

APPALACHIAN AREA AGENCY ON AGING

CONTRACT FOR SERVICE PROVISION UNDER THE OLDER AMERICANS ACT OF 1965 (As Amended)

THIS AGREEMENT, effective April 4, 2016, by and between the S.C. APPALACHIAN COUNCIL OF GOVERNMENTS/AREA AGENCY ON AGING (*hereinafter referred to as the Area Agency on Aging or as the AAA*), and SPARTANBURG REGIONAL FOUNDATION (*hereinafter referred to as the Contractor*), establishes:

WHEREAS, the Older Americans Act of 1965 (as amended) (42 U.S.C., 3001 et seq.) authorizes Federal funds to be used by State and Area Agencies on Aging to provide a comprehensive coordinated system of services for the elderly within each Planning and Service Area (PSA) for which there is an approved Area Plan, and

WHEREAS, the Lieutenant Governor's Office on Aging, the South Carolina State Unit on Aging, has designated the Appalachian Area Agency on Aging (SCACOG/AAA) as the Area Agency on Aging responsible for the administration of Older Americans Act funds within the geographic area of the Appalachian region: Anderson, Cherokee, Greenville, Oconee, Pickens and Spartanburg Counties, and

WHEREAS, the AAA has conducted a comprehensive Needs Assessment concerning services within its Planning and Service Area and a competitive procurement process for the provision of such services, and

WHEREAS, the Contractor has submitted an offer to provide certain services to elderly persons within Spartanburg County, and

WHEREAS, the AAA desires to engage the Contractor to render certain services.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. ENGAGEMENT OF INDEPENDENT CONTRACTOR:

It is the express intention of the parties that the Contractor is an independent contractor and not an employee, agent, joint venturer, or partner of the AAA. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the AAA or the Contractor or any employee or agent of the Contractor.

Both parties acknowledge that the Contractor is independent for Federal, State, and local tax purposes. The Contractor shall retain the right to perform services for others during the term of this Agreement.

The Contractor represents that all services required hereunder will be performed by the Contractor or under its supervision and by personnel who are fully qualified and authorized under State and local law to perform such services.

2. PARTIES:

The Appalachian Area Agency on Aging (AAA) is a component of the Appalachian Council of Governments (ACOG). The Appalachian AAA was created pursuant to Section 305 (42 V.S.e. 3025) of the Older Americans Act with its principal place of business at 30 Century Circle, P. O. Box 6668, Greenville, SC 29606. The contractor is a corporation organized/incorporated under South Carolina State law as a private non-profit with a principal place of business at 101 EAST WOOD STREET, SPARTANBURG, SC 29303.

3. COMMUNICATIONS MEDIA AND NOTICE:

All official communication and notices related to this Agreement shall be transmitted using, as appropriate, the following addresses and technological means:

For the AAA:

Physical Address: 30 Century Circle
Greenville, SC 29607

Mailing Address: P. O. Box 6668
Greenville, SC 29606

Telephone Number: (864) 242-9733

**FAX Transmission
Number:** 864-242-6957

For the Contractor:

Physical Address: 101 East Wood St.

Mailing Address: 101 East Wood St.
Spartanburg, SC 29303

Telephone Number: 864-560-6729

**FAX Transmission
Number:** 864-560-7346

Any modifications to this Agreement shall be executed in writing and be transmitted only to the identified physical or mailing addresses. Each party agrees to provide prompt notification to the other concerning any change in the listings in this section.

The Contractor Officer named below is the point of contact for communications concerning contract issues:

Tim Womack
Phone: 864-242-9733
Fax: 864-242-6957
Email: twomack@scacog.org

4. AUTHORIZED INDIVIDUALS:

The following individuals are hereby designated as representatives of the Parties:

For the AAA:

For the Contractor:

AAA Director: Tim Womack

Senior Director: Jane Ovenden

Executive Director: Steven R. Pelissier

Executive Director: Kristie Caradori

5. INDEMNIFICATION OF LIABILITY:

The Contractor shall indemnify the AAA/SCACOG, its officers, agents, and employees, harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure to act of the Contractor or the Contractor's officers, assistants, employees, or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to carry liability insurance in an amount appropriate to the services provided and shall submit evidence thereof upon approval by the AAA.

6. STATEMENT OF WORK:

The Contractor shall perform and carry out, in a proper manner satisfactory to the AAA, the services as outlined in the SCOPE(S) OF WORK AND STANDARDS FOR EACH SERVICE PURCHASED UNDER THIS CONTRACT (see APPENDIX VI).

7. PERIOD OF PERFORMANCE:

This Contract will become effective on April 4, 2016, and will continue in effect until June 30, 2017, unless terminated earlier in accordance with Section 25 of this Agreement.

8. OPTION TO EXTEND:

The AAA may extend the term of this Contract by written notice to the Contractor prior to 90 days before the end of the initial Contract period, provided that the AAA shall give the Contractor a preliminary notice of its Intent to Extend at least 120 days before the Contract expires. The preliminary notice does not commit the AAA to an extension. If the AAA exercises this option, the extended Contract shall be considered to include such option. However, the total duration of any extension under this clause shall not exceed 12 months.

9. MONETARY CONSIDERATION:

In consideration for the services to be rendered by the Contractor, the AAA agrees to pay the Contractor per the terms of Reimbursement (Section 19 of this Agreement). The Contractor agrees to provide the ten percent (10%) match required, as applicable, and the required documentation of cash or In-Kind match.

