

RFA Number
0511291202

New York State
Department of Health

Division of Home and Community Based Care

**Bureau Home Care and Hospice Surveillance and Quality
Indicators/Evaluation**

Request for Applications

Telemedicine Demonstration Program

Questions Due: February 9, 2006

Applications Due: March 31, 2006
4:45 P.M.

Contact Name & Address: Rebecca Fuller Gray
New York State Department of Health
Division of Home and Community-Based Care
Bureau of Home Care and Hospice Surveillance
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I. Introduction

1. Description of Program

Section 3621 of the Public Health Law authorizes a telemedicine demonstration program. The goal of the demonstration is to generate additional knowledge and experience on and collect information relating to the use of telemedicine technologies in the home care setting. Specifically, the demonstration will enable the Department to identify the potential of these technologies to improve quality of care and disease management for home care patients. Additionally, the demonstration will provide information on the costs, benefits and possible efficiencies of these technologies in the delivery of services to home care patients.

Projects eligible for funding include:

- Telemedicine technology initiatives that facilitate the provision of therapies by licensed professionals who may, through the use of interactive video technologies, monitor the progress of home care patients in a more efficient and cost effective manner;
- Telemedicine technology initiatives that enhance collaboration and communication among the home care aide, the supervising home health nurse, the patient's primary care physician, and/or any other essential health care personnel. These initiatives may include the use of web-based technologies for physician order entry; and
- Other telemedicine technology initiatives that may contribute to improving quality of care and disease management and/or enhance the efficiency of service delivery to home care patients.

There is no preference to the technologies that agencies may propose to use. Telemedicine technology is not restricted to interactive video or web-based technologies, but these are merely examples of the types of telemedicine technologies currently available. However, the following are not eligible to be funded: telephone reassurance, personal response systems, emergency response telephones and personal emergency telephones.

All applications must include an evaluation design to determine whether the hypothesized outcomes for the proposed technology were obtained.

Section 3621 also requires the Department of Health to issue an annual report to the Governor and the legislature on projects funded under the telemedicine demonstration program. The purpose of the report is to evaluate the appropriateness of incorporating the use of telemedicine technologies into the Medicaid program. The report will address whether telemedicine improves access for Medicaid beneficiaries to home health care services, reduces health care complications and reduces costs of home health care and other medical services to

the Medicaid program. It will be based on the evaluations conducted by the funded projects.

2. Background/Intent

Telemedicine is generally described as the use of communication equipment to link health care practitioners to patients who are not in the same location as the practitioners. The technology is used by health care providers for many reasons, including improved patient access to specialists and mental health providers, improved quality of care, better communication among providers, reduced transportation expenses and increased cost efficiencies. In the home care setting, telemedicine is currently used for disease management of such conditions as congestive heart failure, asthma, diabetes, wound care, palliative care and medication management.

Telemedicine can provide a range of benefits to the home care patient. Perceived benefits include improved access to care, improved clinical outcomes, increased compliance with the prescribed plan of care and an enhanced ability to monitor patients. Various measures can be used to assess cost effectiveness and quality of care, including reduction in home care lengths of stay, home care agency readmission rates, utilization, hospital admission rates, emergency room visit rates and costs.

The purpose of the telemedicine home care demonstration is to evaluate the use of telemedicine in the delivery of home care services. It is anticipated that the demonstration will reveal best practices of the use of telemedicine technology, including web-based technologies that allow physician order entry and electronic medical records and patient referral. Additionally, the demonstration is expected to demonstrate ways in which this technology can be utilized to improve the collaboration and communication between the professional and the paraprofessional providing home care services.

This request for applications solicits applications from home care agencies to implement and evaluate telemedicine/telehomecare technologies. Projects will be selected based on the potential of the project to promote the efficient and effective delivery of appropriate, high quality and cost effective home and community-based services.

3. Funding

Three million dollars are available for the two-year period of the demonstration. Awards must not exceed \$150,000. Both home care agencies that have already integrated telemedicine into their home care delivery systems and wish to expand, upgrade, enhance or otherwise modify their technology, and those that have not but wish to pursue it, are encouraged to apply.

II. Who May Apply

Organizations eligible to submit applications for funds must be home care agencies that are licensed, certified or exempt under Article 36 of the Public Health Law. An agency that provides personal care or home care services exclusively to individuals by a program administered, operated, or regulated by another state agency or an organization licensed and

operating exclusively as a nurses' registry are defined in Article 36 of the Public Health Law as exempt from licensure requirements.

Home care agencies that have not been awarded funds under prior telemedicine RFAs issued by the Department, nor yet implemented telemedicine technologies of their own accord, are eligible and encouraged to submit an application. Home care agencies that have received funding under prior telemedicine RFAs issued by the Department or wish to expand, upgrade, change or otherwise modify the technology that they have already implemented are also eligible to submit an application. However, if the applicant has already received Telemedicine Demonstration Program funding through an earlier award currently under contract with the Department, a new application via this RFA should either:

- propose a project design different than that currently being funded; or
- propose enlarging the current project by enrolling a larger number of unduplicated patients than that currently contracted for or by adding a new technology to justify such additional funding.

Only a home care agency licensed, certified or exempt under Article 36 of the Public Health Law may apply. Only one application may be submitted by any organization and all of its related entities. If more than one application is received from the same organization or related entities, all such applications will be ineligible for funds. However, more than one (1) home care agency may be included in the applicant's proposed project. In addition, while joint proposals are permitted, the application should designate one (1) home care agency as the lead agency. Joint proposals are subject to the same \$150,000 award cap as sole agency applicants.

III. Completing the Application

1. Budget

The Telemedicine Demonstration Program does not affect current Medicare, Medicaid and other third-party reimbursement policy. Home care agencies awarded funds under this initiative will continue to bill Medicaid, Medicare and other parties for billable units of care delivered to covered individuals as per current policy and procedure for the payer.

All applicants must complete a budget which does not exceed \$150,000. Applicants should submit the budget using the attached budget forms. Applicants should submit a 24-month budget, assuming a October 1, 2006 start date. All costs identified within the submitted budget should be related to the provision of the Telemedicine Demonstration RFA and must not exceed the amount requested through the RFA – maximum allowable amount of \$150,000. Justification for each cost should be submitted in narrative form, not to exceed two (2) double-spaced pages. For all existing staff, the Budget Justification should delineate how the percentage of time devoted to this initiative has been determined. *This funding may only be used to expand existing*

activities or create new activities pursuant to this RFA. These funds may not be used to supplant funds for currently existing staff activities.

The total amount awarded to any one project under this demonstration is \$150,000. Allowable expenses exclude any expenses incurred prior to contract start dates and any expenses reimbursed through billable events. Allowable expenses include all other costs related to planning, implementing and evaluating the project. This includes but is not limited to the purchase, lease or renting of new equipment and software and/or upgrades to existing equipment and software; personnel (salaries and fringe); training for physicians, home care agency staff, patients and families; marketing the project to physicians, home care agency staff, and patients and families; supplies; and maintenance and technical assistance contracts for equipment and software.

When submitting the application, the budget and budget narrative must be in a sealed envelope which is separate from the other components of the application.

The State Fiscal Year (SFY) 2005-06 Budget (Ch. 58, L. 2005) authorizes \$3 million for the two-year period of the Telemedicine Demonstration Program – \$2 million for Year One and \$1 million for Year Two. As such, when planning Year One and Year Two budgets, applicants should budget less for Year Two than for Year One. For continuation of the Telemedicine Demonstration Program, the New York State Legislature should re-appropriate such funds in the SFY 2006-07 Budget. Such action is anticipated.

