_\_\_\_\_ if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  - 2. Immediately terminate this Agreement and Contract # \_\_\_\_\_ if Business Associate has breached a material term of this Agreement and cure is not feasible;
  - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary;
  - 4. Immediately stop all further disclosures of PHI to Business Associate pursuant to each agreement between Covered Entity and Business Associate that is the subject of such breach, until the breach is cured.
- c. Effect of Termination.
  - 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason or upon written demand from Covered Entity, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies, including backups, of the PHI. If the return or destruction of PHI held by the Business Associate is not permissible pursuant to South Carolina law, the Business Associate will extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.
  - 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
- d. Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of PHI is continuous and survives any termination, cancellation, expiration, or other conclusion of this Agreement or any other agreement between Business Associate and Covered Entity.

## **VII. INDEMNIFICATION (the following does not apply to other government agencies or political subdivisions)**

Business Associate agrees to indemnify and hold harmless Covered Entity from any claims, demand, suit, loss, liability, or administrative penalties that the Covered Entity may sustain as a result of the Business Associate's breach of this Agreement, including any breach of confidentiality by a person to whom the Business Associate has disclosed information pursuant to this Agreement; provided, however, that the Business Associate shall not hold the Covered Entity harmless from any claims, demands or causes of action arising or resulting directly or indirectly from negligence of the Covered Entity, its officers, agents, representatives or employees, or any person or entity not subject to the

Business Associate's supervision or control. This indemnification shall include reasonable expenses including attorney's fees incurred by defending such claims and damages incurred by reason of the Business Associate's failure to comply with applicable laws and regulations or for damages caused by the Business Associate, its employees and/or agents, including subcontractors. As a condition precedent to asserting a right of indemnity, the Covered Entity shall provide timely written notice to the Business Associate of the assertion of the claim to which the right of indemnification is claimed to exist.

## VIII. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Standards means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement to comply with the requirements of the Privacy Rule, the Security Standards, HIPAA, HITECH, or any other state or federal law affecting this Agreement. If a Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HITECH or its regulations, such Party shall notify the other Party in writing. For a period of thirty days, the Parties shall address such concern in good faith and amend the terms of the Agreement if necessary to bring it into compliance. If, after such thirty day period, the Agreement fails to comply with HIPAA, the Privacy Rule, the Security Standards or HITECH, then either Party has the right to terminate upon written notice to the other Party.
- c. Survival. The respective rights and obligations of Business Associate under Section VI.c and VI.d of this Agreement shall survive termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Standards.
- e. All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand-delivered or upon dispatch if sent by reputable overnight delivery service, facsimile, or U.S. Mail to the appropriate address or facsimile number. Notification of any unauthorized use or disclosure of PHI or of a Breach of Unsecured PHI under paragraphs IV.f and IV.g shall be made to the DHEC Privacy Officer at 2600 Bull Street, Columbia, SC 29201, 803-898-0767 (phone), 803-898-0476 (fax).
- f. Business Associate and Covered Entity agree that Individuals who are the subject of PHI are not third-party beneficiaries of this Agreement.
- g. The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and HITECH and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of any amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA and HITECH or other applicable laws. Covered Entity may terminate this Agreement and Contract # \_\_\_\_\_ upon thirty (30) days written notice if (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section, or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and HITECH.
- h. If any provision of this Agreement violates any applicable statute, ordinance, or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.
- i. This Agreement may not be amended, altered, or modified except by written agreement signed by Business Associate and Covered Entity.

- j. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- k. The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.
- l. Neither Covered Entity nor Business Associate shall use the names or trademarks of the other party or of any of the respective party's affiliated entities in any advertising, publicity, endorsement, or promotion unless prior written consent has been obtained for the particular use contemplated.
- m. All references to specific statutes, codes, or regulations shall be deemed to be references to those statutes, codes or regulations as they may be amended from time to time.
- n. Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or authority to control or direct the activities of the other or the right or authority to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party, unless expressly authorized in this or another agreement between the parties.

AS TO DHEC

BY: \_\_\_\_\_

Lisa F. Waddell, MD, MPH  
 Director for Preventive Services

DATE: \_\_\_\_\_

AS TO THE CONTRACTING PARTY

BY: \_\_\_\_\_

(NAME)