10. APPLICABLE LAW:

This Contract is made under, and shall be construed in accordance with, the laws of the State of South Carolina. By executing this Contract, the Contractor agrees to submit to the jurisdiction of the courts of the State of South Carolina for all matters arising or to arise hereunder including, but not limited to, performance of the Contractor and the payment of all license and taxes of whatever kind or nature applicable thereto.

11. COMPLIANCE WITH THE OLDER AMERICANS ACT:

Certain portions of the Older Americans Act of 1965 (as amended) (42 U.S.C. 3001 et seq.) and regulations issued pursuant to the Act (45 CFR 1321) apply by their terms to the activities of Contractors providing services to eligible beneficiaries of funded programs. Accordingly, the Contractor agrees to follow the statutory and regulatory provisions, as applicable. **APPENDIX II identifies those policies.**

12. FEDERAL AND STATE PUBLIC POLICY REQUIREMENTS:

The following Federal and State public policy requirements are adopted by reference to this Contract:

- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
- Debarment and Suspension (Executive Orders 12549 and 12689)
- Equal Employment Opportunity (Executive Orders 11246 and 11375: supplemented by regulations at 41 CFR 60)
- Clean Air Act (42 U.S.C. 7401 et. seq.) and Federal Water Pollution Act (33 U.S.C. 1251)
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Drug-Free Workplace Act of 1988
- South Carolina Drug-Free Workplace Act (S.C. Code of Laws, 44-107.10)

Notwithstanding the fact that Federal civil rights laws which apply to the expenditures of Federal assistance funds do not, by their terms, apply to the conduct of Contractors under sub-grants, the Contractor agrees to comply with the following Statutes:

- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- The Americans with Disabilities Act of 1990
- Title IX of the Education Act Amendments of 1972 (for any education program which may be performed)

In addition, the Contractor agrees that, in order to demonstrate its business integrity, it will comply with all other Federal, State, and local laws that apply by their terms to its general operations and to the Agreement terms.

Ownership of all copyrights or rights in data arising from materials by the Contractor in the course of performance of this Agreement shall vest with the AAA and its parent organization. The U. S. Department of Health and Human Services, the South Carolina Lieutenant Governor's Office on Aging, and the AAA shall retain a royalty-free, non-exclusive irrevocable right to reproduce, publish, or otherwise use the work for program purposes and to authorize others to do so.

13. DISPUTES:

In accordance with Section 10 of this Agreement, all disputes under or relating to this Agreement will be addressed under provisions of the laws of South Carolina. However, both parties agree, to the maximum extent practical, to pursue alternative resolution measures such as mediation or arbitration prior to commencing any action in a court of competent jurisdiction.

14. SEVERABILITY/PARTIAL INVALIDITY:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

15. CONTRACT INTEGRITY:

It shall be a breach of ethical standards for any payment, gratuity, or offer to be made on behalf of the Contractor, or any lower tier entity, as an inducement for the award of this Agreement; for any modification, or for any other beneficial contractual or administrative action.

The Contractor shall assure that no officer, employee, or agent of the Contractor shall participate in any action related to the performance of this Contract which constitutes an actual or apparent conflict of interest.

The Contractor warrants that, in submitting any offer to provide services to be performed under this Agreement, it did not engage in any action which would constitute collusion with other parties for the purpose of discouraging competition among potential offerors.

The AAA reserves the right to impose appropriate bonding requirements on the Contractor for the purpose of assuring full performance under this Agreement, or of assuring that any employees, agents, sub-contractors or other parties who perform under the Agreement are paid.

The AAA also reserves the right to impose appropriate sanctions or pursue other remedies against the Contractor in the case that any evidence comes to its attention that illegal or improper activity has been pursued by the Contractor, or that defective or purposely inaccurate cost or price data was submitted in the performance of this Agreement or in any reports or claims arising hereunder.

The Contractor agrees to maintain business management systems that incorporate sound practices and procedures related to financial management, purchasing, and property management as a means to avoid loss, damage, theft, or misuse of resources that could result in adversely affecting its ability to perform in accordance with the terms and conditions of this Agreement and to achieve required results. The AAA reserves the right to have access to and to review such practices and procedures to the extent deemed necessary and to recommend improvements that will assure economical and efficient delivery of services covered in this Contract.

16. CONTRACT ADMINISTRATION AND MONITORING:

The AAA will conduct such post-award Contract administration as it deems necessary based on the nature of the services being performed. Such action may include, but not be limited to, site visits, facility and operational inspections; review of submitted reports; review of underlying programmatic, financial, and compliance documentation; obtaining of information from third parties; and conduct of financial and performance audits at the AAA's expense.

To facilitate such Contract administration, monitoring, and oversight, the Contractor agrees to maintain and protect in an orderly system all financial and programmatic records that are pertinent to the Contract for a period of three years from Contract close-out, and to provide access to all such records by the Comptroller General of the United States, the U. S. Department of Health and Human Services, the South Carolina Lieutenant Governor's Office on Aging, and the AAA, and any of their duly authorized representatives. This access shall include unrestricted access to the Contractor's officers, employees, and agents for the purpose of interview and discussion of such records and documentation.

17. ACCEPTABLE PERFORMANCE:

The AAA is the responsible authority, without recourse to Federal and State agencies that provide its funding, for the satisfaction and settlement of contractual and administrative matters arising out of this Agreement. This includes, but is not limited to, the determination of acceptable performance. It will be guided in that determination by the programmatic requirements, Scope(s) of Services and Quality Assurance Standards that are adopted by reference in APPENDIX VI of this Agreement, but will exercise broad discretion in making the determination that payments for services rendered have been earned. The AAA will document, in its own records, whether the Contractor has met the terms and conditions of this Agreement and may provide information related thereto to others in accordance with any applicable public disclosure requirements.

