

**APPENDIX \_\_\_\_\_**  
**NEW YORK STATE DEPARTMENT OF HEALTH**  
**STANDARD CLAUSES**  
**FOR MANAGEMENT SERVICE AGREEMENTS**

Notwithstanding any other provision of this agreement, contract, or amendment (hereinafter “Agreement”) the parties agree to be bound by the following clauses, which are hereby, made a part of the Agreement:

**A. DEFINITIONS FOR PURPOSES OF THIS APPENDIX**

1. **“MCO”** includes;
  - traditional health maintenance organizations certified pursuant to Public Health Law (PHL) Section 4403;
  - special purpose MCOs, also known as prepaid health services plans (PHSPs), certified pursuant to PHL section 4403-a;
  - HIV Special Needs Plans (HIV SNPs) certified pursuant to PHL Section 4403-e; and
  - Managed long term care plans certified or operating pursuant to PHL section 4403-f.
2. **“Management Contractor”** means any person, other than staff employed by the MCO, entering into an agreement with the governing authority of an MCO for the purpose of managing the day-to-day operations of the MCO.
3. **“IPA”** includes, in addition to independent practice associations, a pharmacy or laboratory with the legal authority to contract with other pharmacies or laboratories to arrange for or provide services to enrollees of the New York State MCO.
4. **“Management functions”** are elements of an MCO governing body’s management authority. Some management functions, listed in 10 NYCRR 98-1.11(i), **must not** be delegated by an MCO to another person or entity. Other management functions, listed in 10 NYCRR 98-1.11(j), **may** be delegated to another person or entity, but only pursuant to a management contract approved by DOH.
5. **“Technical and administrative services”** refers to any functions (other than medical services) that an MCO is not prohibited from delegating by 10 NYCRR 98-1.11(i), and that are not functions listed in 10 NYCRR 98-1.11(j) requiring DOH approval of a management contract. Administrative services include administrative expenses provided through the contract that the MCO would otherwise have reported on the MCO’s own cost report. They do not include administrative expenses incurred by an IPA or provider in the course of performing the IPA or provider’s business.
6. **“Claims Payment”** is defined as making an independent determination to pay, deny or pend claims for payment. This is different from the ministerial task of writing a check for payment based upon the decision to act on a claim made by a different entity.

**B. GENERAL TERMS AND CONDITIONS**

1. This Agreement is subject to approval by the Department of Health and will not become effective until such approval is received from the Department of Health.
2. This Agreement shall be limited to five years and may be renewed only when authorized by the Commissioner.
3. The governing authority of the MCO shall be responsible for establishment and oversight of the MCO’s policies, management and overall operation, regardless of the existence of any management contract.

4. The governing authority of the MCO shall retain ongoing responsibility for statutory and regulatory compliance.
5. The governing authority of the MCO are in no way lessened by entering into a management contract, and any powers not specifically delegated to the management contractor through the provisions of the Agreement remain with the governing authority of the MCO.
6. The parties agree to incorporate into this Agreement any and all modifications required by the Department of Health for approval or, alternatively, to terminate this Agreement if so directed by the Department of Health effective upon at least ninety (90) days notice.
7. The parties agree that any amendments or revisions to this Agreement shall be effective only with the prior written consent of the Department of Health.
8. The management contractor agrees that it shall not subcontract any of its obligations hereunder or the performance of any of the management contractor's services without the prior written consent of the Commissioner. In the event the management contractor proposes to subcontract any management functions, the subcontractor will be a signatory to the management contract, which will expressly provide for the subcontracting of management functions to the subcontractor. The subcontractor will be subject to the provisions of 10 NYCRR 98-1.11 to the same extent as the management contractor, including all termination provisions, provided that the subcontractor may also be terminated by the management contractor upon at least ninety (90) days notice and with the prior written approval of the Commissioner.
9. The parties to this Agreement agree to comply with all applicable requirements of the Federal Americans with Disabilities Act.
10. The parties to this Agreement agree to comply with all applicable requirements of the: Health Insurance Portability and Accessibility Act of 1996, 42 USC 1320 (d); Public Health Law Article 27-F; and Mental Hygiene Law § 33.13.
11. The MCO, IPA or management contractor which is a party to the Agreement agrees that nothing within this Agreement is intended to, or shall be deemed to, transfer liability for the parties own acts or omissions, by indemnification or otherwise, to each other or to a provider.
12. Sole Agreement. The management contract, with its exhibits, schedules and attachments, approved by the Department shall be the sole agreement between the management contractor and the governing authority of the MCO for the purpose of the management services delegated herein on behalf of the MCO and payment to the management contractor for management services.
13. The validity and interpretation of this Agreement and the rights and obligations of the parties under this Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws provisions.

