

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

STATE AGENCY (Name & Address): NYS Office of Mental Health 44 Holland Avenue Albany, NY 12229	BUSINESS UNIT/DEPT.ID: OMH01/3650000 CONTRACT NUMBER: <input type="text"/> CONTRACT TYPE: <input type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input type="checkbox"/> Fixed-Term Agreement
CONTRACTOR SFS PAYEE NAME: <input type="text"/>	TRANSACTION TYPE: <input type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment
CONTRACTOR DOS INCORPORATED NAME: <input type="text"/>	PROJECT NAME: <input type="text"/>
CONTRACTOR IDENTIFICATION NUMBERS: NYS Vendor ID Number: <input type="text"/> Federal Tax ID Number: DUNS Number (if applicable):	AGENCY IDENTIFIER: CFDA NUMBER (Federally Funded Grants Only):
CONTRACTOR PRIMARY MAILING ADDRESS: <input type="text"/> CONTRACTOR PAYMENT ADDRESS: <input type="checkbox"/> Check if same as primary mailing address CONTRACT MAILING ADDRESS: <input type="checkbox"/> Check if same as primary mailing address	CONTRACTOR STATUS: <input type="checkbox"/> For Profit <input type="checkbox"/> Municipality, Code: <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit Charities Registration Number: Exemption Status/Code: <input type="checkbox"/> Sectarian Entity

Contract Number: #

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

CURRENT CONTRACT TERM:

From: To:

CURRENT CONTRACT PERIOD:

From: To:

AMENDED TERM:

From: To:

AMENDED PERIOD:

From: To:

CONTRACT FUNDING AMOUNT

(*Multi-year* – enter total projected amount of the contract;
Fixed Term/Simplified Renewal – enter current period amount):

CURRENT:

AMENDED:

FUNDING SOURCE(S)

- ☐ State
☐ Federal
☐ Other

FOR MULTI-YEAR AGREEMENTS ONLY – CONTRACT PERIOD AND FUNDING AMOUNT: (Out years represent projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

ATTACHMENTS PART OF THIS AGREEMENT:

- ☐ Attachment A:
- ☐ Attachment B:
- ☐ Attachment C: Work Plan
- ☐ Attachment D: Payment and Reporting Schedule
- ☐ Other:
- ☐ Attachment A-1(a) MWBE and EEO Requirements
- ☐ Exhibit 1: MWBE Utilization Plan
- ☐ Exhibit 2: MWBE Request for Waiver
- ☐ Exhibit 3: MWBE Compliance Report
- ☐ Exhibit 4: EEO Workforce Utilization Report
- ☐ Attachment A-2(a): Shelter Plus Care Regulations
- ☐ Attachment E: OMH Contract Certification
- ☐ Attachment F: Business Associate Agreement
- ☐ Attachment G: Project Bank Account
- ☐ A-1 Program Specific Terms and Conditions
- ☐ A-2 Federally Funded Grants and Requirements Mandated by Federal Laws
- ☐ B-1 Expenditure Based Budget
- ☐ B-3 Capital Budget
- ☐ B-1 (A) Expenditure Based Budget (Amendment)
- ☐ B-2 (A) Performance Based Budget (Amendment)
- ☐ B-3 (A) Capital Budget (Amendment)
- ☐ B-4 (A) Net Deficit Budget (Amendment)
- ☐ B-2 Performance Based Budget
- ☐ B-4 Net Deficit Budget
- Riders:**
- ☐ Non-Licensed Program Rider with Certification of Compliance (Exhibit A)
- ☐ Residential Program Rider
- ☐ Assisted Outpatient Treatment Rider
- ☐ Community Projects Fund Rider
- ☐ HCBS Waiver Rider

Contract Number: #

**STATE OF NEW YORK
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

NOW THEREFORE, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

STANDARD TERMS AND CONDITIONS

I. GENERAL PROVISIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

C. Order of Precedence:

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2¹, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2², Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

D. Funding: Funding for the term of the Master Contract shall not exceed the amount specified as “Contract Funding Amount” on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

E. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

F. Modifications: To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the

¹ To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

² To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

G. Governing Law: The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

H. Severability: Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

I. Interpretation: The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

J. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:

- a) by certified or registered United States mail, return receipt requested;
- b) by facsimile transmission;
- c) by personal delivery;
- d) by expedited delivery service; or
- e) by e-mail.

2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).

3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).

4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

K. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

L. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

M. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

N. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

O. Legal Action: No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

P. No Arbitration: Disputes involving the Master Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

Q. Secular Purpose: Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

R. Partisan Political Activity and Lobbying: Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

S. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.³

T. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

U. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

V. Federally Funded Grants and Requirements Mandated by Federal Laws: All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent

³As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

that the Master Contract is funded, in whole or part, with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. General Renewal: The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

2. Renewal Notice to Not-for-Profit Contractors:

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

C. Termination:

1. Grounds:

- a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.
- c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

2. Notice of Termination:

- a) Service of notice: Written notice of termination shall be sent by:
 - (i) personal messenger service; or

(ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. Effect of Notice and Termination on State's Payment Obligations:

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

4. Effect of Termination Based on Misuse or Conversion of State or Federal Property:

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

D. Suspension: The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time

as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:⁴ Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:⁵ Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:⁶ Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:⁷ The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service

⁴ A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

⁵ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁶ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁷ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

reports shall be used to determine funding levels appropriate to the next annual contract period.

h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:⁸ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

⁸ Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

Contract Number: # _____

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

(i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.

(ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

(iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

(iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).

(v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.
- (ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

- 1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
- 2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

- 1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor

agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use Of Material, Equipment, Or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.

a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.

c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.

- e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
 - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.
 - g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.
2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:
- a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.
 - b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.
3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).
4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

- a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
- b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry

(e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. **Federal Funds:** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

F. Confidentiality: The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first

submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of

\$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and

women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:

a) The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

c) The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Master Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;

2. any debts owed for UI contributions, interest, and/or penalties;

3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.
3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:
 - a) to require updates or clarifications to the Questionnaire upon written request;
 - b) to inquire about information included in or required information omitted from the Questionnaire;
 - c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
 - d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
 - e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees

to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

- a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
- b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

P. Consultant Disclosure Law:⁹ If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the

⁹ Not applicable to not-for-profit entities.

prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

ATTACHMENT A-I
PROGRAM SPECIFIC TERMS AND CONDITIONS

A. Agency Specific Terms and Conditions

1. If this Master Contract is a "procurement contract" within the meaning of New York State Finance Law Section 139-k, then the OMH reserves the right to terminate this contract in the event it is found that the certification filed by the CONTRACTOR in accordance with the New York State Finance Law Section 139-k was intentionally false or intentionally incomplete.
2. If Section 5-a of the NYS Tax Law is applicable, the CONTRACTOR must submit the following forms as and when required: to the NYS Tax Department, a Contractor Certification Form ST-220-TD, and to OMH, a Contractor Certification to Covered Agency Form ST-220-CA.
3. The CONTRACTOR warrants to the OMH that it has secured sufficient right, title and interest to ensure that OMH may use any design, device, material, process, or other component comprising all or part of the deliverables.
4. If the deliverables for this Master Contract include goods or services relating to computer software and/or hardware, all such deliverables/deliveries shall be provided, where applicable, in accordance with the parameters contained within the specifications for the goods or services being purchased.
5. In the event that CONTRACTOR is provided access to any electronic data or computer application maintained by OMH, OMH may request, and CONTRACTOR shall execute, such additional forms or agreements as OMH generally requires as a condition of such access (e.g., Data Exchange Agreement, Computer Application Sharing Agreement, Confidentiality and Non-Disclosure Agreement).
6. The OMH has an irrevocable, royalty-free, non-exclusive and world-wide license to publish, reproduce, display, disclose or otherwise use any of the contract deliverables; provided, however, that if and to the extent that the contract deliverables require CONTRACTOR to create, write, develop or produce an original work which is or could be subject to protection under the laws governing intellectual property, including but not limited to the laws of copyright and patents (the "Work"), such Work shall be deemed to be a work made for hire and in the course of the services being rendered under this Agreement and shall belong exclusively to OMH, with OMH having the sole right to obtain, hold and renew in its own name, all copyrights or other appropriate protection. To the extent that any such Work may not be deemed to be a work made for hire, CONTRACTOR hereby irrevocably assigns to OMH all right, title and interest therein. CONTRACTOR shall ensure that all copies of the Work are marked with appropriate copyright notices and shall give OMH all reasonable assistance and execute all documents necessary to assist and/or enable OMH to perfect, preserve, register and/or record its rights in any Work. Upon termination, cancellation or expiration of this Agreement, CONTRACTOR shall turn over all Works to OMH, and upon request, any OMH documents or items furnished to CONTRACTOR during the performance of this Agreement.
7. In the event that CONTRACTOR, in the course of performance hereunder, obtains access to information, data or records deemed confidential in accordance with the provisions of Mental Hygiene Law Section 33.13 and/or "protected health information" as

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PROGRAM SPECIFIC TERMS AND CONDITIONS

such term is defined in 45 C.F.R. Parts 160, 164, then CONTRACTOR shall restrict its use of that information, data or records for the limited purposes of this agreement and in accordance with Appendix F of this agreement, if and as applicable. Any further dissemination or any use beyond that specifically authorized, of any such information, data or records, by CONTRACTOR, its agents, successors or associates shall constitute an unlawful disclosure of confidential information in violation of Mental Hygiene Law Section 33.13, and/or 45 C.F.R. Parts 160, 164, if and as applicable, and CONTRACTOR acknowledges that it has an affirmative obligation to safeguard any such information, data or records from unnecessary distribution amongst its agents and to any third parties. CONTRACTOR specifically agrees to indemnify OMH from damages to third parties flowing from any breach of the confidentiality of records in the possession or control of CONTRACTOR.