The failure of the AAA to enforce any provision of this Agreement shall not be construed as waiver of its right to subsequently enforce the terms and conditions herein. Further, acceptance of services and payment do not constitute a waiver of any rights of the AAA concerning Contractor default or enforcement of requirements in this Agreement, including those concerning quantity or quality of services. The Contractor shall not be in default because of any failure to perform this Agreement under its terms if failure arises from causes beyond its control and without fault or negligence of the Contractor. Examples of these causes are: acts of God or of the public enemy, fires and floods, epidemics and quarantine restrictions, strikes or freight embargos, or unusually severe weather. The Contractor shall have a plan in place for service resumption or transfer of service responsibility, as necessary or appropriate.

18. REPORTING:

The Contractor shall be responsible for submission of financial, compliance, and performance reports in accordance with APPENDIX III and according to the format and frequency of such reports provided therein. Failure to submit required reports in a full, current, and complete manner is grounds for withholding payments.

Outside the normal reporting cycles imposed in APPENDIX III, the Contractor will also immediately report to the AAA any matter that relates to the problems, delays, or adverse conditions that affect Contractor performance or compliance with this Agreement. This obligation shall include disclosure of any investigation or inquiry about suspected or actual adult protective services violations involving staff, volunteers, or clients served by the Contractor, and the results of such investigation or inquiry. It shall also include disclosure of any investigation or inquiry initiated by any governmental entities concerning possible violations of health and safety regulations related to any or all services delivered by the Contractor.

19. PAYMENT:

The Contractor shall be paid as soon as reasonable and possible, provided that all required accurate monthly reports are submitted and funds have been received from the State Unit on Aging.

Failure to file any required report, complete and accurate, within the specified time will result in withholding of payment to Contractor until such report(s) are filed and verified.

The AAA reserves the right to redirect under-utilized funding from one Contractor to another, based on the Aging Services Fund Utilization Policy, APPENDIX I-C.

20. RECOVERY OF PAYMENTS:

In the event that information comes to the attention of the AAA that is documented/verified, that payments made to the Contractor have not been earned or have been made after a material violation of the Agreement has occurred, the AAA reserves the right to recover such payments by sending notice to the Contractor. In the event such notice is received, the Contractor agrees to return the unearned payments within 30 days. In the event such refund does not occur in a timely manner, the AAA may impose an interest charge on the Contractor at the rate of six percent (6%) per annum.

21. CLOSE-OUT:

Upon expiration of the performance period, or when all performance under this Agreement has been completed, the AAA will proceed to close-out the Agreement by conducting such review or audit of financial claims, reports, and documentation as it may deem necessary. The AAA may rely on any audit or agreed-upon procedures performed by an independent auditor engaged by the Contractor to the extent such procedure meets its needs. However, it may conduct additional or supplemental reviews as needed to assure that the terms and conditions of this Agreement have been met. If necessary, the Contractor may submit a final Request for Payment not more than thirty (30) days following the completion of the performance period or Contract. The AAA may also require the Contractor to complete a Statement of Waiver of Claims at that time, indicating that all claims have been submitted and that no further billing for services will be submitted or honored.

22. MODIFICATIONS:

The parties agree that, from time to time, modifications to this Agreement may be necessary. Such modifications will be in writing and executed in the same manner and general form as the original Agreement and will, to the maximum extent practical, be bilateral. However, if because of changes to applicable Federal or State law the AAA must amend the Contract unilaterally, the Contractor agrees to continue performance for the period specified in this Agreement.

23. TRANSFER OF CONTRACTUAL OBLIGATION: SUBCONTRACTING:

Any transfer of substantive or administrative responsibility under this Agreement to a successor, an assign, or a sub-contractor is expressly prohibited except with the prior approval of the AAA and by means of a written modification to this Agreement.

24. SUSPENSION OF WORK:

The Contractor agrees not to suspend work under this Agreement unless specifically instructed to do so by the AAA. The AAA reserves the right to issue an Order to Stop Work for reasons related to performance or administration. Any work conducted during a Stop Work Order is not authorized and payment will be withheld.

If the Contractor suspends work because of factors beyond its control (e.g., natural disaster, etc.) or other excusable delay, it shall not be subjected to contractual sanctions or remedies so long as it reinstates performance as quickly as practicable (see plan referenced in #17 above).

25. CONTRACT TERMINATION:

This Agreement may be terminated by the AAA unilaterally for any of the following reasons:

- Withdrawal of Federal or State funding;
- Default or Breach of Contract by Contractor;
- Convenience of the AAA;
- Insolvency or Bankruptcy of the Contractor; or
- Loss of Licensure or Certification (if applicable).

Notice of such termination shall be in writing and immediate. The effective date of the termination shall be at the discretion of the AAA based on the best interest of the Older Americans Act program and its beneficiaries. In the event that the Contract is terminated because of default or breach of contract by the Contractor, the Contractor agrees that it shall repay the AAA for the actual costs associated with termination and re-procurement.

This Agreement may be terminated bilaterally by both Parties. However, in the interest of maintaining continuation of services to beneficiaries, such termination will not take effect for ninety (90) days following execution of the Agreement to Terminate.

This Contract may be terminated unilaterally by the Contractor by providing written notice to the AAA at least one hundred twenty (120) days prior to the intended effective date. Violation of this provision may result in the Contractor being ineligible to bid on SCACOG/AAA contracts for a period of up to sixty (60) months.