2. Application Content

a. Literature Review

Applications should include a literature review that discusses the documented as well as the hypothesized impact and effects of telemedicine in general and telemedicine used in home care settings in particular. The literature review should address the specific telemedicine technology proposed to be used in the agency's project and cite any studies that may have been done regarding the technology that the agency is proposing to use.

b. Overview

The application should include an overview or brief general description of the project that succinctly states the following:

- technology to be used and how it operates;
- how the agency plans to use the technology to complement, enhance or improve the quality of care their patients receive compared to what the agency already provides;
- specific diseases and/or conditions to be monitored, managed or otherwise addressed;
- hypothesized or desired outcomes for patients, caregivers, staff, access, costs and utilization;

- specific information and data captured by the technology in the patient’s home and how this information will be used to enhance, complement and improve care;
- responsibilities of patients and caregivers;
- educational and training needs for patients and caregivers; and
- the qualifications of the individuals who are responsible for the coordination and administration activities of the project.

c. Current Caseload

The application should include a description of the applying agency’s *current* patient population and utilization and include the following:

- total number of unduplicated patients served annually by primary payer and, within primary payer categories, by secondary payer;
- number who live alone; number who live with at least one responsible adult; number who live with someone who provides care;
- total number of home care visits, by nurse, home health aides and other professional; and
- total number of episodes of care (an “episode of care” begins at the time a patient is admitted to an agency and ends at discharge).

d. Patient Eligibility Criteria, Assessment and Selection

The application should describe the population that will be enrolled in the project and how they will be identified. The application should include a description of the following:

- eligibility criteria for participation in the project:
 - ◆ what characteristics a patient should have to be eligible to participate in the project, e.g., specific medical condition or disease, ability to learn to use the equipment, compliance history, presence of a caregiver in the home, physical environment, etc.; and
 - ◆ what characteristics or factors would render the patient ineligible;
- description of the screening tool, if one is used, to identify those who are potentially eligible to participate and who should be more fully assessed;

- description of the assessment tools used to ascertain patient eligibility, willingness and capacity and caregiver willingness and capacity to participate in the project. This should include how barriers such as language will be determined, addressed and accommodated; and
- description of the assessment tool used to:
 - ◆ ascertain whether the patient’s physical environment (home) is appropriate, e.g., can accommodate telemedicine equipment and installation; and
 - ◆ identify barriers that may limit participation. A safety checklist should be included.

A description of the assessment and selection process should be included and should address the following questions:

- will both current patients and new admissions be screened and/or assessed;
- what personnel will do the screening, if a screen is conducted, and complete the assessment;
- what personnel will be involved in reviewing the assessment information to determine if the patient is eligible to participate;
- what is the process for ensuring that the decision-makers have all the information they need to make the decision regarding eligibility to participate; and
- what are the timeframes for completing the screen, completing the assessment, and determining patient eligibility to participate in the project.

e. Description of Patients To Be Enrolled in the Project

This section of the application should include:

- anticipated unduplicated number of patients to be enrolled in the project in year one, and the number in year two of the project, by quarter;
- anticipated unduplicated number of patients to be enrolled in the project in year one, and the unduplicated number in year two of the project, for whom the primary or secondary payer is Medicaid; and
- projected number of episodes of care for all enrolled patients, and for Medicaid patients, in each year of the project.

f. Detailed Description of the Telemedicine Technology

A complete and detailed technical and functional description of the computer, informatics, equipment and telecommunications configuration should be provided. Explain why the equipment proposed is the most appropriate equipment for the project.

Applicants should list any and all vendors it will be utilizing in their proposed

Telemedicine Demonstration project. Proposals may be submitted if the applicant has not made a final selection of a vendor. However, the applicant should still demonstrate a clear understanding of the type of technology that will be used and of the qualifications it is seeking in a potential vendor.

The application should include descriptions of the following:

- all necessary equipment, including general equipment configurations in the home and provider environments; software and required peripherals; and storage media;
- for each component of the equipment, discuss its relevance to the project and how it contributes to effectiveness, timeliness and accuracy, as well as usability by the appropriate user population. Discuss how each component contributes to the types of information collected and transmitted to providers and health care workers, and to the hypothesized outcomes;
- describe the product lines to be used (including names of the vendor(s)) and how they were selected for use in this demonstration;
- describe how the technology vendors will be selected by the agency;
- describe the experience the vendor has in analyzing the validity of their products data. Include any supporting evidence pertaining to the confidence level practitioners have in the accuracy of output readings of the data obtained from this technology. Include customer service surveys that have been performed and reviewed;
- describe how updates to the technology will be acquired;
- describe how patient information will be maintained and stored in the patient record;
- describe the infrastructure required to ensure the confidentiality of patient data and compliance with HIPAA standards including a description of the firewall capabilities and specifications as well as certificate update capabilities;
- describe how seamless access to patient information will be ensured from the patient to the provider/practitioner;
- provide a schematic diagram that shows information flow between patient, home care agency and other providers;
- discuss how the patient's physician will be integrated into the telemedicine process and what reporting mechanisms and procedures will be used to communicate data to the physician;

- differentiate equipment and software already in use from the equipment and software that will be purchased and or leased with project funds:
 - ◆ identify the equipment and software that are upgrades to existing equipment and software; and
 - ◆ identify the equipment and software that will be purchased and or leased with project funds that represent an expansion of current agency capacity, e.g. additional home units similar to those already used by the agency;
- describe what should be done to the patient’s home, the agency’s offices and other providers’ offices to install the equipment;
- provide technical specifications, including band width for lines that are required to use the technology in the home;
- state whether synchronous and/or asynchronous modes of communication will be used [“Synchronous” means occurring at regular intervals – the opposite is “asynchronous”. Most communication between computers and devices is asynchronous – it can occur at any time and at irregular intervals. Communications *within* a computer, however, is usually synchronous and is governed by the microprocessor clock. For example, a telephone conversation is asynchronous because both parties can talk whenever they like. If the communication were synchronous, each party would be required to wait a specified interval before speaking.];
- if images are used, provide technical specifications for the quality of the images, including resolution;
- describe types of technical support required for the technology; and
- describe academic qualifications, knowledge and experience of the agency’s technical support staff in the areas of medical informatics and telemedicine.

Equipment purchased with funds awarded via the Telemedicine Demonstration Program RFA becomes the property of the New York State Department of Health (NYSDOH), and should be labeled as such. Disposition of the equipment at the end of the grant will be decided by the Department of Health.

g. Training Requirements

The application should include a description of the training associated with the proposed telemedicine technology and should include how staff, patients and family caregivers will be educated regarding the proper handling, storage and operation of equipment. Describe the content and frequency of specific training to ensure the appropriate and correct use of technology for each group, i.e., patients, family caregivers, nursing staff including RNs, LPNs, home health and personal care aides, provider support staff, provider technical staff, and other providers such as physicians and therapists. Identify who will provide this training and his/her qualifications to do so. Include a copy of the individuals CV/resumes with the application.

h. Outcomes Measurement and Evaluation Design

The application must provide an evaluation design that the applicant intends to use to measure outcomes as a result of implementing the telemedicine technology. Outcomes should be measured in the following areas: quality of care; appropriateness of use of the technology in the home care setting; whether access to home care was improved; whether clinical outcomes were improved; and how the cost of home care service delivery was effected in terms of efficiency, effectiveness and appropriateness of use in the Medicaid population. This should include how the agency will collect and analyze the data, which is required to determine the hypothesized outcomes.

The application should identify within the evaluation the specific variables that will be used to measure outcomes in the following areas:

- quality of home care;
- appropriateness of use in the home care setting;
- access to home care;
- clinical outcomes; and
- cost of home care service delivery, efficiency and effectiveness for the Medicaid population.

