

SCHIE_x PARTICIPATION AGREEMENT

Approved March 13, 2014

This Participation Agreement (“Agreement”) is made effective as of _____ (“Effective Date”) by and between _____ (“Participant”), and South Carolina Health Information Partners, Inc. (“SCHIP”), a South Carolina nonprofit corporation (Participant and SCHIP being referred to individually as a “Party” and collectively as the “Parties”).

WHEREAS, SCHIP governs the South Carolina Health Information Exchange (“SCHIE_x”), a multi-partner electronic health information exchange that facilitates the electronic exchange of protected health information (“PHI”) among Participants for Permitted Purposes;

WHEREAS, Participant desires to participate in and exchange PHI via SCHIE_x, pursuant to the terms of this Agreement; and

WHEREAS, the Parties desire to comply with all applicable state and federal laws intended to protect the privacy and electronic security of PHI of individuals whose data may be transmitted via SCHIE_x;

NOW THEREFORE, for and in consideration of the recitals shown and the mutual covenants and conditions herein contained, the Parties enter into this Agreement to provide a full statement of their respective responsibilities.

1. DEFINITIONS

The definitions set forth in the SCHIE_x Policy Manual, as amended from time to time, shall apply to the capitalized terms used but not defined in this Agreement.

2. GRANT OF RIGHTS

2.1 Grant by SCHIP.

SCHIP grants to Participant, and Participant accepts, a non-exclusive, personal, nontransferable, limited right to have access to and to use the System for Permitted Purposes, subject to Participant’s full compliance with this Agreement and the SCHIE_x Policy Manual. SCHIP retains all other rights to SCHIE_x and all the components thereof. No Participant shall obtain any rights to SCHIE_x except for the limited rights to use the System expressly granted by this Agreement.

2.2 Provision of Health Data.

A Participant in SCHIE_x EXCHANGE shall participate in and maintain its connection to the SCHIE_x record locator service (“RLS”)-based, peer-to-peer network and provide through the System the information, including PHI, as required for the role-based access controls as set forth in Section 5 of this Agreement.

2.3 Measures to Assure Accuracy of Data.

Participant shall, in accordance with the SCHIEEx Policy Manual, use reasonable and appropriate efforts to assure that all data it provides to the System is accurate, reasonably complete, and provided in a timely manner.

2.4 License.

Subject to Section 2.5 (Limitations on Use of PHI) below, Participant grants to SCHIP a perpetual, non-exclusive, royalty-free right and license (i) to access and/or otherwise permit other Participants to access through SCHIEEx and use all PHI provided by Participant in accordance with this Agreement and the SCHIEEx Policy Manual, and (ii) to use such PHI to carry out the duties of SCHIP under this Agreement and the SCHIEEx Policy Manual, including without limitation System administration, testing, problem identification and resolution, management of the System, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation those promulgated under HIPAA, and otherwise as SCHIP determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal and state laws and regulations.

2.5 Limitations on Use of PHI.

Notwithstanding Section 2.4 (License) above, PHI provided by Participant to SCHIEEx may only be accessed, used, or disclosed by other Participants for Permitted Purposes.

3. RESPONSIBILITIES OF SCHIP

3.1 SCHIP shall provide the overall guidance for the operation of SCHIEEx and the System, including its security and privacy and its technical components, and shall publish this guidance in the SCHIEEx Policy Manual, as amended from time to time. SCHIP shall have the following responsibilities and perform the following functions:

- a.** Audit Participant, in accordance with the policies and procedures set forth in the SCHIEEx Policy Manual, to determine if Participant is complying with the SCHIEEx Policy Manual, including the adoption by Participant of the policies listed in Section 4.2 below. The circumstances in which SCHIP may conduct an audit include, but are not limited to, receipt of notice of a violation or suspected violation of this Agreement and/or the SCHIEEx Policy Manual; receipt of a complaint from an individual or the individual's representative regarding access, use, or disclosure of that individual's PHI; or at random as needed to ensure compliance.
- b.** Develop and implement the technical components for the operation of SCHIEEx.
- c.** Provide the guidance for and facilitate the operation of a "data host" function, as applicable.
- d.** Provide the guidance for and facilitate the operation of an "audit host" function whose responsibility it will be to regularly monitor the activities of SCHIEEx and to report its findings to SCHIP as indicated in the policies and procedures established for the operation of the "audit host."