The AAA may, at its option, replace the Contractor before the intended effective date when it is in the best interest of the program to do so. In addition, the AAA may, at its option and for the good cause, adjust payments due to the Contractor by deducting expenses incurred by the AAA in arranging for alternative service delivery.

26. ENTIRE AGREEMENT:

This Contract and its Appendices supersede any and all Contracts/Agreements, either oral or written, between the parties hereto with respect to the rendering of the services by the Contractor to the AAA and contains all Covenants and Agreements between the parties with respect to such services. Each party acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other Contracts, Agreements, Statement or promise not contained in this Contract or its Appendices shall be valid or binding.

In accordance with Paragraph 22, any modification of this Contract will be effective only if it is in writing and signed by authorized officials of both parties.

FOR THE AREA AGENCY ON AGING

FOR THE CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

Witness:

Witness:

Name: _____

Name: _____

Title: _____

Title: _____

APPENDICES

- APPENDIX I: SCHEDULES OF CONTRACTOR MONETARY CONSIDERATION
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- A. Maintenance of Non-Federal Support for Services
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- APPENDIX VII: AWARD INFORMATION SHEET
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APPENDIX I-A

**APPALACHIAN AREA AGENCY ON AGING
SPECIAL CONDITIONS OF FUNDING**

NSIP FUNDS:

NSIP fund allocations are subject to the LGOA AIM distribution methodology so that individual provider NSIP budgets may change throughout the budget year. Contractor recognizes that such change could require a budget amendment to increase or to decrease the amount of NSIP dollars awarded.

GENERAL:

1. Federal and State funds associated with this Contract will be available to the Contractor provided they are received by the ACOG/AAA from the grantor, unless the Budget and Control Board mandates a reduction that impacts the NGA with the LGOA.
3. The Federal share of the Contract is earned only when the cost is accrued and the non-federal share of the cost has been contributed. Contractors must provide evidence on a monthly basis that local required matching funds are being applied.
4. All financial and program reports must be submitted to the ACOG/AAA in the format and schedule(s) provided by the AAA and in accordance with the requirements of the LGOA.
5. The Contractor agrees to comply with the Debarment/Suspension terms and conditions of 45 CFR Part 92.35 (2000 as amended) as applicable to the Contractor.
6. The Contractor ensures that preference for service is given to those older persons in greatest social and/or economic need, with particular attention to low income older individuals including low-income minority older individuals, older individuals with limited English proficiency, older individuals residing in rural areas, and older individuals at risk for institutional placement.
7. All Contracts for the procurement of services or goods supported with financial assistance through the LGOA must adhere to the applicable Federal and State procurement codes.
8. Any Sub-Contracting of funds and/or services under this Contract must receive prior approval from the ACOG/AAA. The Contractor must provide to the ACOG/AAA any agreements from the Sub-Contractor(s).

9. The Contractor must comply with the policies and procedures set forth by the LGOA according to the most recent LGOA Policies and Procedures Manual and any Program Instructions issued to the ACOG/AAA during the Contract period.
10. The Contractor must take adequate steps to ensure that persons with limited English speaking skills receive, free of charge, the language assistance necessary to afford them meaningful and equal access to the benefits and services provided under this Contract.
11. The Contractor agrees that there shall be no discrimination on the basis of handicap, age, sex or religious belief, in programs and activities receiving federal financial assistance under this grant award.
12. The Contractor shall maintain, for the full term of the Contract, and any renewals thereof, Workers Compensation insurance with such limits as may be required by law, and a policy or policies of general liability against liability.
13. The Contractor shall maintain a disaster preparedness plan that is reviewed and updated annually.
14. All Contractors should be aware that the Appalachian AAA reserves the right to remove from AIM units requested for reimbursement that do not have sufficient eligibility support in AIM at the time of the review of the monthly request for funds. Ineligible units must be removed in order to avoid delays at the Appalachian AAA and/or the LGOA level in processing the funds request. It is anticipated, however, that this type of action should not be necessary due to the Contractor's own review of client data prior to submission of any request for funds.
15. The Appalachian AAA is aware that corrections to client or unit data may be necessary from time to time and will make every effort allowable within LGOA guidelines to process and reimburse requests for all allowable units while taking documented corrections into consideration.
16. All Contractors should make an effort to attend the Appalachian AAA Regional Aging Advisory Committee meetings as scheduled.

APPENDIX I-B

**SPECIAL CONDITIONS FOR
HOME AND COMMUNITY-BASED SERVICES**

1. Home and Community-Based Services (HCBS) in this Contract shall be used first for continued services for individuals removed from the AIM waiting list and to prevent individuals from being put on a waiting list or for services not allowable under existing Federal funding sources when there is no waiting list. Contractors wishing to shift HCBS to another service other than that shown on the Schedule(s) of Reimbursement must submit a request for approval to the AAA prior to utilizing the funds, or units will be disallowed.
2. The Contractor shall obtain and maintain verification of the client's needs prior to initiating services with HCBS.
3. HCBS funds shall NOT be used to supplant existing service funding from ANY other source.
4. The ACOG/AAA will only reimburse the Contractor for units of service provided with HCBS funds who provide the ACOG/AAA with all requested data, entered in AIM in the format necessary to document the outcome of services purchased with HCBS funds as mandated by the S. C. Lieutenant Governor's Office on Aging.