Funded projects should conduct an evaluation according to the evaluation design submitted as part of their application. The final report for the project, which should be submitted within 90 days of the date that the contract expires, should include the evaluation design and findings.

i. Project Organization, Staffing and Management

This section of the application addresses how the project will be organized, staffed and managed. It should include an organization chart for the home care agency and illustrate the specific units in which project staff are located and their reporting lines. The relationship between all sub-contractors on the project, if any, and home care agency staff and project staff should also be shown. The organization chart should be accompanied by a narrative description addressing the specific role and responsibilities of each staff member assigned to the project including the proportion of time allocated to the project and their management and supervision responsibilities. It should describe how project staff relate to each other, to sub-contractors if any, and to other home care agency staff.

The application should designate a project director who has overall responsibility for the technical, administrative and financial aspects of the project and a principal investigator, who may be the same as the project director, who will be responsible for the evaluation.

j. Marketing and Outreach

A key element for all telemedicine projects is marketing the program to the community including patients, physicians, other health professionals, provider groups, health care facilities and agencies who provide health services in the community. The application should describe how the applicant will communicate the availability of its telemedicine program to its community and how information regarding the telemedicine program will be distributed.

k. Patient and Other Customer Satisfaction

The application should include a description of any patient and other customer satisfaction surveys that will be conducted. This description should include:

- identification of customer groups, e.g., patient, family caregivers, physicians, etc.;
- frequency of patient and customer satisfaction surveys and a sample survey if available; and
- description of how survey findings will be incorporated into program improvements.

l. Quality Assurance Plan

Applications should include a quality assurance plan for the patients enrolled in the demonstration. It should also describe how the applicant will:

- identify problems,
- develop solutions, and
- monitor outcomes .

The description should include how the program will enhance the quality of care and treatments of home care patients.

The plan should address, among other factors, how patient and family satisfaction survey information will be used to improve quality. It should also describe how the project will be monitored to determine whether necessary and correct information/data is being received.

m. Compliance with HIPAA

The application should include a description of how patient privacy will be maintained including a copy of the agency's HIPAA compliance procedures. Regarding Institutional Review Board (IRB) approval, if the submitted project proposes utilizing telemedicine technology in routine care planning and delivery, IRB review and approval is probably not necessary. However, applicants should discuss this with their own IRB as proposals are prepared. Applicants should state within their proposal whether their respective IRB requires that the submitted project, if selected to be funded, be reviewed.

3. Application Format

The application format is as specified below:

- **Face Page.** Must use Attachment 1. Do not alter it in any way.
- **Table of Contents.** Use Attachment 2. If the application includes any appendices or attachments, they and their page numbers should be added to the Table of Contents after the sections that are already listed. The order of the sections may not be altered in any way.
- **Abstract.** Use Attachment 3. Describe the technology to be used, unduplicated number of patient participants in the project annually, annual number of patient episodes for participating patients, geographical coverage, and expected outcomes in terms of changes in utilization and costs, and short and long term health outcomes for patients.
- **Narrative Description.** Use the following outline. Do not alter the order or move topics around. Include all information listed for each topic. Failure to provide the specific information listed for each topic, in the order in which it is listed, may result in a lower score:
 - a) **Literature review**
 - b) **Overview**
 - c) **Current Caseload**
 - d) **Patient Eligibility Criteria, Assessment and Selection**
 - e) **Description of Patients To Be Enrolled in the Project**
 - f) **Detailed Description of the Telemedicine Technology**
 - g) **Training Requirements**
 - h) **Outcomes Measurement and Evaluation Design**
 - i) **Project Organization, Staffing and Management**
 - j) **Marketing and Outreach**
 - k) **Patient and Other Customer Satisfaction**
 - l) **Quality Assurance Plan**
- **Budget and Budget Narrative.** Use Attachment 4. *Place the budget and budget narrative in a separate sealed envelope.*
- **Organizational Capacity.** Describe the ability of the organization to successfully implement telemedicine in terms of the applicant's organizational structure, personnel and roles, i.e. an overall description of the applicant's organization.
- **Work Plan.** Present major or significant tasks in chronological order. Provide for each task a start and end date. Include the titles of the individuals and/or sub-contractors who will be

responsible for the task. A listing of specific services or work products should be included. Deliverables should be broken down into discrete items which will be performed or delivered as a unit. A specific date should be associated with each deliverable making each expected completion date clear. The work plan should include the entire time period of the two-year contract. Use Attachment 5.

- **Key Individual Profiles.** Key individuals are those who will have the most accountability for implementing the project and ensuring that the proposed project achieves its goals and objectives. Identify the individuals whose authority, support and involvement are critical to project success. Provide profiles of these individuals that describe their *qualifications* and *commitment*, as well as their *capacity* and *ability* to guide and manage the project. Vitae and/or resumes are generally not considered profiles.
- **HIPAA Compliance Policy and Procedure.** See Appendix H, Attachment 6.
- **Vendor Responsibility Questionnaire.** Use Attachment 7. For purposes of completing the Vendor Responsibility Questionnaire, the applicant should consider itself the vendor. For information regarding vendor responsibility, please refer to:

<http://nysosc3.osc.state.ny.us/vendrep/faqs.htm>

- **Vitae and Resumes**
- **Attachments.** Place all other attachments, such as assessment tools, eligibility determination tools, Quality Assurance and Continuous Quality Improvement policies and procedures, etc., here.
- **Other.** Faxed or e-mailed proposals will not be accepted.

Incomplete applications and those that do not use the required forms found in the attachments to this RFA (with the exception of the face sheet) will have points deducted from the submitted application for failing to follow requested format and using the required forms.

The literature review and narrative description together should not exceed 25 pages, double-spaced, using no smaller than 11 pitch font, with one inch margins on all sides. All pages should have a footer identifying the name of the applicant and the RFA Number, which is 0511291202.

Review Process

1. Elimination of Application Without Review

The review, scoring and selection process for all applications that are submitted in

response to this RFA is as follows. Department of Health staff will screen all applications submitted by the due date and time and eliminate from further consideration an application that:

- is submitted after March 31, 2006, 4:45 p.m.;
- is submitted by an entity that is not licensed or certified as a home care agency under Article 36 of the Public Health Law;
- has been submitted by an organization or related entity submitting an additional application(s);
- does not submit the required face sheet (Attachment 1);
- is submitted without an evaluation design;
- failed to place the Budget and Budget Narrative in a separate sealed envelope;
- is submitted without a budget or whose budget exceeds \$150,000.

2. Technical and Financial Criteria

Evaluation of proposals will be based on the following technical and financial criteria.

A. Technical Criteria:

Seventy-five (75) total points are available based on the technical criteria as described below.

1. Applicant organization's capacity to successfully implement the technology. This includes, among other factors, documentation in the proposal that demand for the home units is sufficient to guarantee that all of them will be used. (20 points)
2. Industry's experience with the technology to be used documenting the following five factors: relevance, effectiveness, timeliness and accuracy, and usability by the appropriate user population. The applicant need not have this experience. Consideration will be given to the contribution of each component of the proposed technology to the above five factors, to the types of information collected and transmitted to providers and health care workers, and to the hypothesized outcomes. Information in the literature review and other sections of the application will be used to score the application on this criterion. (10 points)
3. Potential of the proposed technology to produce efficiencies in the delivery of home care services to the Medicaid-eligible home care population; e.g., reduction in number of home visits per participant; and increase in caseload per home care visits for nurses, home health aides, etc. Information in the literature review and other sections of the application will be used to score the application on this criterion. (15 points)
4. Comprehensive and effective quality assurance plan and work plan specific to the proposed project. (15 points)

5. Evaluation design. (15 points)

B. Financial Criterion:

Twenty-five (25) points are available based on the financial criterion.

Each application will be reviewed and scored by Department of Health staff. The Technical Criteria Review Committee will have three staff, and the Financial Criterion Review Committee will have two staff.

For each application, the scores on each of the technical requirements will be averaged across reviewers, and the average technical scores will be summed for each proposal. Applications will be scored on technical criteria, one through six as described above.