e. Report and investigate unauthorized uses and security incidents within the System.

f. Maintain the functionality of the System and the services it provides in accordance with the SCHIEEx Policy Manual, and provide such service, security, and other updates as SCHIP determines are appropriate from time to time. SCHIP must provide notice to Participant of technical occurrences that adversely impact the System if the technical occurrence is not resolved within forty-eight (48) hours of its discovery.

g. Provide access to training information and materials to Participant regarding the Participant's and its Authorized Users' rights and obligations under this Agreement and the access and use of the System and its services, including such user manuals and other resources SCHIP determines appropriate to support the System and its services.

h. Provide, during normal business hours, support and assistance in resolving difficulties in installing, accessing, and using the System and its services.

4. RESPONSIBILITIES OF PARTICIPANT

Participant shall have the following responsibilities and perform the following functions:

4.1 Fully comply with the SCHIEEx Policy Manual, as amended from time to time by SCHIP and incorporated herein by reference, a current copy of which is available on the SCHIEEx website, www.SCHIEEx.org, and with all applicable state and federal laws and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, Code of Laws of South Carolina, and if also applicable, 42 CFR Part 2, pertaining to confidentiality of alcohol & drug program patient records ("Applicable Law"). Participant must comply with Applicable Law even if Participant is not a Covered Entity and would not otherwise be required to comply with such laws.

4.2 Adopt and implement all necessary and appropriate policies and procedures to comply with the SCHIEEx Policy Manual, including the following:

1. Policy Statement(s) regarding patient rights and education;
2. Policy Statement(s) regarding compliance with all federal and state laws and regulations;
3. Policies and Procedures for auditing the access to and use of SCHIEEx products and services; and
4. Policy Statement(s) regarding Breaches of Confidential Information.

4.3 Provide to SCHIP copies of all of its applicable policies and procedures relating to the privacy and security of PHI, upon the request of SCHIP.

- 4.4** Ensure that its Authorized Users who must access the System as part of their job responsibilities understand and execute individual User Agreements prior to accessing the System.
- 4.5** Terminate Authorized User system identifications and any passcodes at the time of termination of employment or other business relationship with Participant.
- 4.6** Monitor compliance with individual Authorized User login and passcode use and strictly enforce a prohibition on any sharing of an Authorized User's login and passcode.
- 4.7** Terminate or suspend an individual Authorized User's login and passcode when a violation of internal policies and procedures has occurred or when a violation of the use of SCHIEEx, per this Agreement or the SCHIEEX Policy Manual, is identified by SCHIP or Participant staff.
- 4.8** If Participant participates in SCHIEEx EXCHANGE, notify its patients that their data will be submitted via SCHIEEx and provide patients with the opportunity to opt out of having their PHI exchanged through SCHIEEx.
- 4.9** If Participant participates in SCHIEEx EXCHANGE, develop and maintain a notice for its patients regarding participation in SCHIEEx as a part of the Participant's Notice of Privacy Practices or other document that complies with the SCHIEEx Policy Manual.
- 4.10** Cooperate with all requests for audits initiated by SCHIP or its agents by providing all requested information. Participant must respond to an audit request within twenty (20) calendar days of receipt of the audit request.
- 4.11** Provide appropriate and adequate training to all of Participant's personnel, including without limitation Authorized Users, regarding the requirements of laws and regulations that govern the confidentiality, privacy, and security of PHI, including without limitation requirements imposed under HIPAA.
- 4.12** Comply with the standards for the confidentiality, security, and use of patient health information, including without limitation PHI, described in HIPAA, as provided in the SCHIEEx Policy Manual.
- 4.13** Report to SCHIP any access, use, or disclosure of PHI in violation of this Agreement or the SCHIEEx Policy Manual, in accordance with the time frames for such notifications set forth in the SCHIEEx Policy Manual.
- 4.14** Implement security measures with respect to the System and the services it provides in accordance with the SCHIEEx Policy Manual.
- 4.15** Reasonably cooperate with SCHIP on issues related to the DURSA and SCHIEEx's participation in the eHealth Exchange.