8. In the event that CONTRACTOR, in the course of performance hereunder, obtains access to information, data or records deemed confidential by OMH (other than information, data or records which is already covered by paragraph 7 above) ("Confidential Information"), CONTRACTOR shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without OMH's written permission. CONTRACTOR further agrees to use such Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. This obligation will not apply to information which:
 - a. Was known to CONTRACTOR prior to receipt from OMH as evidenced through written documentation;
 - b. Was or becomes a matter of public information or publicly available through no fault on the part of CONTRACTOR;
 - c. Is acquired from a third party entitled to disclose the information to CONTRACTOR;
 - d. Is developed independently by CONTRACTOR with the use of OMH's Confidential Information;
 - e. Is required to be disclosed pursuant to law, regulation or court order; provided, however, that in the event of a demand for such disclosure, CONTRACTOR shall not make such disclosure without prior written notice to OMH and an adequate opportunity for OMH to oppose such disclosure, including seeking an injunction as appropriate under the circumstances.
9. In that purchases by the State of New York are not subject to sales tax, transportation tax and Federal excise tax, payment for such amounts may not be claimed, declared or allowed under this agreement. Exemption certificates will be provided upon request.
10. Federal law requires that OMH provide their contractors with information about the Federal False Claims Act, the New York State False Claims Act and other federal and state laws that play a role in preventing and detecting fraud, waste and abuse in federal health care programs. This information must include the whistleblower protections that are in these laws. OMH must also provide its contractors with information about OMH's own policies and procedures for detecting and preventing waste, fraud and abuse.

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PROGRAM SPECIFIC TERMS AND CONDITIONS**

Detailed descriptions of these laws, their whistleblower protections and OMH's policies are on the OMH website. Information can also be found at the New York State Medicaid Inspector General website ² to obtain information about these laws. Contractors having difficulty finding this information or who wish to request a paper copy, may contact OMH Counsel's Office at (518) 474-1331 or OMH Counsel's Office.

All contractors of OMH are required to participate in the reviews and audits described in the OMH policies, and to abide by these policies with respect to funding for OMH services.

Contractors are required to make the information at the website address listed above available to all their employees and to sub-contractors involved in performing work under the contract with OMH.

11. Notices

For the purpose of notice as set forth in the Standard Terms and Conditions, Sections I(J)2 and I(J)(3), notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

State of New York Office of Mental Health

a. Community Mental Health Services Grants

Name: Nancy Splonskowski
Title: Director, Contracts & Claims, Community Budget & Financial Management
Address: 44 Holland Avenue, Albany N.Y. 12229
Telephone Number: (518) 473-7885
Facsimile Number: (518) 402-2529
E-Mail Address: ContractNotices@omh.ny.gov

b. Local Capital Construction Grants

INTENTIONALLY DELETED

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Contractor Name:

Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

12. Mental Health Regulations

- a. Each provider who receives OMH State aid must comply with all applicable provisions of the *Official Compilation of Codes, Rules, and Regulations of the State of New York*, including, but not limited to Title 14 (Mental Hygiene).
- b. Limits on Administrative Expenses and Executive Compensation (14 NYCRR Part 513, incorporated herein by reference) –
 - i. If CONTRACTOR is a “covered provider” within the meaning of 14 NYCRR § 513.3(d) at any time during the life of this Agreement, then during the period when CONTRACTOR is such a “covered provider”:
 - a) CONTRACTOR shall comply with the requirements set forth in 14 NYCRR Part 513, as amended; and
 - b) CONTRACTOR's failure to comply with any applicable requirement of 14 NYCRR Part 513, as amended, including but not limited to the restrictions on allowable administrative expenses, the limits on executive compensation, and the reporting requirements, may be deemed a material breach of this Agreement and constitute a sufficient basis for, in the discretion of the Office, termination for cause, suspension for cause, or the reduction of funding provided pursuant to this Agreement.
 - ii. CONTRACTOR shall include the following provision in any agreement with a subcontractor or agent to provide program or administrative services under this CONTRACT:

[Name of subcontractor/agent] acknowledges that it is receiving “State funds” or “State-authorized payments” originating with, passed through or approved by the New York State Office of Mental Health in order to provide program or administrative services on behalf of [Name of CONTRACTOR]. If at any time during the life of this Agreement [Name of subcontractor/agency] is a “covered provider” within the meaning of Section 513.3(d) of OMH regulations, [Name of subcontractor/agent] shall comply with the terms of 14 NYCRR Part 513, as amended. A failure to

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comply with 14 NYCRR Part 513, where applicable, may be deemed a material breach of this Agreement constituting a sufficient basis for suspension or termination for cause. The terms of 14 NYCRR Part 513, as amended, are incorporated herein by reference.

13. General Provisions

CONTRACTOR agrees that in the event that this *MASTER CONTRACT* or any document associated with this *MASTER CONTRACT* requires conformance as to any matters of form only *CONTRACTOR* will cooperate fully with and promptly respond to any and all requests by OMH for execution of applicable documents.

B. Program Specific Terms and Conditions for Community Mental Health Services Grants

1. General

- a. OMH requires *CONTRACTOR* to comply with specific instructions applicable to the conduct of the program or programs funded under this Master Contract, including requirements and limitations applicable by virtue of the funding source for this Master Contract. Such instructions, which are known as the *Aid-to-Localities Spending Plan Guidelines*, are referred to herein collectively as "Guidelines" and shall be deemed incorporated by reference and a binding part of this Master Contract. *CONTRACTOR* shall adhere to all provisions contained in the Guidelines, which can be found on the OMH website at www.omh.ny.gov/omhweb/spguidelines/. In the event that a conflict exists between the Guidelines and this Master Contract, the provisions of the Master Contract shall govern.
- b. *CONTRACTOR* is required to comply with all OMH fiscal and program reporting requirements, including, but not limited to completion and submission of the following: Consolidated Fiscal Report (CFR), including Consolidated Budget Report (CBR) and Consolidated Claim Report (CCR); Patient Characteristics Survey (PCS); New York State Department of Labor/Office of Mental Health Employment Support System (replaces NYISER system); Mental Health Provider Data Exchange (MHPD); and Children and Adult Information Reporting System (CAIRS). In addition to any other Deliverables provided for this Master Contract, all such fiscal and program reports shall be deemed "Deliverables". Accordingly, OMH may, in its sole discretion, withhold any State Aid and/or Medicaid payment due under this Master Contract until such time as the *CONTRACTOR* has submitted to OMH all Deliverables, including reports, which are due prior to any scheduled payments.

2. Budget

- a. For a contract with simplified renewals, OMH shall provide *CONTRACTOR* with instructions for the completion and submission of all documents required to renew the contract, including the requirement for a detailed budget. Upon receipt of the

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notice, the CONTRACTOR shall complete all required documents and provide a detailed budget in accordance with guidance provided by OMH.

- b. For a multi-year agreement, OMH shall provide CONTRACTOR with the authorized allocation of funding for the next contract year at least 90 days prior to the end of the current contract year. The actual authorized allocation for each contract year may be less than the funding amount listed on the Master Contract for Grants Face Page for that contract period because the Face Page reflects a projected amount for the out years of the contract which is based on certain funding assumptions that may or may not occur, such as a statutorily authorized Cost of Living Adjustment (COLA). Upon receipt of the authorized allocation of funding, CONTRACTOR shall submit an annual budget, which must be approved by OMH prior to any payments being made for that contract year.

3. Payments

- a. Payments: OMH will make payments as set forth in Attachment D hereof ("Payment and Reporting Schedule"). Such Payments may be used only for Eligible Expenditures as defined herein.

For Payments requiring submission of an invoice, such invoices shall be remitted to:

**NYS Office of Mental Health
Contracts & Claims Unit
44 Holland Avenue, 7FL
Albany, NY 12229**

- b. Sums Subject to Recapture: OMH shall be entitled to recoup from any Payment made to CONTRACTOR any amount, under this or any contemporaneous or predecessor agreement, by which Payment exceeds Eligible Expenditures less Income for the relevant period
- c. Recoupment of Scheduled Payments shall occur upon submission and reconciliation of a final claim for the contract period. Final claim shall be due in accordance with Attachment D ("Payment and Reporting Schedule") and Section III(C) of the Master Contract, and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the CONTRACTOR to the State. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.
- d. Income shall mean those funds available to CONTRACTOR from any source whatsoever, as payment for or reimbursement of costs associated with the provision of Contract Services; but shall not include: funds paid by OMH to the CONTRACTOR pursuant to this Master Contract or for purposes other than the provision of Contract Services; or, Gifts or Donations (contributions or endowments from non-governmental sources, intended to further the general work and purposes of the CONTRACTOR and not for specific payment of an Eligible Expenditure), and may be limited as set forth in the Guidelines. As is consistent with good and prudent judgment, CONTRACTOR shall maximize all sources of income available to itself or

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its clients, and, encourage and assist all clients to or, on behalf of clients unable to do so, apply for income to which they are entitled.