**CONDITIONS MANDATED BY
THE S. C. LIEUTENANT GOVERNOR'S OFFICE ON AGING**

5. This Contract PROHIBITS the rotation of service recipients through the various funding sources used for a particular service.
6. Each funding source shall have a distinct client population for the duration of the Contract period or until the client's service is terminated. In the absence of notification of extenuating circumstances, all services are to continue for the entire duration of the Contract period.
7. A new client, who is in need of the service and meets the eligibility criteria of that funding source, if cannot be served or referred to another agency, will be placed on the waiting list and will be added when such vacancies occur.
8. The Contractor will carry out the assessment function and the service functions while the AAA will handle prioritizations unless other provisions are specifically stated under Contract.

9. The Contractor is advised that the LGOA does not allow revisions to AIM client data during a reporting period after the 10th day of the month.

GENERAL DISCLAIMER:

Funds from this Contract shall not be used for capital improvements, major renovations, land purchases, past or current debts, cost of life insurance when the sub-recipient is the beneficiary, late payment charges including penalties and fines, contingency funds, contributions, entertainment, promotional expenses, other fines and penalties, actual losses which could have been covered by insurance, interest, fund raising costs, investment management costs, profit/losses on disposition or depreciable property or other capital assets and legal fees.

The undersigned **Official Representative of the Contractor** has read, understands, and agrees to the SPECIAL CONDITIONS as outlined above.

Signature

Date

APPALACHIAN AREA AGENCY ON AGING AGING SERVICES FUND UTILIZATION POLICY

POLICY:

The Appalachian Area Agency on Aging (AAA) shall regularly review the level of services provided by its contractors in order to manage the funds allocated to the AAA for provision of services to the elderly and to assure, to the extent practical, that funds for services shall be utilized within the contract period. The AAA shall have the authority to redistribute funds within the contract period.

In order to accomplish the objectives stated above, the AAA will strive to utilize the following review schedule and benchmarks:

1. **Three-month review of units served to date compared to contract.**
2. **Six-month review of units served to date compared to contract.** Once the six-month review has been completed, a contractor not serving at least 50% of its contracted units for any particular service(s) shall submit to the AAA for approval a plan of action outlining how the remaining contracted units will be served during the remaining contract period. Particular circumstances or trends that might prevent full utilization of the contracted units should be identified by the contractor in their plan of action.

A plan of action shall also be required for contractors reporting units in excess of 50% as of the six-month review.

3. **Nine-month review of units served to date compared to contract.** Once the nine-month review has been completed:
 - a. If a contractor **that met** the service levels at the six-month review has served less than 75% of its contracted unit for any particular service(s), the contractor shall *immediately* submit to the AAA for approval a plan of action detailing how the remaining contracted units will be served during the remaining contract period. Particular circumstances or trends that might prevent full utilization of the contracted units should be identified by the contractor in their plan of action. If the AAA determines that the plan of action does not sufficiently assure full utilization of contracted units, it may elect to modify the contract and reduce the amount of units of contracted service. This reduction in contracted units would proportionally reduce the amount of funds committed for the contract.

A plan of action is also required for contractors serving in excess of 75% as of the nine-month review.

- b. If a contractor **that did not meet** the service levels at the six-month review has, at this review point, served less than 75% of its contracted units for any particular service(s), the AAA may modify their contract to reduce the amount of units of contracted service.

A plan of action is also required for contractors serving in excess of 75% as of the nine-month review.

- c. A reduction in contracted units would proportionately reduce the amount of funds committed for the Contract. When funds become available for aging services due to modification of any contract(s) as outlined above, the AAA has the right to redistribute, within the AAA geographic area, those funds in order to maximize utilization of the funds within the contract period.
- d. **A year-end review of service levels will also be completed and may result in a redistribution of funds.**

PROGRAMMATIC RELATED POLICIES

A. Maintenance of Non-Federal Support for Services:

The Appalachian Area Agency on Aging will ensure that each Contractor will be required to:

- Ensure that Older Americans Act (OAA) funds are not used to replace funds from non-Federal sources; and
- Agree to continue or initiate efforts to obtain private and other financial support for services funded under OAA.

B. Matching and Percentage Requirements:

The AAA and Contractor must meet all the matching and percentage allocation requirements of the Federal regulations as applied to its Area Plan. The AAA may use its allotments for supportive, nutrition, and wellness services to pay not more than eighty-five percent (85%) of the costs of those activities that are funded by Title III funds. Five percent (5%) will be provided by the State for those such activities. The State matching funds for OAA funding shall be distributed on the same basis as the Federal funds, if they are used as match. The Contractor shall provide from non-Federal resources the ten percent (10%) match for the cost for the supportive, nutrition, and wellness services that are funded by Title III funds.

C. Requirements for the Non-Federal Share:

The Contractor's non-Federal share may be cash and/or third party in-kind contributions. The Contractor shall maintain a reporting system that documents that the Contractor is meeting the local match requirements.

When computing the value of third party in-kind match, the Contractor shall use the fair market value of the third party donation. Fair market value is defined as "*what a reasonable buyer would pay to a reasonable seller when neither party is compelled to make the transaction.*" When volunteer time is used as in-kind match, the definition would be the same, except that the terms "*buyer*" and "*seller*" would be changed to "*employer*" and "*employee*."

Note: Guidance about determining the value of donations is available in Publication 561 of the Internal Revenue Services.

Documentation of local support provided by vendor agencies will be submitted to the ACOG/AAA on a monthly basis.

D. Populations Targeted for Service Under the OAA:

Contractor shall ensure that preference for service is given to those older persons in greatest social and/or economic need, with particular attention to low-income minority persons and older persons living in rural areas.

“*Low-Income*” is defined as income that is less than 125% of the poverty level.