4.16 Submit Messages through the eHealth Exchange only for Permitted Purposes.

4.17 Use any information received through the eHealth Exchange in accordance with the terms and conditions of the DURSA as well as the terms and conditions of this Agreement and the SCHIEEx Policy Manual.

4.18 Receive, store, process and otherwise access or utilize any patient records from any federally assisted alcohol and drug treatment program only in accordance with 42 CFR Part 2 and resist all efforts in judicial proceedings to obtain access to such patient records except as specifically provided for in the applicable provisions of 42 CFR Part 2.

5. AUTHORIZED USERS

5.1. User Agreements.

Every Participant must execute a User Agreement with each Authorized User that Participant will allow to utilize SCHIEEx in accordance with this Agreement prior to allowing the Authorized User to access the System. A sample User Agreement is provided in the SCHIEEx Policy Manual.

5.2 Identification of Authorized Users.

Each Participant shall maintain a list identifying all of Participant's Authorized Users and the unique system identification for each. Participant shall update such list whenever an Authorized User is added or removed by reason of termination of employment or otherwise. Participant shall provide SCHIP with a copy of this list upon request.

5.3 Certification of Authorized Users.

Participant shall ensure, and by granting access to SCHIEEx thereby certifies to SCHIP, that an Authorized User:

- a.** Has completed a training program conducted by Participant;
- b.** Will be permitted by Participant to use the System and its services only as reasonably necessary for the performance of Participant's activities in accordance with Participant's role-based access controls;
- c.** Has agreed not to disclose to any other person any passwords and/or other security measures issued to the Authorized User; and
- d.** Has acknowledged in writing that his or her failure to comply with this Agreement and the SCHIEEx Policy Manual may result in the withdrawal of privileges to use the System and its services and may constitute cause for other actions by Participant.

5.4 No Use by Other than Authorized Users.

Participant shall restrict access to the System and, if applicable, use of its services, only to Authorized Users in accordance with this section.

5.5 Responsibility for Conduct of Participant and Authorized Users.

Participant shall be solely responsible for all acts and omissions of Participant and/or its Authorized Users, and all other individuals who access the System and/or use its services either through Participant or by use of any password, identifier or log-on received or obtained directly or indirectly from Participant or any of its Authorized Users, with respect to the System, the services provided, and/or any confidential and/or other information accessed in connection therewith.

6. TERM OF AGREEMENT

The initial term of this Agreement shall commence on the effective date of this Agreement and terminate on December 31 of that same year. At the end of the initial term and each subsequent term, this Agreement will automatically renew for an additional term of one year, unless either party has given written notice of nonrenewal at least thirty (30) days prior to the end of the term then in effect. The terms of this Agreement shall remain the same during each renewal period, except as provided in Section 8 (Fees), and except to the extent there are changes to the SCHIEX specifications or SCHIEx Policy Manual, as provided for in Section 9 (Software, Hardware and Equipment) and Section 13 (Changes to the SCHIEx Policy Manual).

7. BUSINESS ASSOCIATE AGREEMENT

Participant and SCHIP agree to enter into and be bound by the terms, conditions, and obligations of the Business Associate Agreement executed concurrently with this Agreement.

8. FEES

Fees for participation in SCHIEx are set forth in Schedule A (Fee Schedule), a copy of which is attached to this Agreement and incorporated herein by reference. Fees will be determined by Participant type. Participant shall pay SCHIP its first annual fee concurrently upon execution of this Agreement. Thereafter, fees are due annually on January 1. SCHIP may modify the Fee Schedule incorporated in this Agreement on an annual basis as necessary to ensure the ongoing sustainability of SCHIEx and fair cost allocation among all Participants. SCHIP shall notify Participant of any changes to the Fee Schedule at least sixty (60) days prior to the annual renewal date. If Participant chooses to renew this Agreement at the end of the term, as discussed above in Section 6, Participant agrees that the renewed Agreement will incorporate the Fee Schedule in effect for all Participants as of the renewal date.