- e. Eligible Expenditures are those actual, reasonable and necessary expenses incurred by the CONTRACTOR in the provision of contract services in accordance with and as limited by the amount set forth for these expenditures in the contract budget as contained in Attachment B, the Guidelines and the rules and regulations of the State Comptroller governing reimbursement of State employees (M/C Bargaining Unit), for expenses incurred while performing State business.

- i. An expenditure shall not be an Eligible Expenditure if and to the extent that it exceeds the cost that a prudent person would pay in the open market under the circumstances prevailing at that time.
- ii. Expenditures which are not Eligible Expenditures shall be disallowed and excluded from the calculation of Eligible Expenditures for purposes of determining Sums Subject to Recapture as provided above.
- iii. The cost of items whose use is shared with non-contract purposes shall be prorated and only the portion utilized for the performance of contract services may be claimed as Eligible Expenditures. Except where payment is being prorated, no items claimed under any other agreement with the State of New York may be claimed hereunder.

f. Contract Budget Modifications

- i. Any proposed modification to a contract that will result in a transfer of funds among program activities or budget cost categories, but does not affect the amount, consideration, scope or other terms of such contracts must be submitted to OMH for submission to the Office of State Comptroller for approval when:
 - a) The amount of the modification is equal to or greater than ten percent of the total value of the contract for contracts of less than five million dollars; or
 - b) The amount of the modification is equal to or greater than five percent of the total value of the contract for contracts of more than five million dollars.
- ii. If the modified expenditure occurs prior to approval by the State Comptroller, the Contractor is accepting the risk that the modified expenditure may not be approved and may be deemed an ineligible expenditure, subject to recapture as provided in paragraph 2(b) above.
- iii. Exempt Transactions: The following budget modifications may be made by the CONTRACTOR without OSC approval. OMH approval may still be required as set forth in the Guidelines:
 - a) Property Escalations: Providers may reallocate funding from the "other than personal services" category (OTPS) to the real property category

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where necessary to accommodate unanticipated costs increases related to rent, utilities or maintenance; and

- b) Fringe Benefits: Providers may reallocate funding from the personal services category to the fringe benefits category where necessary to accommodate unanticipated costs increases related to health insurance premiums for their employees.
- iv. Exempt Programs/Contracts: Reallocations of budgeted amounts in the following contracts/programs do not require OSC approval, regardless of amount:
- a) Performance-based contracts, meaning CONTRACTOR has agreed to provide, and the STATE has agreed to accept, a certain set of deliverables for a fixed price, without reference to CONTRACTOR's costs (a "Performance-based Contract"); or
 - b) "Model driven" programs or ones for which payment is based on a fixed amount per unit (an "Exempt Program"). Exempt Programs include the following:

OMH Programs Exempt from OSC Approval of Budget Reallocations	
Residential Programs, including, but not limited to:	Program Code
Community Residence, Children & Youth	7050
Community Residence, Adult	8050
Supported Single Room Occupancy	5070
Supported Housing	6050, 6060
Congregate Treatment	6070
Congregate Treatment Support	6080
Apartment Treatment	7070
Apartment Treatment Support	7080
Program Development Grant	0190
Transient Housing	2070
Residential Care Centers for Adults (RCCA)	6070, 6080
Shelter Plus Care Housing	3070
Teaching Family Home	4040
Family Based Treatment	2040
Family Care	0040
Case Management Programs, including, but not limited to:	Program Code
Adult Homes	6820, 6920
Blended Case Management (BCM)	0820, 0920
Intensive Case Management (ICM)	1810, 1910
Supportive Case Management (SCM)	6810, 6910
Residential Treatment Facilities (RTF)	2880, 2980
Transition Coordinator	
Assertive Community Treatment (ACT)	0800-0806, 8810

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OMH Programs Exempt from OSC Approval of Budget Reallocations	
HCBS (Home & Community-Based Services) Waiver	2300, 2980
Vocational/Rehab Programs, including, but not limited to:	Program Code
Ongoing Integrated Supported Employment (OISE)	4340
Personalized Recovery Oriented Services (PROS)	6340, 7340, 8340

Reallocation of amounts between budget categories for a Performance-based Contract or an Exempt Program shall not affect the Payment due to CONTRACTOR from the State for provision of the Performance-based Contract or Exempt Program services.

- v. In determining whether CONTRACTOR's expenditures for any given budgeted contract category exceeds the allowable threshold interchange, the amount included in that category for Performance-based Contract or Exempt Programs shall first be deducted.

4. Fifth Quarter Payment Provisions

The Fifth Quarter, i.e., "Optional" Payment to be made under the provisions of Attachment D shall be a sum Subject to Recapture for a succeeding Contract Period or under a Successor Agreement.

5. Acquisition of Property

Unless otherwise agreed, this Master Contract shall be considered a cost-reimbursement contract for purposes of determining ownership of any property acquired by CONTRACTOR with funds provided under the Master Contract. The CONTRACTOR shall dedicate and utilize any such property for purposes benefiting this and subsequent agreements with the Office of Mental Health, or its assigns, for the duration of that property's useful life. The CONTRACTOR hereby grants and assigns a purchase money security interest having first priority in all such property, even though hereafter acquired. The CONTRACTOR shall execute any documents which OMH may reasonably require to effectuate the provisions of this section.

6. Community Mental Health Facility Real Estate Provisions

- a. OMH has the right to review and approve in writing any new contract for the purchase of or lease for rental of real estate operated as a necessary adjunct to the provision of the community mental health services as specified in this contract, if applicable, and any modifications, amendments or extensions of an existing lease prior to its execution. If, in its discretion, OMH disapproves of any lease, then OMH shall not be obligated to make any Facility Real Estate payments for such property.

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PROGRAM SPECIFIC TERMS AND CONDITIONS**

- b. No member, officer, director or employee of CONTRACTOR shall retain or acquire any interest, direct or indirect, in any Facility Real Estate, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the CONTRACTOR and the OMH.

7. Required Provider Training

OMH periodically offers or supports training programs for providers of mental health services. Local Governmental Units (LGUs) and agencies that are licensed and/or receive direct or indirect funding from OMH shall send appropriate representatives to such training, if directed to do so by OMH.

8. Required Criminal History Background Checks

Chapter 575 of the Laws of 2004 (Mental Hygiene Law § 31.35 and Executive Law §845-b) requires every provider of mental health services who is licensed by, contracts with or is otherwise approved by the Office of Mental Health, to request criminal history record checks for prospective employees and volunteers who will have regular and substantial unsupervised or unrestricted physical contact with clients. Chapter 673 of the Laws of 2006 further amends Executive Law § 845-b to expand the reach of the criminal history record check to also include a check of multi-state records maintained by the Federal Bureau of Investigation (FBI).

9. Consumer Specific Records

In addition to any other requirements regarding record keeping, the records of accounts shall identify, in a manner designated by the OMH, all monies received and disbursed for or on behalf of each individual consumer. The OMH may review these and other consumer records, including records evidencing consumer identity.

C. Program Specific Terms and Conditions for Local Capital Construction Grants

[INTENTIONALLY DELETED]

ATTACHMENT A-I(a)
Contractor Requirements And Procedures For Business Participation Opportunities For
New York State Certified Minority- And Women-Owned Business Enterprises (MWBE)
And Equal Employment Opportunities For Minority Group Members And Women

1. New York State Law

- a. Pursuant to New York State Executive Law Article 15-A, OMH recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of OMH contracts.
- b. In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OMH establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

2. Business Participation Opportunities for MWBEs

- a. OMH has developed compliance requirements, forms and procedures to ensure that contractors shall comply with requirements to ensure equal employment opportunities for minority group members and women, and that there are meaningful participation opportunities for certified MWBEs in the OMH procurement process. Contractors participating in and/or selected for procurement opportunities with OMH shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity (EEO) and opportunities for MWBE, including but not limited to Article 15-A and its implementing regulations as promulgated by the Empire State Development (ESD) Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144.
- b. OMH has established an overall agency goal of 30% for MWBE participation, 12% for Minority-Owned Business Enterprises (MBE) participation and 8% for Women-Owned Business Enterprises (WBE) participation. For this contract, the goals for MWBE participation have been established as follows:

ATTACHMENT A-1(a)
Contractor Requirements And Procedures For Business Participation Opportunities For
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Total MWBE participation: _____%

MWBE _____% participation is comprised of:

MBE: _____ % and WBE: _____ %

The contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that OMH may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: Division of Minority & Women Business Development. For guidance on how OMH will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

- c. In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OMH may withhold payment from the Contractor as liquidated damages.
- d. The Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:
 - i. Contractors are required to submit a MWBE Utilization Plan on Exhibit 1 with their bid or proposal or, if not previously submitted with its bid or proposal, with the original contract documents. Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. If unable to completely meet the participation goals specified in the contract, requests for a partial or total waiver of established goal requirements may be made at any time during the term of the Contract to OMH, detailing a Good Faith Effort, but must be made no later than prior to the submission of a request for final payment on the Contract. Such requests for waiver shall be submitted using a Request for Waiver on Exhibit 2.
 - ii. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OMH.
 - iii. OMH will review the submitted MWBE Utilization Plan and advise the Contractor of OMH acceptance or issue a notice of deficiency within 20 days of receipt.
- e. If a notice of deficiency is issued, Contractor agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the

ATTACHMENT A-1(a)
Contractor Requirements And Procedures For Business Participation Opportunities For
New York State Certified Minority- And Women-Owned Business Enterprises (MWBE)
And Equal Employment Opportunities For Minority Group Members And Women

OMH, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OMH to be inadequate, OMH shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Exhibit 2.