“*Minority older persons*” are defined by the Administration on Aging (AOA) as:

- African-American, not Hispanic origin – a person having origins in any of the black racial groups of Africa;
- Hispanic Origin – a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish/Portuguese culture of origin, regardless of race;
- Native American (Indian) or Alaskan native – a person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition;
- Asian-American/Pacific Islander – a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This area includes China, Japan, Korea, the Philippine Islands, Samoa, and the Hawaiian Islands.

“*Rural*” is defined by the AOA as “*any area that is not defined as urban.*” Urban areas comprise a central place and its adjacent densely settled territories with a combined minimum population of 50,000 and an incorporated place or a Census-designated place with 20,000 or more inhabitants. (All these definitions are from NAPIS Instructions.)

E. Voluntary Contributions for OAA Services:

The 2000 OAA amendments continue to provide for solicitation of voluntary contributions for services delivered with OAA funds. Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under the OAA, provided that the method of solicitation is non-coercive (OAA 315(b)(I). A voluntary contribution is a gift or donation, freely given, without persuasion, coercion, or legal obligations.

The Contractor shall not means test for any service for which contributions are accepted or deny services to any individual who does not contribute to the cost of the service. The ACOG shall consult with Contractors and older individuals in the PSA to determine the best method for accepting voluntary contributions. The same sliding scale used for cost-sharing shall be used to guide voluntary contributions. (OAA 315(b)(2)&(3)

The Contractor shall ensure that they will:

- Provide each program beneficiary with an opportunity to voluntarily contribute to the cost of the service;
- Protect the privacy and confidentiality of each program beneficiary with respect to the recipient’s contribution or lack of contribution;

- Clearly inform each program beneficiary that there is no obligation to contribute and that the contribution is purely voluntary;
- Establish appropriate procedures to safeguard and account for all contributions.
- Use all collected contributions to expand the service for which the contributions were given and to supplement NOT supplant funds received under the OAA. (OAA 315(b)(4)(A-E))

The voluntary contributions system adopted shall be clearly explained to individuals who use the Contractor’s services. The explanation should be made both verbally and in writing at the time service delivery is arranged. The explanation shall include the voluntary nature of the contribution, confidentiality policies, and how contributions are collected and used.

F. Cost-Sharing for OAA Services:

The 2000 OAA amendments provide for cost-sharing for limited services delivered with OAA funds. Cost-sharing is defined by the State Unit on Aging (SUA) as *“sharing of the full cost of the service by the Contractor and the Program beneficiary.”* The level of participation is based on the individual’s willingness and ability to share in the cost, and the Contractor’s total cost of the service. Each Contractor must meet the OAA requirements. The following provisions are taken from the OAA, as amended in November 2000:

1. The SUA permits cost-sharing by program beneficiaries for all services funded under the OAA and State-funded programs with the exceptions noted in Items 2 and 3 of this section. (OAA 315(a)(I))
2. The State is not permitted to implement cost-sharing for the following OAA services:
 - a. Information and assistance, outreach, benefits counseling, or case management services;
 - b. Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services;
 - c. Congregate and home-delivered meals funded under the OAA; or
 - d. Any services delivered through tribal organizations (OAA 315(a)(2)(A-D)).
3. The State does not permit cost-sharing for services by older persons whose income is at or below Federal poverty guidelines. The SUA may exclude from cost-sharing low-income persons whose incomes are above the Federal poverty line, if other factors warrant partial or full exemption. The SUA shall not consider any assets, savings, or other property owned by older persons when defining low-income persons who are exempt from cost-sharing, when creating a sliding scale for cost-sharing, or when seeking contributions or explaining the cost-sharing sliding scale. The AAA may describe the unit in composite terms such as *“visit”* for home care, a *“ride”* for transportation services.

4. The AAA shall require that each Contractor will:
 - a. Protect the privacy and confidentiality of each service recipient with respect to declared income and share of cost paid;
 - b. Establish appropriate procedures to safeguard and account for payments received;
 - c. Use all collected payments to expand the service for which the payment was given;
 - d. Not consider assets, savings, or property owned by the recipient in determining whether cost-sharing is permitted under the OAA;
 - e. Not deny services to an individual due to income or failure to participate in cost-sharing; determine eligibility of individuals to cost-share solely by their confidential self-declaration of income with no required verification; and
 - f. Widely distribute State-created materials in languages reflecting the reading abilities and languages of recipients that describe the criteria for cost-sharing, the sliding scale, and mandate above in Statement F, above. (OAA 315(a)(5)(A-G))

The explanation should be made both verbally and in writing at the time the service is arranged. It shall include confidentiality policies and how payments are used to expand services. Income from cost-sharing shall not be used to meet the local match requirement. Prior to the implementation of cost-sharing, each State and AAA shall develop plans that are designed to ensure that the participation of low-income or minority older individuals, with particular attention to low income minority, those with limited English proficiency and older individuals residing in rural areas will not decrease with the implementation of cost-sharing. (OAA 315(c)(1)&(2))

G. Fees for Non-OAA Supported Services: (For Services Associated with this Contract)

Fees or payments are defined by the SUA as “*legal obligations required in order to receive the service.*” The SUA allows fees for meals provided with Home- and Community-Based Services funds and Bingo Tax and license fees, provided each source of funds has a distinct population receiving services under those sources. **A contractor may not rotate the same population of service recipients through various funding sources.**

When no OAA funds are used to support a service, in whole or in part, and the funding source has no prohibitions against fees, a Contractor may require a fee from an individual in order to receive a service. The sliding scale used for cost-sharing and voluntary contributions, and the method of developing it, should be used for establishing such fees. The sliding scale shall establish a maximum total amount an individual may be charged, regardless of the number of services received. A “block” fee may be established as a percent of income whenever the AAA determines it is in the best interest of the individual.