### **C. PAYMENT; RISK ARRANGEMENTS**

1. The management contractor shall compensate Participating Providers in a timely manner consistent with the provisions of Sections 3224-a, 3224-b, and 3224-c of the New York State Insurance Law, as applicable; provided, however, that nothing herein shall limit the liability of the MCO pursuant to such law for any failure to pay providers in accordance with the provisions of such law.
2. The parties agree that the management contractor can not assume any financial risk under this Agreement.

#### **D. IPA'S ROLE AS AGENT**

1. The parties understand and agree that IPA, as a signatory to this Agreement, has authority to act as agent for the Participating IPA Providers with regard to the adjudication of claims by MCO and/or MSO. IPA shall include language in its participating provider agreements and/or provider manual to inform Participating IPA Providers that MSO has initial responsibility for determining payment of claims submitted by Participating IPA Providers for the provision of covered services to members. The Parties understand and agree that IPA, in its capacity as agent for the Participating IPA Providers, has the authority to play an active role in resolving any claims adjudication issues that the provider may have with the MCO and/or MSO.

#### **E. RECORDS; ACCESS**

1. Annual reports on the financial operations will be provided to the MCO, and any other operational data when requested by the governing authority of the MCO, the Commissioner or Superintendent of Insurance, will be provided by the management contractor.
2. The parties agree that medical records shall be retained for a period of six (6) years after the date of service, and in the case of a minor, for three (3) years after majority or six (6) years after the date of service, whichever is later, or for such longer period as specified within this Agreement. This provision shall survive the termination of this Agreement regardless of the reason.

#### **F. TERMINATION AND RENEWAL**

1. Any application for renewal shall be submitted at least 90 days prior to the expiration of this Agreement and shall demonstrate that the goals and objectives of the contract have been met within specified time frames; that the quality of care provided by the MCO during the term of the Agreement has been maintained and improved; and that the reporting requirements contained in this Agreement have been met.
2. This Agreement shall terminate and be deemed cancelled, without financial penalty, to the governing authority of the MCO or the MCO itself not more than sixty (60) days after notification to the governing authority of the MCO and the Manager by the Department of Health of a determination that the MCO is not providing adequate care or otherwise assuring the health, safety and welfare of the enrollees.
3. Any termination or non-renewal of this Agreement shall require the prior written approval of the Commissioner following 90 days prior written notice; provided, however, that termination may occur upon less than 90 days notice if it is demonstrated to the satisfaction of the Commissioner, prior to termination, that circumstances exist which justify more immediate termination.
4. The MCO shall provide a plan for the management of the MCO subsequent to any discharge of Manager, to be submitted with 90 days prior notification to the Department of Health of the MCOs decision to discharge the Manager.

#### **G. ARBITRATION**

1. To the extent that arbitration or alternative dispute resolution is authorized elsewhere in this Agreement, the parties to this Agreement acknowledge that the Commissioner is not bound by arbitration or mediation decisions. Arbitration or mediation shall occur within New York State, and the Commissioner will be given notice of all issues going to arbitration or mediation, and copies of all decisions.