- f. Contractors are required to submit a Quarterly MWBE Contractor's Compliance Report to the OMH on Exhibit 3, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

3. Equal Employment Opportunity Requirements

- a. Contractor agrees with all of the terms and conditions of Standard Terms and Conditions Section IV(J).
- b. Where applicable, contractor agrees, upon request, to submit to the OMH, a workforce utilization report, as set forth in Exhibit 4, identifying the workforce actually utilized on the Contract if known.
- c. Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

Exhibit 1 MWBE UTILIZATION PLAN

June 2013

Page: _____ of _____

1. Offeror/Contractor Name:		4. Telephone :		8. Contract No.		11. Contract Goals: MBE: _____% WBE: _____%	
5. Email Address:				9. Total Contract Value: \$			
2. Address:		6. Federal ID:		10. Contract Description:		12. Adjusted Goals: MBE: _____% WBE: _____%	
3. City, State, Zip:		7. SFS Vendor ID:					
13. MWBE Subcontractor. (attach sheets as necessary)		14. Classification.		15. Description of Work/Supplies			
Name:		MBE <input type="checkbox"/>		<input type="checkbox"/> Direct (Spending directly fulfilling contract obligations.) Description:			
Address:		WBE <input type="checkbox"/>		<input type="checkbox"/> Indirect (Spending in support of company operations.) Description:			
City/State/Zip:		Dual <input type="checkbox"/>					
Telephone:							
Email Address:		Fed. ID. NO:		SFS Vendor ID:			
Name:		MBE <input type="checkbox"/>		<input type="checkbox"/> Direct (Spending directly fulfilling contract obligations.) Description:			
Address:		WBE <input type="checkbox"/>		<input type="checkbox"/> Indirect (Spending in support of company operations.) Description:			
City/State/Zip:		Dual <input type="checkbox"/>					
Telephone:							
Email Address:		Fed. ID. NO:		SFS Vendor ID:		Total MWBE Expenditures: \$	
FOR AUTHORIZED USE ONLY							
Utilization Plan Approved: <input type="checkbox"/> Y <input type="checkbox"/> N		Date: _____					
Notice of Deficiency Issued: <input type="checkbox"/> Y <input type="checkbox"/> N		Date: _____					
Notice of Acceptance Issued: <input type="checkbox"/> Y <input type="checkbox"/> N		Date: _____					
Reviewed By: _____		Date: _____		Signature: _____ Print Name: _____			
Comment(s): _____				Title: _____ Date: _____			

☐ VENDOR CERTIFICATION: I hereby affirm that the information supplied in this utilization plan is true and correct.

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 142, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

Exhibit 2
REQUEST FOR WAIVER OF M/WBE PARTICIPATION GOALS

This form must be submitted for review and approval by NYS Office of Mental Health M/WBE liaison and the Governor's staff. Waiver approval must be perceived prior to completion of the contract and a prerequisite for full and final payment.

SECTION 1: BASIC INFORMATION			
Contractor's Name:		Federal ID Number:	SFS Vendor ID Number:
Street Address:		E-Mail Address:	
City, State, Zip Code:		Telephone:	
Contract Number:		Contract Value: \$	
Description of Contract:		M/WBE Goals Assigned to the Contract:	
		MBE %	WBE%
		%	%
SECTION 2: TYPE OF M/WBE WAIVER REQUESTED			
MBE Waiver	<input type="checkbox"/> Total Waiver	<input type="checkbox"/> Partial Waiver	If partial waiver is being requested please indicate the proposed MBE utilization: %
WBE Waiver	<input type="checkbox"/> Total Waiver	<input type="checkbox"/> Partial Waiver	If partial waiver is being requested please indicate the proposed WBE utilization: %
Does a certified M/WBE exist anywhere in New York State that can provide at least 20% of the products and/or services needed to the contract? If so, please explain in detail the reason you are requesting a waiver. (Attach additional sheets if necessary).			
SECTION 3: SUPPORTING DOCUMENTATION			
Provide the following documentation as evidence of your good faith efforts to meet the M/WBE goals set forth in the contract and support of your waiver application: (Please check all that apply and include attachments).			
<input type="checkbox"/> Attachment A. List of the general circulation, trade and M/WBE specific publications and dates of publications in which your firm solicited for certified M/WBE participation as a subcontractor/supplier and copies of such publications.			
<input type="checkbox"/> Attachment B. List of the certified M/WBEs found in the New York State Contracting System M/WBE Directory (https://ny.newnyccontracts.com/) that were solicited for this contract. Provide proof of the dates or copies of the solicitations and copies of the responses made by the certified M/WBEs. Describe specific reasons that responding certified M/WBEs were not selected.			
<input type="checkbox"/> Attachment C. Descriptions of the contract documents/plans/specifications made available to certified M/WBEs by the contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified M/WBEs.			
<input type="checkbox"/> Attachment D. Description of the negotiations between the contractor and certified M/WBEs for the purposes of complying with the M/WBE goals for this contract.			
<input type="checkbox"/> Attachment E. Identify dates of pre-bid, pre-award or other meetings attended by the contractor and scheduled by OMH with certified M/WBEs whom OMH determined were capable of fulfilling the M/WBE goals set in the contract.			
<input type="checkbox"/> Attachment F. Any other information deemed relevant to the request for waiver.			
SECTION 4: SIGNATURE AND CONTACT INFORMATION			
DECLARATION: The undersigned certifies that he or she is authorized by the Contractor identified above to make this declaration. The Contractor has made good faith efforts, as defined in NYS law, to meet the M/WBE goals contained in NYS law and under the applicable contract. The undersigned acknowledges that failure to submit complete and accurate information in connection with a waiver request may result in denial and/or a finding of non-compliance. Failure to establish good faith efforts may result in suspension or termination of a New York State contract.			
Prepared By : (Signature)		Date:	
Name and Title of Preparer:			

The Freedom of Information Law requires public disclosure of certain records held by NYS OMH. Based upon the foregoing, you are hereby notified that this document, and related documents, constitutes "records" that fall under the scope of the Freedom of Information Law. Therefore, such documents may be made available to the public.

Instructions for Completing and Submitting an Application for a Waiver of M/WBE Utilization Goals

Article 15-A of the New York State Executive Law and 5 NYCRR 140-145 require State Agencies to increase participation by Minority and Women-Owned Business Enterprises (M/WBEs) on State contracts. All solicitations are reviewed and have goals established for them for both MBE and WBE utilization. The goals are expressed as a percentage of the anticipated payments made under the contract. A state agency shall not grant any automatic waivers of goal requirements on a State contract. A State agency may grant a partial or total waiver of goal requirements upon submission and approval of a waiver application documenting a contractor's good faith efforts. Governor's Office Executive Chamber approval is also a requirement of a State Agency waiver approval. Failure to make good faith efforts may result in a State contract being awarded to another bidder, or, if the contract is already in progress, may result in financial penalties.

Section 1: Basic Information

Complete all sections including the contractor's name, address federal identification number, State Financial System (SFS) vendor identification number and contract number. Please provide a current e-mail address and telephone number where the firms authorized representative may be reached. In the space provided, please provide a detailed description of the contract. Where requested, please state the original M/WBE utilization goals that were established for the contract.

Section 2: Type of Waiver Request

In this section please indicate the type of waiver being requested. If requesting a partial waiver, please provide the revised utilization goal percentage being proposed by the firm. In the space provided, explain in detail the need of a waiver of the M/WBE participation goals.

Section3: Supporting Documentation

Demonstrating Good Faith Efforts requires extensive documentation in order to comply with the requirements of Article 15-A of the Executive Law. See the form for specific details on the documentation required and check all that apply.