9. SOFTWARE, HARDWARE AND EQUIPMENT

9.1 SCHIP possesses, or will obtain in the future, rights to all of the software necessary to operate SCHIEx and the System (the "SCHIEx Software"). Participant agrees that all such rights, including but not limited to copyrights, patent rights, trademark rights, trade secret rights and all other rights or interests in intellectual property in any form relating to, arising from or associated with the SCHIEx Software now or in the future existing in or under common law, state law, Federal law and/or laws of foreign countries, shall remain with SCHIP or its licensors. Upon termination or expiration of this Agreement, Participant agrees to discontinue all use,

reproduction, modification, distribution or display of the SCHIEEx Software. Participant further agrees, upon termination or expiration of this Agreement, to delete all digital copies of the SCHIEEx Software and to return each physical copy of all such SCHIEEx Software to SCHIP in good condition, reasonable wear and tear excepted. Participant further agrees to discontinue using any SCHIEEx trade names and/or trademarks, or confusingly similar variations thereof, upon the termination or expiration of this Agreement. Upon request by SCHIP, Participant shall provide written assurance of its compliance with the foregoing requirements following the termination or expiration of this Agreement.

9.2 Participant shall be responsible for procuring all hardware, equipment, and software necessary for it to access the System, use its services (including any software), and provide to SCHIEEx all information required to be provided by Participant (“Participant’s Required Hardware and Software”). Participant’s Required Hardware and Software shall conform to SCHIEEx’s specifications as set forth in the SCHIEEx Interoperability Services Guide in the SCHIEEx Policy Manual. SCHIP may change such specifications as necessary. SCHIP must specify the time period in which the change must be implemented; however, Participant shall always have at least sixty (60) days to implement any such change. As part of Participant’s obligation to provide Participant’s Required Hardware and Software, Participant shall be responsible for ensuring that all of Participant’s computers to be used to interface with the System are properly configured, including but not limited to the operating system, web browser, and Internet connectivity.

9.3 SCHIP grants to Participant a non-exclusive, personal, nontransferable, limited license to use the SCHIEEx Software solely for access to or use of the System.

9.4 Participant shall not, without SCHIP’s prior written consent, copy any of the SCHIEEx Software.

9.5 Participant shall not modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to recreate the SCHIEEx Software or the System, or to create any derivative works from the SCHIEEx Software or the System.

9.6 The SCHIEEx Software includes certain third-party software, hardware, and services, which may be subject to separate licenses or subscriptions or other agreements or may require that Participant enter into such agreements with third-party vendors. Participant shall execute such agreements as may be required for the use of such software, hardware or services, and comply with the terms of any applicable license or other agreement relating to third-party products included in the SCHIEEx Software.

9.7 Participant shall use reasonable efforts to ensure that its connection to and use of the System, including without limitation the medium containing any data or other information provided to the System, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or “malware,” viruses, worms, and Trojan Horses) which will disrupt the proper operation of the System or any part thereof or any hardware or software used by SCHIEEx in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or

the taking of or failure to take any action will cause the System or any part thereof or any hardware, software or data used by SCHIEx or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable or inaccessible.

10. INTELLECTUAL PROPERTY

The Parties acknowledge and agree that any and all intellectual property rights, titles and interests in and to SCHIEx and the System, including but not limited to the SCHIEx Software and any copyrights, patent rights, trademark rights, trade dress rights, trade names, trade secret rights and all other rights or interests in intellectual property in any form relating to, arising from or associated with SCHIEx and/or the System now or in the future existing in or under common law, state law, Federal law and/or laws of foreign countries, are now and shall be in the future owned or licensed by SCHIP and/or its partners or vendors. Participant shall not receive any intellectual property rights, titles or interests in and to SCHIEx, the System, the SCHIEx Software or as otherwise described above, other than the limited license provided herein.