When this method is used, payments should be prorated over each type of service the individual receives. For purposes of explaining the sliding scale, the AAA may describe the unit in composite terms, such as “*visit*” for home care, a “*ride*” for a transportation service.

Fees established for services may be waived by the Contractor in whole or in part for a specified period of time. In granting a waiver, the Contractor shall consider hardship caused by unusual or unpredictable situations. These include, but are not limited to, increased medical expenses, housing or energy expenses, natural disasters, or signs of abuse, neglect, or exploitation. A waiver may be granted, either at the time of initial assessment, or when the individual’s circumstances change. Fees are identified and tracked by client.

The following principles should guide termination of services due to non-payment:

- Individuals above poverty level who have been determined able to pay a fee may be denied or terminated from services, except when the individual’s health and/or safety is at risk;
- Individuals or their representatives shall be given notice of actions that can be taken to avoid service termination; and
- Individuals or their representatives shall notify the Contractor of any changes that affect their ability to make payments or when income or expenses have changed.

When the individual or representative notifies the Contractor of the inability to make payment, the Contractor shall re-assess the client to determine if there is cause for a full or partial waiver of the fee or a suspension of the fee for a designated period. Staff shall encourage and support a sense of self-determination in all interactions so that the individual’s dignity is preserved.

When a Contractor offers private-pay services, fees shall be based upon the full cost of the service as determined by the Contractor, and no part of the cost may be supported by OAA.

REPORTING REQUIREMENTS

A. Information System Requirements:

1. Use Saber Corporation's software, Advanced Information Manager (AIM), to collect client and service unit information or other software mandated by the LGOA.
2. Hold a current maintenance agreement on AIM software.
3. Have reliable Internet service with ability to transmit file sizes up to 10MG using remote e-mail forwarding.
4. Have computer hardware and operating system adequate to run AIM and AIM Remote (currently 120 MB Free Hard Disk Space; 128 MB RAM, or better according to operating system); Windows 93, NT, ME, or Windows 2000 Operating System.
5. Have reliable technical support to maintain computer hardware and operating system to ensure that deadlines for data collections and transmission are met on a monthly and ongoing basis.
6. Have adequate staff and AIM licenses to ensure that deadlines for data collection and transmission are met on a monthly and ongoing basis.
7. Have staff participate in ongoing training to ensure that quality data is collected and maintained according to ACOG/AAA, State, and Federal requirements.
8. Keep demographic data in AIM current, accurate, and complete, including status dates, phone numbers, physical and mailing addresses, rural/urban designations, county codes, region codes, dates of birth, race, genders, consent to release information, eligibility, and income information, according to ACOG/AAA, State, and Older Americans Act (OAA), and other funding source guidelines.
9. Collect and enter units of service by individual clients monthly in AIM using LGOA assigned Activity Groups, Funding Sources, and NAPIS categories.

10. Units of Services must balance monthly with requests for reimbursement from ACOG/AAA, using the Monthly Units of Service Report (zMUSR) in AIM.
11. Record and keep current and accurate the Net Unit Costs (Contract rates), Total Unit Costs, and Total Budgeted Units for each Activity Group/Funding Source in the zMUSR in AIM.
12. Collect and record in the zMUSR in AIM, Program Income, including Grant-Related Income (GRI) and fees, according to ACOG/AAA, State, OAA, and other funding sources guidelines.
13. Be familiar with and capable of using Microsoft Word and Microsoft Excel software.

AS APPLICABLE:

14. Before submitting the monthly Request for Funds, the Contractor will run the HHS25a and other AIM reports to verify that all assessments are current for each client served and will remove any units that may have been served after the most recent assessment date has expired. LGOA allows 30 days to update an assessment.
15. Run the LG97c or other reports to verify that clients meet the age requirement for each individual service provided; client files need to show a non-expired assessment date and that the clients meet the nutrition risk score requirements of 6 or above as required by LGOA.
16. If the client does not have a nutrition risk score of 6 or above, the Contractor will assure that permission to serve client has been obtained and justification has been noted under the Justification Tab portion of the assessment screen in AIM.
17. Before submitting the Request for Funds, Contractor will remove all units of service from AIM corresponding to any determined portion of the month during which the client did not meet the eligibility requirements.
18. **In order to ensure client and unit eligibility, efforts will be made to closely adhere to the following: The Contractor will submit the monthly meal composite report (after verifying total meals ordered with the AAA Nutrition Program Monitor for those who provide meal services). The Contractor will provide form SC63, applicable HHS25a and LG97c reports by the 5th day of the month and may do so electronically after review of these reports. Reports will be reviewed by SCACOG for accuracy and returned to providers for correction by the 7th day of the month. The provider will make corrections as applicable and after making all updates, will notify SCACOG then submit the request for funds and MUSR report by the 9th day of the month. Failure to make corrections by the due date could delay payment until the next month.**

19. Vendor agencies providing Minor Home Repair Services will supply Before and After photos for each funded project.

DRUG-FREE WORKPLACE ACT
CODE OF LAWS OF SOUTH CAROLINA 1976,
AS AMENDED
SECTION 44-107-10 THROUGH SECTION 44-107-90
CERTIFICATION STATEMENT

I hereby certify to the ACOG/AAA that I will provide a drug-free workplace by:

1. Publishing a Statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace, and specifying the actions that will be taken against employees for violations of the prohibition.
2. Establishing a Drug-free Awareness Program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug violations
3. Making it a requirement that each employee, to be engaged in the performance of the Contract, be given a copy of the Statement required by Item 1;
4. Notify the employee in the Statement required by Item 1 that, as a condition of employment of the Contract or Grant, the employee will:
 - a. Abide by the terms of the Statement; and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after conviction;
5. Notifying the using agency within ten (10) days after receiving notice under Item 4b from an employee or otherwise receiving actual notice of the conviction;
6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee convicted, as required by Section 44-107-50; and
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of Items 1, 2, 3, 4, 5, and 6.