Section 4: Signature and Contact Information

The waiver application must be signed by an authorized official of the firm who will be responsible for the contract. By signing the waiver application, the authorized official is certifying that he or she is authorized to make the DECLARATION that has been set forth, and that the Contractor has made good faith efforts, as defined in NYS law, to meet the M/WBE goals contained in NYS law and under the applicable contract. The undersigned acknowledges that failure to submit complete and accurate information in connection with a waiver request may result in denial and/or a finding of noncompliance. Failure to establish good faith efforts may result in suspension or termination of a New York State contract. Please state the date that the Application for Waiver of M/WBE Participation Goals was signed by the authorized official who is responsible for the contract.

For NYS OMH USE ONLY:	
Review By:	Date:
Title:	
OMH Waiver Recommendation	
<input type="checkbox"/> Full MBE Waiver be granted	<input type="checkbox"/> Full WBE Waiver be granted
<input type="checkbox"/> Partial MBE Waiver granted, revised MBE goal: %	<input type="checkbox"/> Partial WBE Waiver granted, revised WBE goal: %
<input type="checkbox"/> MBE Waiver denied	<input type="checkbox"/> WBE Waiver denied
Executive Chamber Waiver Recommendation	
<input type="checkbox"/> Approve <input type="checkbox"/> Deny	Date of Decision:
Date Notice of Determination sent to Contractor:	
Comments:	

Exhibit 2-a
M/WBE CERTIFICATION OF GOOD FAITH EFFORTS (CGFE)

Offeror/Contractor Name:	Primary Contact:
Address:	Telephone No:
City/State/Zip Code:	Contract No:

OMH requires completion of this form to be submitted by Bidders/Contractors submitting a bid, proposal or proposed negotiated contract, prior to contract award to document "good faith efforts" to provide meaningful participation by New York State certified M/WBE subcontractors or suppliers in the performance of State contracts. [check actions as applicable]:

☐ (a) The contractor attended any pre-bid meetings that were scheduled by the Agency or the NYS Department of Economic Development or its designee to inform minority and women-owned business enterprises of contracting and subcontracting opportunities available on the project;

☐ (b) The Contractor identified economically feasible units of the project that could be contracted or subcontracted to minority and women-owned business enterprises in order to increase the likelihood of participation by such enterprises;

☐ (c) The Contractor advertised in general circulation, trade association, and trade-oriented, minority and women-focused publications, if any, concerning the contracting or subcontracting opportunity;

☐ (d) The Contractor solicited and provided written notice to a reasonable number of minority and women-owned business enterprises identified from current certified lists of such business enterprises provided or maintained by the NYS Empire State Development's Division of Minority and Women-Owned Business Development, or its designee, of the contracting or subcontracting opportunity in sufficient time to allow the enterprises to participate effectively;

☐ (e) The Contractor followed up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity;

☐ (f) The Contractor provided interested minority and women-owned business enterprises with adequate information about the plans, specifications and requirements for the contracting or subcontracting opportunity;

☐ (g) The Contractor used the services of community organizations, contractor groups, state and federal business assistance offices and other organizations identified by the NYS Department of Economic Development or its designee that provide assistance in the recruitment and placement of minority and women-owned business enterprises; and

☐ (h) The Contractor negotiated in good faith with minority and women-owned business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any minority or women-owned business. "Good Faith" negotiating means engaging in good faith discussions with minority or women-owned businesses about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the minority or women-owned businesses, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available.

The undersigned hereby certifies under penalty of perjury that the company on whose behalf s/he is submitting this Certification of Good Faith Efforts has taken or intends to take the specific good faith efforts described above and in any additional pages or documentation the undersigned has attached to this form.

Signature _____ Date _____

Print Name _____

Title _____

Sworn to before me this _____ day of _____ 20____

Notary Public _____

Seal: _____

Exhibit 3

Contractor Quarterly Compliance Report

Page 1 of 2

Beginning FIVE (5) DAYS following the end of the first calendar quarter after a contract is awarded; quarterly compliance reports will be due for the preceding quarter's activity.

Instructions: List all M/WBEs used during the quarter, providing all requested information in appropriate columns. In the event that an M/WBE is used more than one time during the quarter, list the M/WBE only once for each expenditure category. Use the Expenditure Code below to indicate the category of expenditures for which the M/WBE was used.

Expenditure Code:		C – Commodities	SC – Services	CC – Construction Consultants	CN – Construction
Grants Expenditure Code:		GM – Materials/Equipment		GC – Construction	GS – Services/Consultants
Contract Number:		Reporting Period:			M/WBE Goal:
		<input type="checkbox"/> Q1: April 1 – June 30 <input type="checkbox"/> Q3: Oct. 1 – Dec. 31			% MBE % WBE
Contractor:		<input type="checkbox"/> Q2: July 1 – Sept. 30 <input type="checkbox"/> Q4: Jan. 1 – March 30			
A		B		C	
Amount of Actual Expenditures In Reporting Period		MBE Subcontracting Expenditures In Reporting Period		WBE Subcontracting Expenditures In Reporting Period	
\$ (if none enter 0)		\$ (if none enter 0)		\$ (if none enter 0)	
M/WBE FEIN/SFS VENDOR ID	M/WBE Vendor Name	Certification	Work Status This Report	Expenditure Code	Product Code
FEIN:		<input type="checkbox"/> MBE	<input type="checkbox"/> Active		
SFS ID:		<input type="checkbox"/> WBE	<input type="checkbox"/> Inactive		
		<input type="checkbox"/> Dual	<input type="checkbox"/> Complete		
FEIN:		<input type="checkbox"/> MBE	<input type="checkbox"/> Active		
SFS ID:		<input type="checkbox"/> WBE	<input type="checkbox"/> Inactive		
		<input type="checkbox"/> Dual	<input type="checkbox"/> Complete		
FEIN:		<input type="checkbox"/> MBE	<input type="checkbox"/> Active		
SFS ID:		<input type="checkbox"/> WBE	<input type="checkbox"/> Inactive		
		<input type="checkbox"/> Dual	<input type="checkbox"/> Complete		
FEIN:		<input type="checkbox"/> MBE	<input type="checkbox"/> Active		
SFS ID:		<input type="checkbox"/> WBE	<input type="checkbox"/> Inactive		
		<input type="checkbox"/> Dual	<input type="checkbox"/> Complete		
					Total: \$
Name and Title of Preparer (Print or Type):			Telephone No:	E-mail Address:	
Signature:			Date:	FOR AGENCY USE ONLY	
				Reviewed By:	Date:
Quarterly Reports should be submitted to: mwbe@omh.ny.gov					
Column A:	Total Amount of Actual Expenditures in Report Period: Enter the amount (\$) expended in total for the Reporting Period.				
Column B:	MBE Subcontracting Expenditures: Enter the total amount (\$) of expenditures with certified Minority owned businesses made during the report period under the contract.				
Column C:	WBE Subcontracting Expenditures: Enter the total amount (\$) of expenditures with certified Women owned businesses made during the report period under the contract.				

Expenditure: An actual payment which is made by an agency, either through the Office of the State Comptroller or by the agency's finance office directly, including subcontractor/supplier payments made by a prime contractor and verified by the agency.

Grants: For the purposes of this report, grants are monies dispensed by a contracting governmental agency to a person or institution to accomplish a public purpose authorized by law. According to Article 15-A, grants are considered State contracts. For the purpose of compliance reporting, the recipient of the grant is considered to be the "contractor". These contracts are subject to M/WBE goals and reported in the same fashion as any other contractor.

Not-for-Profit: According to Article 15-A, Not-for-Profits entities are considered to be "contractors". These contracts are subject to M/WBE goals and reported in the same fashion as any other contractor.

Exhibit 3 Contractor Quarterly Compliance Report

Page 2 of 2

Use the following codes in the Product Code column to indicate the category of work for which the M/WBE was utilized

PRODUCT CODE KEY:

A	Agriculture/Landscaping (e.g., all forms of landscaping services)
B	Mining (e.g., Geological investigations)
C	Construction
C15	Building Construction – General Contractors
C16	Heavy Construction (e.g., highway, pipe laying)
C17	Special Trade Contractors (plumbing, heating, electrical, carpentry)
D	Manufacturing (production of goods)
E	Transportation, Communication, Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	Wholesale/Retail Goods (e.g. gravel, hospital supplies, food stores, computer stores, office supplies)
G52	Construction Materials (e.g., lumber, paint, lawn supplies)
H	Financial, Insurance and Real Estate Services
I	Services
I73	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services or equipment, computer programming, security services)
I80	Health Services
I81	Legal Services
I82	Educational Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	Social Services (e.g., counselors, vocational training, child care)
I87	Engineering, architectural, accounting, research, management and related services

Exhibit 4
EQUAL EMPLOYMENT OPPORTUNITY
WORKFORCE UTILIZATION PLAN
Instructions on page 2

Solicitation/Program Name:	Report includes: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
Offeror's Name:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor Subcontractor's name _____
Offeror's Address:	

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled (M) (F)		Native American (M) (F)		Veteran (M) (F)	
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)							
Officials/Administrators																	
Professionals																	
Technicians																	
Service Maintenance Workers																	
Office/Clerical																	
Skilled Craft Workers																	
Paraprofessionals																	
Protective Service Workers																	
Totals																	

PREPARED BY (Signature):	TELEPHONE NO.:	DATE:
NAME AND TITLE OF PREPARER (Print or Type):		EMAIL ADDRESS:
SUBMIT COMPLETED WITH BID OR PROPOSAL		

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (04-10) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form for the contractor's or subcontractor's total work force.