The total technical score for each application will be weighted according to the following formula. Technical score = $(a/b)*75$ where: a = total technical score for the application being scored and b = highest technical score among applications.

3. Budget and Budget Narrative Review

The financial criterion above is computed with a formula. The cost used will be the grand total amount indicated on the Budget form.

The following formula will be used: $(a/b)c = \text{score}$, where a = application with the lowest budgeted amount for the component, b = the budgeted amount of this application, and c = points available for this criterion. Example: if the lowest price is \$100,000 and the price of the application being scored is \$120,000 and there are 25 points available for this criterion, then $(\$100,000/\$120,000) 25 = (.83) 25 = 20.83$ points. In this example, the application with a budget price of \$120,000 receives 20.83 points on the financial criterion and the applicant with the budget price of \$100,000 receives 25 points.

The weighted technical score and the financial score for each application will be added to produce a total score and all proposals will be rank ordered based on their scores.

From the rank order listing, awards will be made from the highest scoring proposal to the next highest scoring proposals in order of their ranking until such time funding is exhausted.

It may not be possible to fund the selected projects at the total amount requested in each year of their project.

V. Administrative Requirements

1. Issuing Agency

This RFA is issued by the NYS Department of Health's Division of Home and Community Based Care/Bureau Home Care and Hospice Surveillance and Quality

Indicators/Evaluation. The Department is responsible for the requirements specified herein and for the evaluation of all applications.

2. Question and Answer Phase

Prospective applicants should note that all clarification and exceptions, including those relating to the terms and conditions of the contract, are to be raised prior to the submission of an application. Written answers to all questions raised will be provided on or before February 28, 2006.

All questions must be submitted in writing to:

Rebecca Fuller Gray, Director
Bureau of Home Care and Hospice Surveillance/QIE
Division of Home and Community Based Care
NYS Department of Health
161 Delaware Avenue
Delmar, New York 12054
FAX: 518-408-1636
e-mail: [hnhscsurv@health.state.ny.us]

All questions faxed or e-mailed to Rebecca Fuller Gray at the number or e-mail address provided above by February 9, 2006 will be compiled into a questions and answers document and automatically distributed to everyone who has faxed or e-mailed a question, or who has requested the questions and answers document. The questions and answers will also be posted on the Department of Health's web-site by February 28, 2006. *Questions will not be accepted via telephone. Telephone callers will be requested to mail, fax or e-mail their questions to the address or fax number provided above.*

3. How to File an Application

Interested organizations must submit a signed original and five signed copies of their application not later than 4:45 P.M., March 31, 2006, to:

Bureau Home Care and Hospice Surveillance and Quality Indicators/Evaluation
Division of Home and Community-Based Care
NYS Department of Health
161 Delaware Avenue
Delmar, New York 12054

Attention: Rebecca Fuller Gray

The budget and budget narrative opening will be held at the same address on April 3, 2006 at 10:00 A.M. It is the applicant's responsibility to see that applications are delivered to this address by the date and time specified above. The Department is not responsible for failures in delivery. Late applications due to delay by the carrier or not received by the due date and time will not be considered.

The detailed budget form should be filled out in its entirety. Responsible corporate officer for contract negotiation must be listed. All evidence and documentation requested under this request for application should be provided at the time the application is submitted.

4. Summary of Timeframes

Application deadline	March 31, 2006
Bid opening	April 3, 2006
Anticipated award notification	May 29, 2006
Anticipated Contract start date	October 1, 2006

5. The Department's Reserved Rights

The Department of Health reserves the right to:

- Reject any or all proposals received in response to this RFA.
- Deny an award to a home care agency that has serious quality problems which have not been resolved or have been only recently resolved, including those providing substandard quality of care or those in immediate jeopardy.
- Waive or modify minor irregularities in applications received after prior notification to the applicant.
- Adjust or correct cost or cost figures with the concurrence of applicant if errors exist and can be documented to the satisfaction of DOH and the State Comptroller.
- Negotiate with applicants responding to this RFA within the requirements to serve the best interests of the State.
- Modify the detail specifications should no applications be received that meet all these requirements.

If the Department of Health is unsuccessful in negotiating a contract with the selected applicants within an acceptable time frame, the Department of Health may begin contract negotiations with the next qualified applicant(s) in order to serve and realize the best interests of the State.

6. Term of Contract

Contracts resulting from this RFA will be effective only upon approval by the New York State Office of the Comptroller.

The term of this contract is two years. It is expected that contracts will have a start date commencing between October 1, 2006 and December 1, 2006. This contract may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

7. Payment & Reporting Requirements

- a) The State (NYS Department of Health) may, at its discretion, make an advance payment to not for profit grant contractors in an amount not to exceed 25% percent
- b) The grant contractor shall submit *quarterly* voucher claims and required reports of expenditures in such detail as the Department shall require to the State's designated payment office:

Division of Home and Community-Based Care
NYS Department of Health
161 Delaware Avenue
Delmar, New York 12054

Attention: Priscilla Davis

Payment of such invoices by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be: All vouchers submitted by the contractor pursuant to this agreement shall be submitted to the Department no later than 30 days after the end date of the period for which reimbursement is being claimed. In no event shall the amount received by the contractor exceed the budget amount approved by the Department and, if actual expenditures by the contractor are less than such sum, the amount payable by the Department to the contractor shall not exceed the amount of actual disbursements.

Contractor will submit to the Department quarterly reports detailing its activities e.g., number of provider staff who have been trained, number of patients screened and/or assessed, number enrolled in project, number of home installations, number and type of telemedicine visits, and other production statistics, and expenditures. Quarterly reports are due no later than 30 days after the last day in the quarter. An annual summary report for the first year of the contract should also be prepared and submitted no later than 45 days after the last day of that

contract year. A final report, including the results of the evaluation, should be submitted no later than 90 days after the contract expiration date.

8. General Specifications

- a) By signing the "Application Form" each applicant attests to its express authority to sign on behalf of the applicant.
- b) Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- c) An applicant with a history of survey compliance issues may be denied an award under this RFA by the Department of Health. This does **not** mean that any application from a lead home care agency with deficiencies from its last survey will be rejected. Rather, the Department's intent is to avoid awarding Telemedicine Demonstration Program funds to home care agencies that have serious quality problems that have not been resolved or have been only recently resolved, because such agencies should be directing all of their resources into restoring and maintaining compliance with all rules and regulations. Such home care agencies include, for example, those providing substandard quality of care or those in immediate jeopardy.
- d) Submission of an application indicates the applicant's acceptance of all conditions and terms contained in this RFA. If this applicant does not accept a certain condition or term, this should be clearly noted in a cover letter to the application.
- e) An applicant may be disqualified from receiving awards if such applicant or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- f) Provisions Upon Default
 - 1) The services to be performed by the Applicant shall be at all times subject to the direction and control of the Department as to all matters arising in connection with or relating to the contract resulting from this RFA.
 - 2) In the event that the Applicant, through any cause, fails to perform any of the terms, covenants or promises of any contract resulting from this RFA, the Department acting for and on behalf of the State, shall thereupon have the right to terminate the contract by giving notice in writing of the fact and date of such termination to the Applicant.

- 3) In the event the Applicant is determined by the Department of Health to possess serious quality problems which have not been resolved or have been only recently resolved, including those providing substandard quality of care or those in immediate jeopardy, the Department acting on behalf of the State, shall thereupon have the right to terminate any contract resulting from this RFA by giving notice in writing of the fact and date of such termination to the Applicant.
- 4) If, in the judgement of the Department of Health, the Applicant acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate any contract resulting from this RFA by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgement of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

9. Appendices

The following will be incorporated as appendices into any contract(s) resulting from this Request for Application.