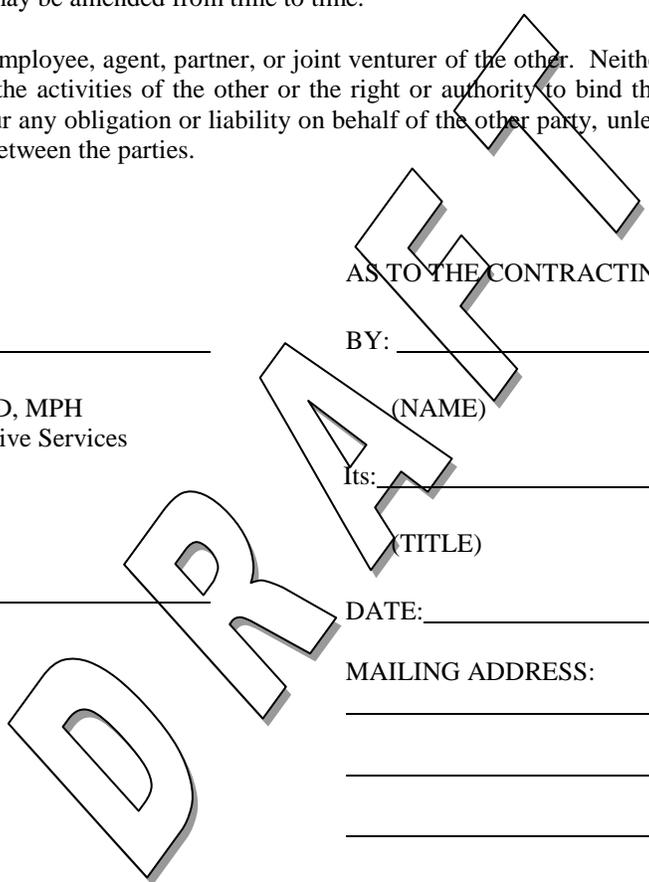
Its: \_\_\_\_\_

(TITLE)

DATE: \_\_\_\_\_

MAILING ADDRESS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_





**ATTACHEMENT III  
DHEC Confidentiality Agreement**

---

I understand that:

- (a) the South Carolina Department of Health and Environmental Control (DHEC) has a legal and ethical responsibility to protect confidential information given or made available to DHEC in administration of the agency's programs and services;
- (b) during the course of my employment, volunteer services, contract performance, or other agency relationship with DHEC, I may have access to confidential information in many forms, oral, written, and electronic;
- (c) my compliance with this confidentiality agreement is an essential condition of my employment, volunteer services, or contractual or other agency relationship with DHEC; and
- (d) violation of this Agreement may result in termination of my volunteer, contractual, and/or work relationship with DHEC or my employer and may be grounds for disciplinary action, fines, penalties, imprisonment, or civil suit to be brought against me.

Confidential information is information known or maintained in any form, whether oral, written, or electronic, whether recorded or not, consisting of protected health information, other health information, personal information, personal identifying information, confidential business information, and other information required by law to be treated as confidential, designated as confidential by the Department, or known or believed by me to be claimed as confidential or entitled to confidential treatment. Examples of confidential information include but are not limited to: personal information of job applicants, DHEC employees, DHEC clients, or members of the public, such as an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information, physical or mental health, health care, payment for health care, education level, financial status, bank account numbers, account or identification numbers issued or used by any federal or state governmental agency or private financial institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, credit records or reports, trade secrets, and confidential business information.

By signing this agreement, I understand and agree that:

- (1) I will not disclose confidential information unless the disclosure complies with DHEC policies and is required to perform my responsibilities.
- (2) I will not disclose confidential information without written authorization from affected persons or parties, except as required by law or, if an employee, as required to perform agency responsibilities.
- (3) I will not access or view any confidential information other than what is required to do my job.
- (4) If I have any questions about whether I need access to certain information, or whether certain information should be disclosed, I will immediately ask my supervisor for clarification.
- (5) I will immediately report any unauthorized disclosure of confidential information to the DHEC Privacy Officer and my supervisor or to the DHEC Procurement Officer, if I am an employee of a contractor.

(6) I will immediately report any request I receive for confidential information, including a subpoena, litigation discovery request, court order, or Freedom of Information Act request, to my supervisor, or the DHEC Procurement Officer, if I am an employee of a contractor, and the DHEC Office of General Counsel.

(7) I will not discuss any confidential information obtained in the course of my relationship with DHEC with any person or in any location outside of my area of responsibility in DHEC, except as otherwise required or permitted by law.

(8) I will not make any unauthorized copy or disclosure of confidential information, or remove or transfer this information to any unauthorized location.

(9) My obligations under this Agreement regarding confidential information will continue after termination of my employment/volunteer assignment/contract affiliation with DHEC.

**THIS CONFIDENTIALITY AGREEMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN ME AND THE DEPARTMENT.**

I have read the above Agreement and agree to comply with all its terms.

Print name:

\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Work Location: \_\_\_\_\_

## Attachment 6

### Procedures for Dispute Resolution

#### I. DISPUTE PROCEDURES FOR GRANT PROGRAM APPLICATIONS DURING THE APPLICATION PROCESS

The following dispute procedures are available to any community based organization, local or county program or any other applicant that objects to any requirement(s) as outlined in a Request for Grant Applications (RFGA), amendment to RFGA or does not receive a distribution of funding as a grantee under a federal, state, or combined federal/state grant program. An applicant or grantee that disagrees with any element of the grant requirements or with the distribution of funding is also referred to herein as a “requestor.”