Instructions for completing:

1. Enter the Solicitation number or RFP number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Designated Contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER**

ATTACHMENT A-2
FEDERALLY FUNDED GRANTS
Revised 7/17/14

Instructions for Agencies

Include any terms and conditions specifically applicable to Federally-funded grants in this attachment. Examples of Federally-funded grant terms and conditions include but are not limited to provisions governing Federal pass-through funds, single audits and sub-recipient audits.

For all Federally-funded grants, including but not limited to Shelter Plus Care grants:

- ☐ Contractor agrees to comply with all requirements for Federally Funded programs as set forth in the Aid-to-Localities Spending Plan Guidelines, referred to herein collectively as "Guidelines." The Guidelines can be found on the NYS Office of Mental Health website at www.omh.ny.gov/omhweb/spguidelines. As set forth in Section B(1)(a) of Attachment A-1, the Guidelines are incorporated by reference and made a binding part of the Agreement.

For Continuum of Care Grants (formerly Shelter Plus Care) only:

- ☐ Contractor agrees to comply with the Interim Rule, the regulatory implementation of the Continuum of Care Program described in section A-2(a), incorporated by reference and made a binding part of the Agreement.


ATTACHMENT A-2(a)
Revised 7/17/14

Homeless Emergency Assistance and Rapid Transition to Housing
Continuum of Care Program

SUMMARY: The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under McKinney-Vento Homeless Assistance Act into a single grant program, and revises the Emergency Shelter Grants program and renames it the Emergency Solutions Grants program. The HEARTH Act also codifies in law the Continuum of Care planning process, a longstanding part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs. The HEARTH Act also directs HUD to promulgate regulations for these new programs and processes.

The interim rule focuses on regulatory implementation of the Continuum of Care program. The existing homeless assistance programs that comprise the Continuum of Care program are the following: the Supportive Housing Program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy (SRO) program. This rule establishes the regulations for the Continuum of Care programs, and through the establishment of such regulations, the funding made available for the Continuum of Care program in the statute appropriating Fiscal Year (FY) 2012 funding for HUD can more quickly be disbursed, consistent with the HEARTH ACT requirements.

The interim rule implements the Continuum of Care Program. For further information and a copy of the Interim Rule (24 CFR Part 578), go to:

<https://www.onecpd.info/resources/documents/CoCProgramInterimRule.pdf> 

**Office of Mental Health
Attachment B-1
Budget**

Budget for contract period to be developed by contractor, using the Consolidated Budget Report (CBR) in the Consolidated Fiscal Reporting software (CFRS), unless otherwise specifically directed in a funding source spending plan guideline or other directive. CFR software downloads and the Guidelines for completion of the CBR are available online via the OMH website.

Attachment C: Program Work Plan

Any services in this contract awarded to Contractor based on Contractor's submission (Contractor's Proposal) in response to a Request for Proposal (RFP) or Invitation for Bid (IFB) shall be subject to the terms and conditions in both the Contractor's Proposal and the RFP [or IFB], incorporated herein by reference, which shall apply as if fully stated herein. If there is any inconsistency between any part of this Agreement and another, the order of precedence as provided in Section I(C) of the Master Contract Standard Terms and Conditions shall control.

Contract #: _____

Contract Period: _____

Agency: _____

Program Name: _____

Instructions: Complete all blank areas and provide detailed program information as appropriate. Programs are required to comply with all standards in applicable regulations and/or OMH fiscal and program guidelines. It is not required to repeat any of this information in the program work plan.

1. Program Overview: A summary of the program(s).

--

2. Program Specifics, Target Population & Capacity/Persons Served: A description of the type of program(s), location(s) and the specific groups of people (individuals, families, or community members) who will be served or directly interact with the program(s), including referral sources, geographic location and demographics, as well as a description of the program(s)' capacity, including the number of contracted units (e.g., residential programs or case management programs), the number of unduplicated persons being served annually (e.g., community support programs), and the number of days/hours the program is in operation.

Program Name/Type	Service Capacity	Location (County/City)	Target Population

[Add additional detail]

3. Services Provided: A detailed explanation of the program(s)' core features (e.g., the kinds of services provided). Licensed programs are not required to repeat any standards already included in the applicable regulations and/or guidelines for those programs.

4. Staffing/Resources: A general description of the staffing resources, qualifications, and ongoing staff development/training activities; and relevant experience of the provider organization to support the program(s).

5. Program Goals/Outcomes: A description of the desired benefits or changes for the target population(s) following their interaction with the program(s).

6. Specific Deliverables and Timeframes (If Applicable): A detailed description of the specific activities and steps required to operate the program(s) and/or project(s).

7. Performance Targets/Milestones (If Applicable): A description of the proposed measures to track whether the project(s) or program(s) is/are on course with its performance targets.



Aid to Localities Financial System

ATTACHMENT D PAYMENT AND REPORTING SCHEDULE

Contract Number:
Contract Period:

I. PAYMENT PROVISIONS

In full consideration of contract services to be performed the State Agency agrees to pay and the contractor agrees to accept a sum not to exceed the amount noted on the face page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

A. Advance Payment, Initial Payment and Recoupment Language (if applicable):

1. The State agency will make an advance payment to the Contractor, during the initial period, in the amount of N/A percent (N/A%) the budget as set forth in the most recently approved applicable Attachment B form (Budget).
2. The State Agency will make an initial payment to the Contractor in the amount of N/A percent (N/A%) of the annual budget as set forth in the most recently approved applicable Attached B form (Budget). This payment will be no later than N/A days from the beginning of the budget period.
3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

<u>Payment Period:</u>	<u>July-Sept Quarter</u>	<u>Oct-Dec Quarter</u>	<u>Jan-Mar Quarter</u>	<u>Apr-June Quarter</u>	<u>Optional</u>
<u>Payment Due:</u>	July 1st	October 1st	January 1st	April 1st	1st day of 5th Quarter

Payment Amount:

4. Recoupment of any advance payment(s) or initial payment(s) shall be recovered by crediting (N/A%) of subsequent claims and such claims will be reduced until the advance is fully recovered within the contract period.

B. Interim and/or Final Claims for Reimbursement

- ☐ Claiming Schedule (select applicable frequency):

<input type="checkbox"/> Quarterly Reimbursement	Due Date	N/A
<input type="checkbox"/> Monthly Reimbursement	Due Date	N/A
<input type="checkbox"/> Biannual Reimbursement	Due Date	N/A
<input type="checkbox"/> Fee for Service Reimbursement	Due Date	N/A
<input type="checkbox"/> Rate Based Reimbursement	Due Date	N/A
<input type="checkbox"/> Fifth Quarter Reimbursement	Due Date	N/A
<input type="checkbox"/> Milestone/Performance Reimbursement	Due Date	N/A
<input checked="" type="checkbox"/> Scheduled Reimbursement	Due Date	A single final claim for each contract year shall be submitted annually by submission of the Consolidated Fiscal Report (CFR) as set forth in Section II(A) of this Attachment D
<input type="checkbox"/> Interim Reimbursement as Requested by Contractor	Due Date	

NOTE: This is a SAMPLE Attachment D for reference only. When preparing your contract documents, please insert the Attachment D mailed to you with your contract instructions.



Aid to Localities Financial System

ATTACHMENT D PAYMENT AND REPORTING SCHEDULE

Contract Number:
Contract Period:

II. REPORTING PROVISIONS

A. Expenditure-Based Reports (select the applicable report type):

- ☐ Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than _____ days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract.

- ☐ ConStatistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than _____ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

- ☐ Expenditure Report

The Contractor will submit, on a quarterly basis, not later than _____ days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

- ☐ Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than _____ days after the end of

- ☒ Consolidated Fiscal Report (CFR)*

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be November 1 of each year; for Upstate and Long Island contractors, the due date shall be May 1 of each year.

*The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

B. Progress-Based Reports

1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the _____ format provided by the State Agency, summarizing the work performed during the contract period (see Table 1 below for the annual schedule).

2. Final Progress Report

Final scheduled payment will not be due until _____ days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses by vendor with its final invoice. Deadline for submission of the final report is _____. The agency shall complete its audit and notify vendor of the results no later than _____. The Contractor shall submit the report not later than _____ days from the end of the contract.

C. Other Reports

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.