- APPENDIX A - Standard Clauses for All New York State Contracts
- APPENDIX A-1 - Agency Specific Clauses
- APPENDIX B - Budget
- APPENDIX C - Payment and Reporting Schedule
- APPENDIX D - Workplan
- APPENDIX H - Federal Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement
- APPENDIX E - Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:

Certificate of Workers' Compensation Insurance, on the Workers' Compensation Board form C-105.2 or the State Insurance Fund Form U-26.3 (naming the Department of Health, Corning Tower Rm. 1315, Albany 12237-0016), or

Affidavit Certifying That Compensation Has Been Secured, form SI-12 or GSI-105.21, or WC/DB-100 or WC/DB-101

Statement That Applicant Does Not Require Workers' Compensation or Disability Benefits Coverage, form 105.21, completed for workers' compensation; and

Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:

Certificate of Insurance, form DB-120.1, or

Notice of Qualification as Self Insurer Under Disability Benefits Law, form DB-155, or

Statement That Applicant Does Not Require Workers' Compensation or Disability Benefits Coverage, form WC/DB-100 or WC/DB-101 completed for disability benefits insurance.

NOTE: Do not include the Workers' Compensation and Disability Benefits forms with your application. These documents will be requested as a part of the contracting process should your agency receive an award.

VI. Attachments

Attachment 1: Face Page

Attachment 2: Table of Contents

Attachment 3: Abstract

Attachment 4: Application Budget Format

Attachment 5: Work plan

Attachment 6: Appendix H – HIPAA

Attachment 7: Vendor Responsibility Questionnaire

Attachment 8: Standard Grant Contract with Appendices

ATTACHMENT ONE

FACE PAGE

Type of home care agency (check one box only): Licensed Home Care Services Agency (LHCSA)
 Certified Home Health Agency (CHHA)
 Exempt Agency

A copy of the current valid License or Operating Certificate must be provided.

Contractor is () is not () a Not-for-Profit organization

Legal Name of Applicant: (as is on file with the NYS Department of State):

Legal Address (as is on file with the NYS Department of State):

County for above address: _____

If applicant is a CHHA: Operating Certificate Number: |_|_|_|_|_|_|_|_|_| PFI: |_|_|_|_|_|
If applicant is a LHCSA: License Number: |_|_|_|_|_| L |_|_|_|_|_|

Charities Registration Number: _____
Federal Tax Identification Number: _____

For all applicants:
List ALL licensed home care service agencies and or certified home health agencies with which the applicant has a corporate relationship, including those of the same corporate-related hospital/health care system or network, whether they are participating in the project described within the application or not. Names should be identical to those on the agency’s operating certificate or license. For each agency listed, provide operating certificate number or license number, as appropriate.

Contact Person: _____ Title: _____

Phone: _____ Fax: _____ E-mail: _____

Title of Application: _____

Name of Project Director: _____

Name of Principal Investigator: _____

Institutional Endorsement: This application has the full support and endorsement of the applicant’s Administrator.

Name: _____
Title: _____

Signature: _____
Date: _____

ATTACHMENT TWO

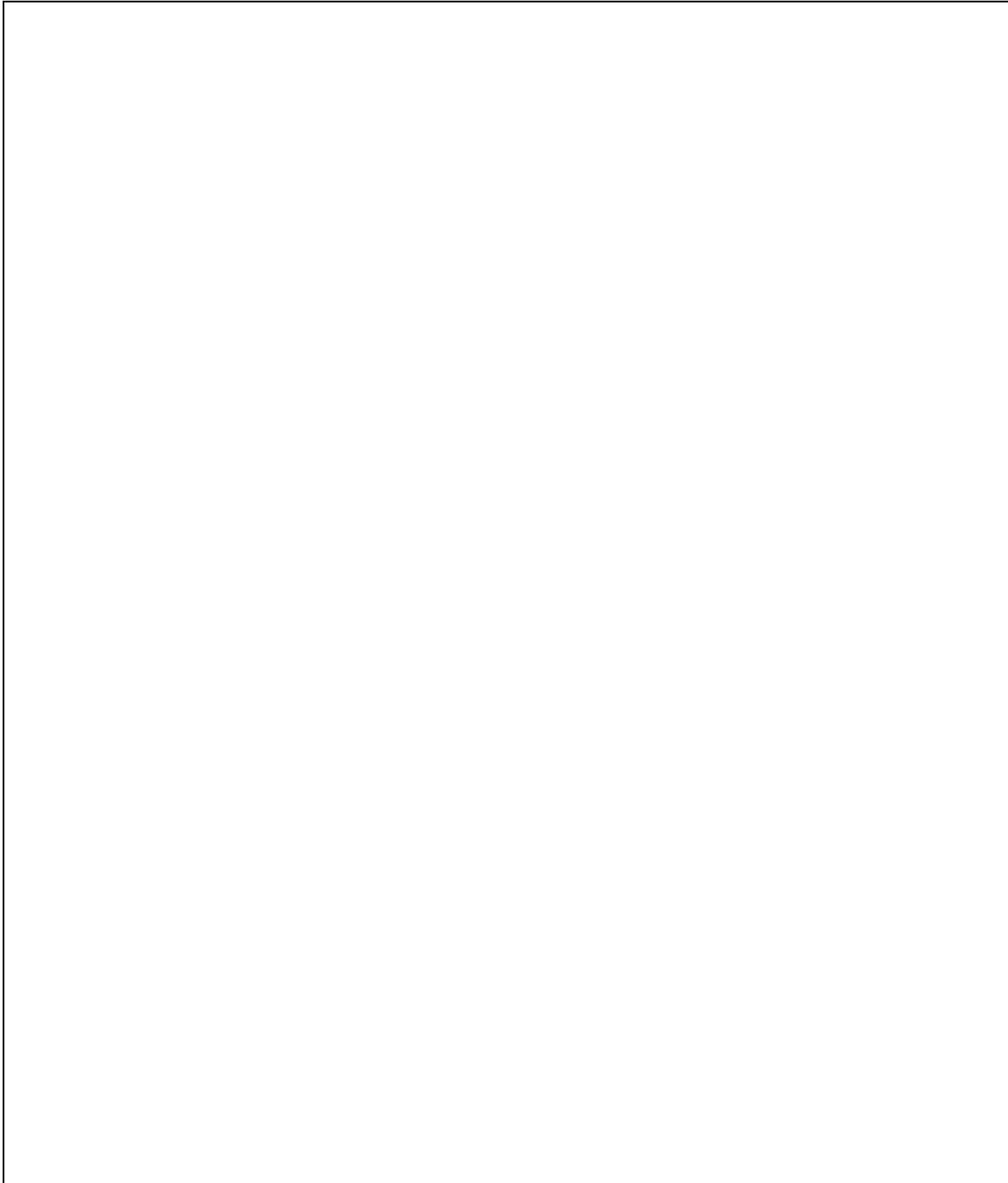
TABLE OF CONTENTS

1. Face Page
2. Table of Contents
3. Abstract
4. Narrative Description
 - a) Literature Review
 - b) Overview
 - c) Current Caseload
 - d) Patient Eligibility Criteria, Assessment and Selection
 - e) Description of Patients To Be Enrolled in the Project
 - f) Detailed Description of the Telemedicine Technology
 - g) Training Requirements
 - h) Outcomes Measurement and Evaluation Design
 - i) Project Organization, Staffing and Management
 - j) Marketing and Outreach
 - k) Patient and Other Customer Satisfaction
 - l) Quality Assurance Plan
5. Work Plan
6. Project Organization, Staffing and Management
7. Key Individual Profiles
8. HIPAA Compliance Policy and Procedure
9. Vendor Responsibility Questionnaire
10. Vita and Resumes
11. Other Attachments

In a separate sealed envelope:

Budget and Budget Narrative

PROJECT ABSTRACT

A large, empty rectangular box with a thin black border, occupying the central portion of the page. It is intended for the user to enter the project abstract text.