11. LIABILITY

11.1 Indemnification. Unless Participant is a political subdivision of the State of South Carolina, an affiliate organization, or otherwise prohibited or limited by law from indemnifying SCHIP, each party (the “Indemnifying Party”) shall indemnify, defend and hold the other party, its shareholders, members, affiliates, officers, directors, employees, consultants and agents, harmless from and against any and all claims, actions, liabilities, losses, costs, and expenses (including, without limitation, costs of judgments, settlements, court costs and attorneys’ fees) arising out of, or relating in any way to: (i) the material breach of any provision of this Agreement, including the SCHIEx Policy Manual, by the Indemnifying Party or its employees or agents; or (ii) any violation of any local, state or federal law or regulation by the Indemnifying Party or its employees or agents. If Participant is a political subdivision of the State of South Carolina, an affiliate organization, or otherwise prohibited or limited by law from indemnifying SCHIP, then neither party shall be liable for any claims, actions, liabilities, losses, costs, and expenses (including, without limitation, costs of judgments, settlements, court costs and attorneys’ fees) arising out of, or relating in any way to, any acts or failures to act by the other party or its employees or agents in connection with this Agreement.

11.2 Limitation on Damages. NOTWITHSTANDING ANY OTHER TERM OF THE AGREEMENT TO THE CONTRARY, IN NO EVENT WILL SCHIP (OR ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUPPLIERS OR LICENSORS) BE LIABLE TO PARTICIPANT, OR ANY THIRD PARTY CLAIMING THROUGH PARTICIPANT, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWSOEVER CAUSED (INCLUDING DAMAGES FOR LOST PROFITS OF ANY TYPE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, INCREASED COSTS OF OPERATION, LITIGATION COSTS, AND THE LIKE), WHETHER BASED UPON A CLAIM OR ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, IN CONNECTION WITH THE USE OR PERFORMANCE OF SCHIEX AND ITS COMPONENTS, REGARDLESS OF WHETHER SCHIP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SCHIP’S

AGGREGATE LIABILITY TO PARTICIPANT, WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, MISREPRESENTATION, OR OTHERWISE, WILL, IN RESPECT OF A SINGLE OCCURRENCE OR A SERIES OF OCCURRENCES, BE LIMITED TO DIRECT DAMAGES AND WILL IN NO CIRCUMSTANCES EXCEED, IN THE AGGREGATE, THE FEES PAID TO SCHIP BY PARTICIPANT PURSUANT TO THIS AGREEMENT.

12. TERMINATION

12.1 Termination for Cause. “Cause” means the failure by either of the Parties to perform a material term of this Agreement.

(a) SCHIP may terminate this Agreement for non-payment of fees by Participant upon ten (10) days written or electronic notice that fees are past due and that SCHIEx access will be terminated if fees are not paid within ten (10) days.

(b) Either of the Parties may terminate this Agreement for Cause based upon the failure of the breaching party to remedy any material breach to the reasonable satisfaction of the non-breaching party within thirty (30) days after being given written notice of said breach.

(c) Should SCHIP terminate this Agreement for Cause for any reason other than non-payment of Fees, SCHIP shall follow the enforcement protocol established in the SCHIEx Policy Manual, which may result in the imposition of sanctions on Participant.

(d) Participant may terminate this Agreement as provided in Section 13.2.

12.2 Termination Without Cause. Participant may terminate this Agreement without Cause by giving sixty (60) days prior written notice to SCHIP.

12.3 Termination by Consent. This Agreement may be terminated at any time by mutual written agreement of the Parties.

12.4 Effect of Termination. Immediately upon termination of this Agreement for any reason, Participant shall cease to be a Participant, and neither Participant nor its Authorized Users shall have any rights to access or use the System or the SCHIEx software. Participant shall return all equipment, hardware and software applications belonging to SCHIP. SCHIP shall retain rights to any and all necessary data relative to security and audit requirements. The following provisions of this Agreement shall survive any termination of this Agreement: Sections 9.1 and 9.4; Section 10 (Intellectual Property); Section 11 (Liability), and specified provisions of the Business Associate Agreement, as set forth therein.

13. CHANGES TO THE SCHIEx POLICY MANUAL

13.1 SCHIP may amend, repeal, or replace the terms contained in the SCHIEx Policy Manual at any time, except as provided in Section 8 (Fees) and Section 9.2 (Software, Hardware and Equipment), and shall give Participant notice of those changes. Subject to Section 13.2, any such change to the SCHIEx Policy Manual shall automatically be incorporated by reference into this

Agreement and be legally binding upon SCHIP and the Participant sixty (60) days following SCHIP's notification to Participant of a change to the SCHIEx Policy Manual.