ATTACHMENT D
PAYMENT AND REPORTING SCHEDULE

Aid to Localities Financial System

Contract Number:

Contract Period:

TABLE I - REPORTING SCHEDULE

PERIOD COVERED	DUE DATE
NOTE: For OMH fiscal and program reporting requirements other than the CFR, see Attachment A-1, Section A and Section B(1)(a)(b)	
NOTE: For budget modification requirements, see Attachment A-1, Section B(3)(f)	

III. SPECIAL PAYMENT AND REPORTING PROVISIONS

**CONTRACT CERTIFICATION
ATTACHMENT E**

(Program Name)

Contract Term:

Contract #:

Agency Name:

Address:

OMH Contact Person:

Phone/Email Address:

The OMH Director (or designee) charged with oversight of the above referenced contract/amendment certifies that the above noted agency has satisfactorily met the standards for provision of service and consumer care required by the NYS OMH for this program. This determination was based on oversight and due diligence review during the previous contract year and included the following checked items as appropriate.

Certified Program:

X Yes

No

If Yes:

Please list the relevant Operating Certificate Number(s):

- ☐ Billings reviewed for Accuracy Annually
- ☐ Satisfactory Quality Assurance Review
- ☐ Review of Annual Consolidated Fiscal Report
- ☐ Consumer Satisfaction Review
- ☐ Timely and Professional Response to Referrals for Service
- ☐ Program Review
- ☐ Site Visit
- ☐ Annual Contract Review Meeting
- ☐ Other _____

Attach additional documentation and comments as appropriate.

If No:

- ☐ Billings reviewed for Accuracy Annually
- ☐ Satisfactory Quality Assurance Review
- ☐ Review of Annual Consolidated Fiscal Report
- ☐ Consumer Satisfaction Review
- ☐ Timely and Professional Response to Referrals for Service
- ☐ Program Review
- ☐ Site Visit
- ☐ Annual Contract Review Meeting
- ☐ Other _____

Attach additional documentation and comments as appropriate.

Certified By: Nancy P. Splonskowski

Director, Contracts and Claims Unit, CBFM

Signature & Date: _____

ATTACHMENT F: BUSINESS ASSOCIATE AGREEMENT

1. The terms and conditions of this document entitled "*Appendix F, Business Associate Agreement*" ("Business Associate Agreement"), and attached to and incorporated in the Agreement, shall apply in the event that Protected Health Information is used or disclosed in connection with or in the course of Contractor's performance of the Agreement, and pursuant to which Contractor may be considered a "business associate" of the New York State Office of Mental Health as such term is defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services, as amended.
2. For purposes of this Business Associate Agreement, the term "Contractor" shall mean and include the term "Business Associate" as such term is defined in 45 CFR §164.103.
3. **Definitions:** Terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in 45 CFR §§160.103, 164.103, and 164.501.
 - a. *Breach* shall have the same meaning as the term "Breach" in §13400 of the HITECH Act and guidance issued by the Department of Health and Human Services, and shall include the unauthorized acquisition, use, or disclosure of Protected Health Information that compromises the privacy or security of such information.
 - b. *Covered Entity* shall mean the New York State Office of Mental Health.
 - c. *Data aggregation* shall mean, with respect to protected health information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
 - d. *Designated Record Set* shall have the same meaning as the term "Designated Record Set" in 45 CFR §164.501.
 - e. *HIPAA Rules* shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.
 - f. *HITECH Act* shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 226 (Feb. 17, 2009), codified at 42 U.S.C. §§300jj *et seq.*, §§17901 *et seq.*
 - g. *Individual* shall have the same meaning as the term "Individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

- h. *Protected Health Information* shall have the same meaning as the term “Protected Health Information” in 45 CFR §160.103, but is limited to the protected health information created or received by Contractor from, for or on behalf of Covered Entity in connection with or in the course of Contractor’s performance of the Agreement.
- i. *Required by Law* shall have the same meaning as the term “Required by Law” in 45 CFR §164.103.
- j. *Secretary* shall mean the Secretary of the Federal Department of Health and Human Services or his/her designee.
- k. *Security Incident* shall have the same meaning as the term “Security Incident” in 45 CFR §164.304.
- l. *Security Rule* shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, subparts A and C.
- m. *Unsecured Protected Health Information* shall mean Protected Health Information that is not secured through the use of a technology or methodology specified by the Secretary in guidance, or as otherwise defined in §13402(h) of the HITECH Act.

4. Obligations and Activities of Contractor:

- a. Contractor agrees not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
- b. Contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Agreement, and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity pursuant to this Agreement. Contractor agrees to fully comply with the responsibilities of Business Associates as set forth in §13401 of the HITECH Act.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of the Agreement.
- d. Contractor agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR §164.410, and any Security Incident of which it becomes aware. In the event of a Breach of Unsecured Protected Health Information:
 - 1) Contractor shall promptly notify Covered Entity of the Breach when it is discovered, but no later than 30 days from the discovery of the Breach. A Breach is considered

discovered on the first day on which Contractor knows or should have known of such Breach. Such notification shall identify the Individuals whose Unsecured Protected Health Information has, or is reasonably believed to have, been the subject of the Breach, and their contact information.

- 2) Covered Entity shall promptly notify Individuals about a Breach of their Unsecured Protected Health Information as soon as possible, but not later than 60 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall meet the requirements of §13402 of the HITECH Act.
- e. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, Contractor agrees to ensure that any agent or subcontractor of Contractor to whom Contractor provides Protected Health Information received from, or created or received by Contractor on behalf of Covered Entity pursuant to the Agreement agrees to at least the same restrictions and conditions that apply through this Business Associate Agreement to Contractor with respect to such Protected Health Information. Contractor will ensure that Business Associate Agreements are executed with all subcontractors that will perform functions or activities on behalf of Contractor that involve the use or disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, Covered Entity.
- f. To the extent that the information made available to Contractor under the Agreement includes Protected Health Information in a Designated Record Set, Contractor 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.
- g. To the extent that the information made available to Contractor in connection with or in the course of Contractor's performance of the Agreement includes Protected Health Information in a Designated Record Set, Contractor 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 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- h. Contractor agrees to document such disclosures of Protected Health Information under the Agreement and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- i. Contractor agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with paragraph (i) of Section 4 of this Business Associate Agreement, 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. If Contractor assists Covered Entity

in maintaining an electronic health record (EHR), Contractor shall support Covered Entity in providing, upon the request of the Individual, an accounting of disclosures of Protected Health Information in the EHR within the prior three years, as well as an electronic copy of Protected Health Information that is part of an EHR.

- j. To the extent Contractor is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations; and shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent that Covered Entity is responsible for compliance with such rule.
- k. Contractor agrees to make its 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 Contractor on behalf of Covered Entity pursuant to the Agreement, available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner as designated by the Covered Entity, for purposes of the Secretary's determining Covered Entity's compliance with the HIPAA Rules.
- l. Contractor shall make its internal practices, books, and records available to the Secretary for purposes of determining its compliance with the HIPAA Rules.

5. Permitted Uses and Disclosures by Contractor

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

6. Specific Use and Disclosure Provisions

- a. Except as otherwise limited in the Agreement or this Business Associate Agreement, Contractor may use Protected Health Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.
- b. Except as otherwise limited in the Agreement and this Business Associate Agreement, Contractor may disclose Protected Health Information for the proper management and administration of the Contractor, provided that disclosures are Required by Law, or Contractor obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will remain confidential and shall be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality obligations under this Business Associate Agreement have been breached.

- c. Except as otherwise limited in the Agreement and this Business Associate Agreement, Contractor may use Protected Health Information to provide Data Aggregation services relating to the health care operations of Covered Entity as permitted in 45 CFR §164.504(e)(2)(i)(B).
- d. Contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with New York State Mental Hygiene Law and 45 CFR §164.502(j)(1).

7. Obligations of Covered Entity

- a. Covered Entity shall notify Contractor of any limitation(s) in its Notice of Privacy Practices produced in accordance with 45 CFR §164.520, to the extent that such limitation may affect Contractor's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Contractor of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Contractor's permitted or required uses and disclosures.
- c. Covered Entity shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

8. Permissible Requests by Covered Entity

Covered Entity shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity. Covered Entity may permit Contractor to use or disclose Protected Health Information for Data Aggregation or management and administrative activities of Contractor, if the Agreement includes provisions for same.

9. Remedies in Event of Breach/Indemnification

- a. In the event of breach by Contractor of any of the covenants and assurances contained in this Business Associate Agreement, Contractor hereby agrees that immediate and irreparable harm may result to Covered Entity, and to the business of Covered Entity, which harm would not be adequately compensated by monetary damages. As such, in the event of breach of any of the covenants and assurances contained in Sections 4, 5, or 6 above, Covered Entity shall be entitled to enjoin and restrain Contractor from any continued violation of such Sections.
- b. Contractor shall defend, indemnify and hold Covered Entity harmless against all claims, losses, liability, costs and other expenses (including reasonable attorneys' fees), without limitation (collectively, "Liability"), resulting from or arising out of the acts or omissions of Contractor in the performance of its duties and obligations under this Business Associate

Agreement, except to the extent that such Liability results from or arises out of the acts or omissions of Covered Entity. Contractor's Liability under the foregoing provision shall include responsibility to pay, or where appropriate, to reimburse Covered Entity, for all costs associated with notification required by HIPAA or HITECH due to a Breach within the meaning of this Business Associate Agreement, except to the extent that such Liability results from or arises out of the acts or omissions of Covered Entity. Contractor shall be fully liable for the actions of its agents, employees and subcontractors.