I also agree that, in compliance with Section 44-107-50, I shall within thirty (30) days after receiving notice from an employee of a conviction pursuant to the title:

1. Take appropriate personnel action against the employee up to and including termination;
or
2. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for the purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

Signature and Title

Date

HIPAA PRIVACY RULE COMPLIANCE- BUSINESS ASSOCIATE

- A. DEFINITIONS: (Terms used, but *not* otherwise defined in this Section shall have the same meaning as those terms in the HIPAA Privacy Rule.)
1. Business Associate: “Business Associate” shall have the same meaning as the term “business associate” in 45 CFR § 150.103 (2002).
 2. Covered Entity: “Covered Entity” shall mean Appalachian Council of Governments/Area Agency on Aging (ACOG/AAA).
 3. Individual: “Individual” shall have the same meaning as the term “individual” in CFR § 164.501 (2002) and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g) (2002).
 4. Privacy Rule: “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Sub-parts A and E (2002).
 5. Protected Health Information: “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 164.501 (2002), limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 6. Required by Law: “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.501 (2002).
 7. Secretary: “Secretary” shall mean the Secretary of the South Carolina Office of the Lieutenant Governor/Office on Aging (SCLG/OOA), or his designee.
- B. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:
1. Business Associate agrees to *not* use or disclose Protected Health Information other than as permitted or required by the Contract or as Required by Law.
 2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Contract.

3. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Contract.
4. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information *not* provided for by this Contract of which it becomes aware.
5. Business Associate agrees to ensure that any agent, including a sub-contractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply throughout this Contract to Business Associate with respect to such information.
6. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information, received from or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner mutually agreed upon or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
7. Business Associate agrees to document such disclosures of Protected Health Information 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 or Protected Health Information in accordance with 45 CFR § 164.528 (2002).
8. Business Associate agrees to provide to Covered Entity or an individual, in time and manner mutually agrees upon, information collected in accordance with Section B.6 immediately above of this Contract, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 (2002).
9. Business Associate agrees to provide access, at the request of Covered Entity and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524 (2002) if the Business Associate has Protected Health Information in a Designated Record Set.
10. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 (2002) at the request of Covered Entity or an Individual, and in the same time and manner as designated by Covered Entity if the Business Associate has Protected Health Information in a Designated Record Set.

11. Business Associate understands and agrees that, should SCLG/OOA be found in violation of the HIPAA Privacy Rule due to Business Associate's material breach of this Section, Business Associate shall be liable to SCLG/OOA for any damages, penalties, and/or fines assessed against SCLG/OOA as a result of Business Associate's material breach. SCLG/OOA is authorized to recoup any and all such damages, penalties and/or fines assessed against SCLG/OOA by means of withholding and/or offsetting such damages, penalties, and/or fines against any and all sums of money for which SCLG/OOA may be obligated to the Business Associate under any previous Contract and/or this or future Contracts. In the event there is no previous contractual relationship between the Business Associate and SCLG/OOA, the amount to cover such damages, penalties, and/or fines shall be due from Business Associate immediately upon notice.

C. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

1. General Use and Disclosure Provisions:

Except as otherwise limited in this Contract, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for or on behalf of Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

2. Specific Use and Disclosure Provisions:

- a. Except as otherwise limited in this Contract, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Contract, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed, that it will remain confidential and 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 it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Contract, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B) (2002).
- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

D. OBLIGATIONS OF COVERED ENTITY

1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520 (2002) to the extent that such limitations may affect Business Associate's use or disclosure of Protected Health Information.
2. Covered Entity shall notify Business Associate of any changes in or revocation of permission by individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
3. Covered Entity shall notify Business Associate of any restrictions to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522 (2002), to the extent that such restrictions may affect Business Associate's use or disclosure of Protected Health Information.
4. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. This provision is notwithstanding the Business Associate's use or disclosure of Protected Health Information for data aggregation or management and administrative activities of Business Associate in accordance with this Contract.

E. TERMINATION DUE TO BREACH OF BUSINESS ASSOCIATE SECTION

Notwithstanding anything in this Section to the contrary, Covered Entity shall have the right to terminate this Contract immediately if Covered Entity determines that Business Associate has violated any material term of this Section.

Signature and Title

Date

APPENDIX VI

SCOPE OF WORK QUALITY ASSURANCE STANDARDS

Each Provider shall follow the Standards established by LGOA for the provision of all services under contract.

The Scopes of Work and Standards for Aging Services can be found in the most recent update to the LGOA Policy and Procedures manual dated 7/1/2015 – Section 500 – 800, as applicable.

(AAA/ADRC)

Award Information Sheet

Award Identification: Contract for Service Provision Under the Older Americans Act of 1965 (As amended)

SCACOG DUNS Number: 06-932-6312

Contract Period: Fiscal Year – April 4, 2016 - June 30, 2017

CFDA Numbers:

Title III-B Supportive Services 93.044

Title III-B - Legal Services 93.044

Title III-C1 - Group Dining 93.045

Title III-C2 - Home Delivered Meals 93.045

Title III-D - Evidence Based Wellness Programs 93.043

NSIP 93.053