- A. **Request or Application for Funding.** Subject to conditions set forth in these procedures, any prospective applicant desiring to file a dispute concerning DHEC’s proposed evaluation of applications or proposed manner of distribution of funds (as outlined in the RFGA) shall e-mail or fax a notification of appeal to Leigh Oden, the grant program manager\*, within *three (3) business days* of the date of issuance of the RFGA or any amendment thereto. The notification of appeal must clearly specify the grounds of the dispute and the relief requested. *Within 48 hours* of receipt of a notification of appeal, the grant program manager shall render a decision as to the disposition of the dispute and will e-mail or fax written notification of this decision to the prospective applicant. If the prospective applicant is not satisfied with the decision rendered by the grant program manager, the applicant shall e-mail or fax written notification to DHEC’s Contracts Manager within *two (2) business days* of the date of the written response from the grant program manager. The Contracts Manager will conduct a review and e-mail or fax a written decision by DHEC’s Deputy Director of Administration to the prospective applicant within *three (3) business days*. The written decision will be final and may not be further appealed by the requestor.
- B. **Award to an Applicant.** A requestor with a dispute regarding the Notification of Award shall e-mail, fax or mail a Notification of Appeal to Leigh Oden, the grant program manager\*, within *three (3) business days* of the date of issuance of the Notification of Award. The notification of appeal must clearly specify the grounds of the dispute and the relief requested. *Within 48 hours* of receipt of a notification of appeal, the grant program manager shall render a decision as to the disposition of the dispute and will e-mail or fax written notification of this decision to the prospective applicant. If the prospective applicant is not satisfied with the decision rendered by the grant program manager, the applicant shall e-mail or fax written notification to DHEC’s Contracts Manager within *three (3) business days* of the Notification of Award date. The Contracts Manager will conduct a review and e-mail or fax a written decision to the requestor within *three (3) business days*. The written decision will be final and may not be further appealed by the requestor.
- C. **Notice of Decision.** A copy of all correspondence or decisions under this dispute resolution procedure shall be mailed or otherwise furnished immediately to the requestor and any other party intervening.

**II. PROCEDURES FOR GRANT DISPUTES OR CONTROVERSIES REGARDING DHEC’S EVALUATION OF A GRANTEE’S EXPENDITURES IN THE POST-AWARD PHASE**

- A. **Applicability.** These procedures shall apply to controversies between DHEC and a grantee when the grantee disagrees with DHEC’s evaluation of an expenditure by the grantee as “not allowed” under the grant program requirements. These procedures constitute the exclusive means of resolving a controversy between DHEC and a grantee of an awarded grant.
  
- B. **Complaint against Grant Program Management.** No later than *30 calendar days* after receiving notice that the agency’s grant program area has denied an expenditure, a grantee must e-mail or fax written notice identifying any dispute or controversy to Leigh Oden, the grant program manager. The grant program manager will, *within 30 calendar days* thereafter, review and attempt to informally resolve the dispute or controversy. If the dispute cannot be mutually resolved within that timeframe, a grantee wishing to continue pursuit of the dispute must e-mail or fax written notice of the dispute to Janet Tapp, the program area director\*, *within five (5) business days* following the 30-day review period. The program area director or his/her designee will, *within ten (10) business days* of receipt of a written notice of the dispute, meet or hold a conference call with the grantee. *Within ten (10) business days* after such consultation with the grantee, the program area director will e-mail or fax the grantee with a written determination as to his/her decision regarding the disposition of the expenditure. The decision of the program area director will be final and may not be further appealed by the requestor.

*\* Contacts are listed below:*

**Grant Program Manager:**

Leigh Oden  
SCDHEC  
2600 Bull Street  
Columbia, SC 29201  
SCDHEC  
Phone: (803) 898-0650  
Fax: (803) 898-0573  
([ODENL@dhec.sc.gov](mailto:ODENL@dhec.sc.gov))

**Program Area Director:**

Janet Tapp  
SCDHEC  
2600 Bull Street  
Columbia, SC 29201  
SCDHEC  
Phone: (803) 898-0625  
Fax: (803) 898-0573  
([TAPPJW@dhec.sc.gov](mailto:TAPPJW@dhec.sc.gov))

**Contracts Manager:**

Ron Brock  
SCDHEC  
2600 Bull Street  
Columbia, SC 29201  
SCDHEC  
Phone: (803) 898-3295  
FAX: (803) 898-0501  
([brockrw@dhec.sc.gov](mailto:brockrw@dhec.sc.gov))