ATTACHMENT FOUR

BUDGET

(Complete one budget for each year for which funds are requested, and one summary budget for both years. Do the same for individual sub-contractors.)

Applicant's name (if CHHA or LHCSA should be the same as on Operating Certificate or license):

Budget Period: Beginning on: _____ **Ending on:** _____

PERSONAL SERVICE

Title/Function on the project	Name (if already employed by applicant)	Annual Salary	% Time Allocated to Project	Amount of Salary Charged to Budget	Fringe Benefits (specify rate: _____)
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
Total Salary and Fringes	XXXXXXXXXX	XXXX	XXXXXX	\$	\$

Total Personal Service (salary plus fringes): \$ _____

OTHER THAN PERSONAL SERVICE

Category:

- Supplies \$ _____
- Travel \$ _____
- Telephone \$ _____
- Postage \$ _____
- Photocopy \$ _____
- Other Contractual Services (specify detail on separate pages) \$ _____
- Equipment \$ _____
- Other (specify) \$ _____
- Other (specify) \$ _____

Total Other Than Personal Service \$ _____

GRAND TOTAL \$ _____

ATTACHMENT 5
Telemedicine Work Plan

Agency Corporate Name: _____

Address: _____

FEIN: _____

Charity Registration Number or copy of Exemption Certificate: _____

Municipality Number (if applicable) _____

Task to be Completed (Please be specific)	Begin Date	Date of Anticipated Completion	Date Completed	Name of Person Responsible

ATTACHMENT 6

APPENDIX H

**FEDERAL INSURANCE PORTABILITY AND
ACCOUNTABILITY (“HIPAA”)**

Appendix H

Federal Health Insurance Portability and Accountability Act (“HIPAA”) Business Associate Agreement (“Agreement”)

I. Definitions:

- (a) A Business Associate shall mean the CONTRACTOR.
- (b) A Covered Program shall mean the STATE.
- (c) Other terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations, including those at 45 CFR Parts 160 and 164.

II. Obligations and Activities of the Business Associate:

- (a) The Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- (b) The Business Associate agrees to use the appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Agreement.
- (d) The Business Associate agrees to report to the Covered Program, any use or disclosure of the Protected Health Information not provided for by this Agreement, as soon as reasonably practicable of which it becomes aware.
- (e) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Program agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.
- (f) The Business Associate agrees to provide access, at the request of the Covered Program, and in the time and manner designated by the Covered Program, to Protected Health Information in a Designated Record Set, to the Covered Program or, as directed by the Covered Program, to an Individual in order to meet the requirements under 45 CFR 164.524, if the business associate has protected health information in a designated record set.

- (g) The Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set that the Covered Program directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Program or an Individual, and in the time and manner designated by Covered Program, if the business associate has protected health information in a designated record set.
- (h) The Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of, the Covered Program available to the Covered Program, or to the Secretary of Health and Human Services, in a time and manner designated by the Covered Program or the Secretary, for purposes of the Secretary determining the Covered Program's compliance with the Privacy Rule.
- (i) The Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) The Business Associate agrees to provide to the Covered Program or an Individual, in a time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

III. Permitted Uses and Disclosures by Business Associate

(a) General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Program as specified in the Agreement to which this is an addendum, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Program.

(b) Specific Use and Disclosure Provisions:

- (1) Except as otherwise limited in this Agreement, the Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- (2) Except as otherwise limited in this Agreement, the Business Associate may use Protected Health Information for the proper management and administration of the business associate or to carry out its legal responsibilities and to provide Data Aggregation services to Covered Program as permitted by 45 CFR 164.504(e)(2)(i)(B). Data Aggregation includes the combining of protected information created or received by a Business Associate through its activities under this contract with other information gained from other sources.
- (3) The Business Associate may use Protected Health Information to report violations of law to appropriate federal and State authorities, consistent with 45 CFR 164.502(j)(1).

IV. Obligations of Covered Program

Provisions for the Covered Program To Inform the Business Associate of Privacy Practices and Restrictions

- (a) The Covered Program shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information.
- (b) The Covered Program shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information.
- (c) The Covered Program shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Program has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by Covered Program

The Covered Program shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Program, except if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

VI. Term and Termination

- (a) *Term.* The Term of this Agreement shall be effective during the dates noted on page one of this agreement, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in the Agreement.
- (b) *Termination for Cause.* Upon the Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for the Business Associate to cure the breach and end the violation or may terminate this Agreement and the master Agreement if the Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or the Covered Program may immediately terminate this Agreement and the master Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible.
- (c) *Effect of Termination.*
 - (1) Except as provided in paragraph (c)(2) below, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Program, or created or received by the Business Associate on behalf of the Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.
 - (2) In the event that the Business Associate determines that returning or destroying the Protected Health Information is not possible, the Business Associate shall provide to the Covered Program notification of the conditions that make return or destruction not possible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is not possible, the Business Associate shall extend the protections of this 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 not possible, for so long as Business Associate maintains such Protected Health Information.

VII. Violations

- (a) It is further agreed that any violation of this agreement may cause irreparable harm to the State, therefore the State may seek any other remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.

- (b) The Business Associate shall indemnify and hold the State harmless against all claims and costs resulting from acts/omissions of the Business Associate in connection with the Business Associate's obligations under this Agreement.

VIII. Miscellaneous

- (a) *Regulatory References.* A reference in this Agreement to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Program to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) *Survival.* The respective rights and obligations of the Business Associate under Section VI of this Agreement shall survive the termination of this Agreement.
- (d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Program to comply with the HIPAA Privacy Rule.
- (e) If anything in this agreement conflicts with a provision of any other agreement on this matter, this Agreement is controlling.
- (f) *HIV/AIDS.* If HIV/AIDS information is to be disclosed under this Agreement, the Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

ATTACHMENT 7

VENDOR RESPONSIBILITY QUESTIONNAIRE

New York State

OFFICE OF THE STATE COMPTROLLER - BUREAU OF CONTRACTS

Vendor Responsibility Questionnaire

A contracting agency is required to conduct a review of a prospective contractor to provide reasonable assurances that the vendor is responsible. This questionnaire is designed to provide information to assist a contracting agency in assessing a vendor's responsibility prior to entering into a contract with the vendor. Vendor responsibility is determined by a review of each bidder or proposer's authorization to do business in New York, business integrity, financial and organizational capacity, and performance history.

Prospective contractors must answer every question contained in this questionnaire. Each "Yes" response requires additional information. The vendor must attach a written response that adequately details each affirmative response. The completed questionnaire and attached responses will become part of the procurement record.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing contractor's business and operations as the questionnaire information must be attested to by an owner or officer of the vendor. **Please read the certification requirement at the end of this questionnaire.**