13.2 If Participant objects to a change, Participant may terminate this Agreement by giving SCHIP written notice thereof not more than sixty (60) days following SCHIP's notice of the change. Notwithstanding any other provision of this Agreement, such termination of the Agreement shall be effective as of the date of SCHIP's receipt of Participant's written notice of termination.

14. ACCURACY OF DATA

Participant shall be solely responsible for ensuring the accuracy, completeness, and quality of Participant's PHI that it maintains and makes available to SCHIEx. SCHIP assumes no responsibility for the accuracy, completeness, and/or quality of Participant's PHI.

15. ADDITIONAL PARTICIPANTS

The Parties expressly acknowledge that it is the intent of both Parties that other Participants join and participate in SCHIEx to facilitate the secure and confidential transmission of PHI among Participants in accordance with the terms of this Agreement and the incorporated SCHIEx Policy Manual. Upon SCHIEx's acceptance of a new Participant, SCHIP shall ensure that the new Participant executes and becomes bound by the Participation Agreement, the Business Associate Agreement and the SCHIEx Policy Manual, with the result that current Participants and the new Participant are all bound by the same terms. The new Participant shall not be granted the right to participate in SCHIEx until both the new Participant and SCHIP execute the Participation Agreement.

16. DISCLAIMER OF WARRANTIES

SCHIP DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, WITH RESPECT TO SCHIEX, ANY COMPONENTS THEREOF, OR ANY RESULTS THAT MAY BE OBTAINED BY USE OF OR PARTICIPATION IN SCHIEX, AND ALL OF THE FOREGOING WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED BY SCHIP.

17. NOTICE

Except as otherwise provided for in the SCHIEx Policy Manual, all notices and other communications from either Party to the other hereunder shall be in writing and shall be deemed given when delivered personally, by overnight courier service or when deposited in the U.S. Mail, certified or registered mail, return receipt requested, postage prepaid and properly addressed to:

SCHIP: South Carolina Health Information Partners, Inc.
1919 Blanding Street
Columbia, SC 29201

Participant: _____

18. IMPOSSIBILITY

The failure of a Party to fulfill any of its obligations under this Agreement shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from events which are beyond the reasonable control of such Party and which makes such Party's performance of its obligations under this Agreement impossible or so impractical as to be considered impossible under the circumstances, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Agreement, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

19. ASSIGNMENT

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The Parties expressly agree that SCHIP may assign this Agreement and its rights, interests and obligations hereunder to another entity without the prior written consent of Participant; however, SCHIP must provide Participant with written notice of the assignment within thirty (30) days after the assignment. Neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by Participant without the prior written consent of SCHIP.

20. ENTIRE AGREEMENT

This Agreement and the SCHIEx Policy Manual incorporated herein by reference constitute the entire agreement between Participant and SCHIP with respect to the subject matter hereof. No waiver, modification or amendment of any of the terms or conditions hereof shall be effective unless set forth in writing and duly signed by Participant and SCHIP.

21. GOVERNING LAW

The validity, construction and performance of this Agreement shall be governed by the laws of the State of South Carolina.

22. CAPTIONS

All captions are included only for reference and shall not constitute substantive provisions of this Agreement.

23. LEGAL EFFECT

The rights and obligations of the Parties under this Agreement shall inure to the benefit of and shall be binding upon their respective heirs, executors, administrators, successors, and permitted assigns. This Agreement is for the sole benefit of the Parties and their respective successors and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

24. SEVERABILITY

Every provision of this Agreement is intended to be severable. If any term or provision hereof is deemed illegal or invalid or unenforceable for any reason whatsoever, such illegality or invalidity or unenforceability shall not affect the validity or legality of the remainder of this Agreement.

25. CONSENT TO JURISDICTION AND VENUE

Any claim arising out of or relating to this Agreement shall be brought in a state or federal court of competent jurisdiction in South Carolina. The Parties consent to the jurisdiction of the state and/or federal courts located in Richland County, South Carolina and hereby waive (i) any objection to jurisdiction or venue of courts in South Carolina, and (ii) any defense claiming lack of jurisdiction or improper venue in any action brought in such courts.

26. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one and the same Agreement.

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

For SCHIP

For Participant

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____