- c. The terms of this Section 9 shall survive expiration or termination of the Agreement.

10. Consideration

Contractor acknowledges that the promises it has made in this Business Associate Agreement shall, henceforth, be relied upon by Covered Entity in choosing to continue or commence a business relationship with Contractor.

11. Interpretation of this Business Associate Agreement in Relation to Other Contracts Between the Parties

Should there be any conflict between the language of this Business Associate Agreement and any other contract or agreement entered into between the Parties (either prior or subsequent to the date of this Business Associate Agreement), the language and provisions of this Business Associate Agreement shall control and prevail unless, in a subsequent written agreement, the Parties specifically refer to this Business Associate Agreement by its title and date, and specifically state that the provisions of the later written agreement shall control over this Business Associate Agreement; except that in the event of a conflict with Appendix A (Standard Terms and Conditions of New York State Contracts) in any agreement to which such Appendix A applies (either prior or subsequent to the date of this Business Associate Agreement), Appendix A shall govern.

12. Term and Termination

- a. Term. The provisions of this Business Associate Agreement shall be effective as of the effective date of the Agreement and shall survive termination of the Agreement and shall not terminate unless and until all Protected Health Information is destroyed, or returned to Covered Entity or, if it is infeasible to return or destroy Protected Health Information, in accordance with the termination provisions in Section (c)(2) of this Section, in which case Contractor's obligations hereunder shall continue for so long as Contractor maintains the Protected Health Information.

- b. Termination for Cause. A breach of this Business Associate Agreement by either party shall be considered a material breach of the Agreement and may be grounds for termination of the Agreement for cause.

- c. Effect of Termination.

- 1) Except as provided in subparagraph (2) of this paragraph, upon termination of the

Agreement for any reason, Contractor shall return to Covered Entity or destroy all Protected Health Information received from Covered Entity, or created or received by Contractor on behalf of Covered Entity. This provision shall apply to all Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information. Upon request by Covered Entity, Contractor shall certify in writing to Covered Entity that all Protected Health Information has been returned or destroyed as required by this section.

- 2) In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information. Upon request by Covered Entity, Contractor shall certify in writing to Covered Entity that it has taken all the steps required by this section to protect Protected Health Information which could not feasibly be returned or destroyed.

13. Miscellaneous

- a. Regulatory References. A reference in this Business Associate Agreement to the HIPAA Rules means the rules as in effect or amended, and for which compliance by a Covered Entity and/or Business Associate is required.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- c. Survival. The respective rights and obligations of Contractor under Section 9 of this Business Associate Agreement shall survive the termination of this Business Associate Agreement.
- d. Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits compliance with the HIPAA Rules.

ATTACHMENT G
PROJECT BANK ACCOUNT

INTENTIONALLY DELETED

Non-Licensed Program Rider

1. Renewal

In order to exercise the right of renewal referenced in Section II(B)(2)(a) of the Master Contract, at the time CONTRACTOR provides notice of its intent to renew (but in any event no later than ninety days prior to expiration of the Agreement), CONTRACTOR must provide a Certification of Compliance in the form attached hereto as Exhibit A. CONTRACTOR agrees that breach of the Certification may be deemed a material breach of the Agreement and a legally sufficient basis for termination under Section II(C)(b) of the Master Contract.

2. Contract Performance

In the event that OMH determines that CONTRACTOR is not performing, or has not performed, its obligations under this Agreement to the State's satisfaction, as required by Section I (E) of the Agreement, OMH:

- a. may, but shall not be obligated to, provide CONTRACTOR with an opportunity to cure the breach and/or to develop and implement a corrective action plan within a designated timeframe. In the event that CONTRACTOR fails to cure the breach and/or to develop and implement a corrective action plan to OMH's satisfaction within such timeframe, such failure shall itself be deemed a material breach of this Agreement and a legally sufficient basis for termination under Section II(C)(b) of the Master Contract; and/or
- b. may reduce the term for which the Agreement may be renewed as provided in Section II(B)(2)(a) of the Master Contract.

Nothing in this paragraph shall be deemed to be a waiver of any breach of this Agreement or to otherwise affect OMH's rights to terminate or enforce the Agreement.

**Certification of Compliance
For Contractors of Non-Licensed Programs
Exhibit A**

On behalf of _____ ("CONTRACTOR"), I hereby certify that, as of the date hereof:

- CONTRACTOR is in compliance with and current on all programmatic and financial obligations under its agreement with the New York State Office of Mental Health ("OMH"), C# _____.
- CONTRACTOR shall remain in compliance with and current on all such obligations.
- CONTRACTOR agrees that any breach of this Certification may be deemed a breach of the Agreement and a legally sufficient basis for termination under Section II(C)(2) of the Master Contract.
- I am fully authorized to make this Certification on behalf of CONTRACTOR.

Date: _____

Signature

Printed Name

Title

Name of Contractor

OMH Statement

- ☐ To the best of our knowledge, we are not aware of any material issues regarding Contractor's performance of its obligations under this contract which would warrant non-renewal of the contract for the recommended term. To the extent that a material issue may exist, OMH has determined that the best interests of the users of the program will be served by continuing the Agreement while providing the Contractor with an opportunity to develop and/or implement a corrective action plan. Where appropriate, the proposed renewal term has been adjusted accordingly.

Date: _____

Signature

Printed Name

Title

Residential Program Rider Residential Capacity

The funding provided in this State Aid Allocation is intended for the operation of adult and children's community residence residential programs, as they are defined in OMH regulation and Guidelines. The county/direct contractor is funded to operate the following beds:

- _____ Supported Housing Beds
- _____ Supported - Single Room Occupancy Beds
- _____ Total – All Supported Housing Beds

- _____ Adult Community Residence – Supervised Beds
- _____ Adult Community Residence – MI-MR Beds
- _____ Adult Community Residence – Intensive Supportive Beds
- _____ Adult Community Residence – Supportive Beds
- _____ Children's Community Residence – Shift Model Beds
- _____ Children's Community Residence – Teaching Family Beds
- _____ Community Residence – Single Room Occupancy Beds
- _____ Total – All Community Residence Beds

It is the general policy of the OMH that, statewide, equal access to voluntary-operated residential program admissions be provided to individuals discharged from State hospitals as well as those referred through community referrals. The CONTRACTOR and the OMH State-operated Psychiatric Center have utilized good faith efforts towards entering into Affiliation Agreements, stipulating policy and procedures essential to the accomplishment of the residential program admission goals, and shall continue to utilize such efforts to revise and refine such existing agreements.

Provider agrees to participate in the Single Point of Access established by the county(ies) in which the provider operates residential programs, according to terms established by such county(ies).

- The single point of access process is designed to assist counties in managing their most intensive mental health services, primarily housing, assertive community treatment and case management, to facilitate better coordination of services and to provide opportunities for the county to add wraparound services in support of more difficult or tenuous residential placements.
- The single point of access process for housing is intended to be a collaborative one in which the county and service providers share responsibility for ensuring that individuals with the greatest need are given priority access to the most appropriate available placements.
- Providers have the right to make an admissions decision on each referral, based on the clinical appropriateness of their service for the individual and an assessment of current conditions that might make the placement unsuitable. In turn, counties have the right to monitor admissions by provider, and to take action should a provider show a pattern of inappropriate admissions decisions. Inappropriate decisions would include rejection of entire categories of individuals, and determinations based solely on an individual's history without consideration of current clinical condition and additional supports that the county can make available.

June 2013

Contract Number: # _____

Assisted Outpatient Treatment Rider

The CONTRACTOR shall establish mechanisms to ensure priority access by individuals referred to the CONTRACTOR who are enrolled in an assisted outpatient treatment program established pursuant to section 9.60 of the Mental Hygiene Law. The CONTRACTOR shall cooperate with the local governmental unit or the commissioner, or their authorized representatives, in ensuring priority access to such individuals, and in the development, review and implementation of treatment plans for such individuals. Any and all related information, reports and data which may be requested by the commissioner or the local governmental unit shall be furnished by the CONTRACTOR. Any requests for clinical records, from persons or entities authorized pursuant to section 33.13 [or 33.16] of the Mental Hygiene law, regarding individuals who are the subject of, or under consideration for, a petition for any order authorizing assisted outpatient treatment shall be given priority attention and responded to without delay.

Community Projects Fund Rider

This rider modifies the Agreement to which it has been affixed.

This Agreement may be made pursuant to an appropriation in an account of the Community Projects Fund (007) established by Section 99-d of the State Finance Law, as added by Section 261 of Chapter 474 of the Laws of 1996. CONTRACTOR understands and agrees that the state will not be liable for payments pursuant to any contract, grant or agreement made pursuant to an appropriation in any account of this fund if insufficient monies are available for transfer to such account of this fund after required transfers pursuant to Section 99-d(3) of the State Finance Law.

June 2013

Contract Number: # _____