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER - BUREAU OF CONTRACTS
VENDOR RESPONSIBILITY QUESTIONNAIRE

1. VENDOR IS: <input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> SUB-CONTRACTOR			
2. VENDOR'S LEGAL BUSINESS NAME		3. IDENTIFICATION NUMBERS a) FEIN # b) DUNS #	
4. D/B/A – Doing Business As (if applicable) & COUNTY FILED:		5. WEBSITE ADDRESS (if applicable)	
6. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE		7. TELEPHONE NUMBER	8. FAX NUMBER
9. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE IN NEW YORK STATE, if different from above		10. TELEPHONE NUMBER	11. FAX NUMBER
12. PRIMARY PLACE OF BUSINESS IN NEW YORK STATE IS: <input type="checkbox"/> Owned <input type="checkbox"/> Rented If rented, please provide landlord's name, address, and telephone number below:		13. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE Name Title Telephone Number Fax Number e-mail	
14. VENDOR'S BUSINESS ENTITY IS (please check appropriate box and provide additional information):			
a) <input type="checkbox"/> Business Corporation	Date of Incorporation	State of Incorporation*	
b) <input type="checkbox"/> Sole Proprietor	Date Established		
c) <input type="checkbox"/> General Partnership	Date Established		
d) <input type="checkbox"/> Not-for-Profit Corporation	Date of Incorporation	State of Incorporation*	Charities Registration Number
e) <input type="checkbox"/> Limited Liability Company (LLC)	Date Established		
f) <input type="checkbox"/> Limited Liability Partnership	Date Established		
g) <input type="checkbox"/> Other – Specify:	Date Established	Jurisdiction Filed (if applicable)	
* If not incorporated in New York State, please provide a copy of authorization to do business in New York.			
15. PRIMARY BUSINESS ACTIVITY - (Please identify the primary business categories, products or services provided by your business)			
16. NAME OF WORKERS' COMPENSATION INSURANCE CARRIER:			
17. LIST ALL OF THE VENDOR'S PRINCIPAL OWNERS AND THE THREE OFFICERS WHO DIRECT THE DAILY OPERATIONS OF THE VENDOR (Attach additional pages if necessary):			
a) NAME (print)	TITLE	b) NAME (print)	TITLE
c) NAME (print)	TITLE	d) NAME (print)	TITLE

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER - BUREAU OF CONTRACTS
VENDOR RESPONSIBILITY QUESTIONNAIRE

<p>21. Within the past five (5) years, has the vendor, any individuals serving in managerial or consulting capacity, principal owners, officers, major stockholder(s) (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate¹ or any person involved in the bidding or contracting process:</p>	
<p>a) 1. been suspended, debarred or terminated by a local, state or federal authority in connection with a contract or contracting process;</p> <p>2. been disqualified for cause as a bidder on any permit, license, concession franchise or lease;</p> <p>3. entered into an agreement to a voluntary exclusion from bidding/contracting;</p> <p>4. had a bid rejected on a New York State contract for failure to comply with the MacBride Fair Employment Principles;</p> <p>5. had a low bid rejected on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract;</p> <p>6. had status as a Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise denied, de-certified, revoked or forfeited;</p> <p>7. been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal government contract;</p> <p>8. been denied an award of a local, state or federal government contract, had a contract suspended or had a contract terminated for non-responsibility; or</p> <p>9. had a local, state or federal government contract suspended or terminated for cause prior to the completion of the term of the contract?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b) been indicted, convicted, received a judgment against them or a grant of immunity for any business-related conduct constituting a crime under local, state or federal law including but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c) been issued a citation, notice, violation order, or are pending an administrative hearing or proceeding or determination for violations of:</p> <p>1. federal, state or local health laws, rules or regulations, including but not limited to Occupational Safety & Health Administration (OSHA) or New York State labor law;</p> <p>2. state or federal environmental laws;</p> <p>3. unemployment insurance or workers' compensation coverage or claim requirements;</p> <p>4. Employee Retirement Income Security Act (ERISA);</p> <p>5. federal, state or local human rights laws;</p> <p>6. civil rights laws;</p> <p>7. federal or state security laws;</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

STATE OF NEW YORK
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status of the liability.

- | | | |
|------------|---|---------------|
| 26. | Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates ¹ within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates regardless of the date of filing?
<i>Indicate if this is applicable to the submitting vendor or affiliate. If it is an affiliate, include the affiliate's name and FEIN. Provide the court name, address and docket number. Indicate if the proceedings have been initiated, remain pending or have been closed. If closed, provide the date closed.</i> | ☐ Yes ☐ No |
|------------|---|---------------|

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER - BUREAU OF CONTRACTS
VENDOR RESPONSIBILITY QUESTIONNAIRE

27.	Is the vendor currently insolvent, or does vendor currently have reason to believe that an involuntary bankruptcy proceeding may be brought against it? <i>Provide financial information to support the vendor's current position, for example, Current Ratio, Debt Ratio, Age of Accounts Payable, Cash Flow and any documents that will provide the agency with an understanding of the vendor's situation.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
28.	Has the vendor been a contractor or subcontractor on any contract with any New York State agency in the past five (5) years? <i>List the agency name, address, and contract effective dates. Also provide state contract identification number, if known.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
29.	In the past five (5) years, has the vendor or any affiliates ¹ : a) defaulted or been terminated on, or had its surety called upon to complete, any contract (public or private) awarded; b) received an overall unsatisfactory performance assessment from any government agency on any contract; or c) had any liens or claims over \$25,000 filed against the firm which remain undischarged or were unsatisfied for more than 90 days ? <i>Indicate if this is applicable to the submitting vendor or affiliate. Detail the situation(s) that gave rise to the negative action, any corrective action taken by the vendor and the name of the contracting agency.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

¹ "Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER - BUREAU OF CONTRACTS
VENDOR RESPONSIBILITY QUESTIONNAIRE

State of:)
) ss:
County of:)

CERTIFICATION:

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the State of New York or its agencies or political subdivisions in making a determination regarding an award of contract or approval of a subcontract; acknowledges that the State or its agencies and political subdivisions may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

The undersigned certifies that he/she:

- has not altered the content of the questions in the questionnaire in any manner;
- has read and understands all of the items contained in the questionnaire and any pages attached by the submitting vendor;
- has supplied full and complete responses to each item therein to the best of his/her knowledge, information and belief;
- is knowledgeable about the submitting vendor's business and operations;
- understands that New York State will rely on the information supplied in this questionnaire when entering into a contract with the vendor; and
- is under duty to notify the procuring State Agency of any material changes to the vendor's responses herein prior to the State Comptroller's approval of the contract.

Name of Business	Signature of Owner/Officer _____
Address	Printed Name of Signatory
City, State, Zip	Title

Sworn to before me this _____ day of _____, 20____;

Notary Public

Print Name

Signature

Date

ATTACHMENT 8 GRANT CONTRACT

STATE AGENCY (Name and Address): _____	.	NYS COMPTROLLER'S NUMBER: _____
	.	
	.	ORIGINATING AGENCY CODE: _____
CONTRACTOR (Name and Address): _____	.	TYPE OF PROGRAM(S) _____
	.	
FEDERAL TAX IDENTIFICATION NUMBER: _____	.	INITIAL CONTRACT PERIOD _____
	.	
MUNICIPALITY NO. (if applicable): _____	.	FROM: _____
	.	
	.	TO: _____
	.	
CHARITIES REGISTRATION NUMBER: ____ - ____ - ____ or () EXEMPT: (If EXEMPT, indicate basis for exemption): _____	.	FUNDING AMOUNT FOR INITIAL PERIOD: _____
	.	
	.	MULTI-YEAR TERM (if applicable): FROM: TO: _____
CONTRACTOR HAS() HAS NOT() TIMELY FILED WITH THE ATTORNEY GENERAL'S CHARITIES BUREAU ALL REQUIRED PERIODIC OR ANNUAL WRITTEN REPORTS. _____	.	
	.	
CONTRACTOR IS() IS NOT() A SECTARIAN ENTITY CONTRACTOR IS() IS NOT() A NOT-FOR-PROFIT ORGANIZATION _____	.	

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

_____	APPENDIX A	Standard clauses as required by the Attorney General for all State contracts.
_____	APPENDIX A-1	Agency-Specific Clauses (Rev 02/03)
_____	APPENDIX B	Budget
_____	APPENDIX C	Payment and Reporting Schedule
_____	APPENDIX D	Program Workplan
_____	APPENDIX X	Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

OTHER APPENDICES

_____	APPENDIX A-2	Program-Specific Clauses
_____	APPENDIX E-1	Proof of Workers' Compensation Coverage
_____	APPENDIX E-2	Proof of Disability Insurance Coverage
_____	APPENDIX H	Federal Health Insurance Portability and Accountability Act Business Associate Agreement
_____	APPENDIX _____	_____
_____	APPENDIX _____	_____
_____	APPENDIX _____	_____

STATE OF NEW YORK

AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

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

I. Conditions of Agreement

- A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.
- B. Funding for the first PERIOD shall not exceed the funding amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.
- C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT.

To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A-1.

- E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal

guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

- F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, 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 this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.
- G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

II. Payment and Reporting

- A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.
- B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.
- C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

III. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules and regulations, policies or procedures affecting this AGREEMENT.
- C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A-1.
- D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.
- E. 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.

- F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

IV. Indemnification

- A. 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 AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

V. Property

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules and regulations, or as stated in Appendix A-1.

VI. Safeguards for Services and Confidentiality

- A. Services performed pursuant to this AGREEMENT 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.
- B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
- C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A-1.

APPENDIX A-1
(REV 02/03)

AGENCY SPECIFIC CLAUSES FOR ALL
DEPARTMENT OF HEALTH CONTRACTS

1. If the CONTRACTOR is a charitable organization required to be registered with the New York State Attorney General pursuant to Article 7-A of the New York State Executive Law, the CONTRACTOR shall furnish to the STATE such proof of registration (a copy of Receipt form) at the time of the execution of this AGREEMENT. The annual report form 497 is not required. If the CONTRACTOR is a business corporation or not-for-profit corporation, the CONTRACTOR shall also furnish a copy of its Certificate of Incorporation, as filed with the New York Department of State, to the Department of Health at the time of the execution of this AGREEMENT.
2. The CONTRACTOR certified that all revenue earned during the budget period as a result of services and related activities performed pursuant to this contract shall be used either to expand those program services funded by this AGREEMENT or to offset expenditures submitted to the STATE for reimbursement.
3. Administrative Rules and Audits:
 - a. If this contract is funded in whole or in part from federal funds, the CONTRACTOR shall comply with the following federal grant requirements regarding administration and allowable costs.
 - i. For a local or Indian tribal government, use the principles in the common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments".
 - ii. For a nonprofit organization other than
 - ◆ an institution of higher education,
 - ◆ a hospital, or
 - ◆ an organization named in OMB Circular A-122, "Cost Principles for Non-profit Organizations", as not subject to that circular,use the principles in OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations," and OMB Circular A-122.
 - iii. For an Education Institution, use the principles in OMB Circular A-110 and OMB Circular A-21, "Cost Principles for Educational Institutions".
 - iv. For a hospital, use the principles in OMB Circular A-110, Department of Health and Human Services, 45 CFR 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals" and, if not covered for audit purposes by OMB Circular A-133, "Audits of States and Local Governments and Non-profit Organizations", then

subject to program specific audit requirements following Government Auditing Standards for financial audits.

- b. If this contract is funded entirely from STATE funds, and if there are no specific administration and allowable costs requirements applicable, CONTRACTOR shall adhere to the applicable principles in "a" above.
 - c. The CONTRACTOR shall comply with the following grant requirements regarding audits.
 - i. If the contract is funded from federal funds, and the CONTRACTOR spends more than \$300,000 in federal funds in their fiscal year, an audit report must be submitted in accordance with OMB Circular A-133.
 - ii. If this contract is funded from other than federal funds or if the contract is funded from a combination of STATE and federal funds but federal funds are less than \$300,000, and if the CONTRACTOR receives \$300,000 or more in total annual payments from the STATE, the CONTRACTOR shall submit to the STATE after the end of the CONTRACTOR's fiscal year an audit report. The audit report shall be submitted to the STATE within thirty days after its completion but no later than nine months after the end of the audit period. The audit report shall summarize the business and financial transactions of the CONTRACTOR. The report shall be prepared and certified by an independent accounting firm or other accounting entity, which is demonstrably independent of the administration of the program being audited. Audits performed of the CONTRACTOR's records shall be conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States covering financial audits. This audit requirement may be met through entity-wide audits, coincident with the CONTRACTOR's fiscal year, as described in OMB Circular A-133. Reports, disclosures, comments and opinions required under these publications should be so noted in the audit report.
 - d. For audit reports due on or after April 1, 2003, that are not received by the dates due, the following steps shall be taken:
 - i. If the audit report is one or more days late, voucher payments shall be held until a compliant audit report is received.
 - ii. If the audit report is 91 or more days late, the STATE shall recover payments for all STATE funded contracts for periods for which compliant audit reports are not received.
 - iii. If the audit report is 180 days or more late, the STATE shall terminate all active contracts, prohibit renewal of those contracts and prohibit the execution of future contracts until all outstanding compliant audit reports have been submitted.
4. The CONTRACTOR shall accept responsibility for compensating the STATE for any exceptions which are revealed on an audit and sustained after completion of the normal audit procedure.
 5. FEDERAL CERTIFICATIONS: This section shall be applicable to this AGREEMENT only if any of the funds made available to the CONTRACTOR under this AGREEMENT are federal funds.

a. LOBBYING CERTIFICATION

- 1) If the CONTRACTOR is a tax-exempt organization under Section 501 (c)(4) of the Internal Revenue Code, the CONTRACTOR certifies that it will not engage in lobbying activities of any kind regardless of how funded.
- 2) The CONTRACTOR acknowledges that as a recipient of federal appropriated funds, it is subject to the limitations on the use of such funds to influence certain Federal contracting and financial transactions, as specified in Public Law 101 -121, section 319, and codified in section 1352 of Title 31 of the United States Code. In accordance with P.L. 101-121, section 319, 31 U.S.C. 1352 and implementing regulations, the CONTRACTOR affirmatively acknowledges and represents that it is prohibited and shall refrain from using Federal funds received under this AGREEMENT for the purposes of lobbying; provided, however, that such prohibition does not apply in the case of a payment of reasonable compensation made to an officer or employee of the CONTRACTOR to the extent that the payment is for agency and legislative liaison activities not directly related to the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. Nor does such prohibition prohibit any reasonable payment to a person in connection with, or any payment of reasonable compensation to an officer or employee of the CONTRACTOR if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal, or application for a Federal contract, grant, loan, or cooperative agreement, or an extension, continuation, renewal, amendment, or modification thereof, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan or cooperative agreement.
- 3) This section shall be applicable to this AGREEMENT only if federal funds allotted exceed \$100,000.
 - a) The CONTRACTOR certifies, to the best of his or her knowledge and belief, that:
 - ◆ No federal appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal amendment or modification of any federal contract, grant, loan, or cooperative agreement.
 - ◆ If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence

an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

- b) The CONTRACTOR shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - c) The CONTRACTOR shall disclose specified information on any agreement with lobbyists whom the CONTRACTOR will pay with other Federal appropriated funds by completion and submission to the STATE of the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. This form may be obtained by contacting either the Office of Management and Budget Fax Information Line at (202) 395-9068 or the Bureau of Accounts Management at (518) 474-1208. Completed forms should be submitted to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower Building, Room 1315, Albany, 12237-0016.
 - d) The CONTRACTOR shall file quarterly updates on the use of lobbyists if material changes occur, using the same standard disclosure form identified in (c) above to report such updated information.
- 4) The reporting requirements enumerated in subsection (3) of this paragraph shall not apply to the CONTRACTOR with respect to:
- a) Payments of reasonable compensation made to its regularly employed officers or employees;
 - b) A request for or receipt of a contract (other than a contract referred to in clause (c) below), grant, cooperative agreement, subcontract (other than a subcontract referred to in clause (c) below), or subgrant that does not exceed \$100,000; and
 - c) A request for or receipt of a loan, or a commitment providing for the United States to insure or guarantee a loan, that does not exceed \$150,000, including a contract or subcontract to carry out any purpose for which such a loan is made.

b. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE:

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs whether directly or through State or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this AGREEMENT, the CONTRACTOR certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The CONTRACTOR agrees that it will require that the language of this certification be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

c. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1) APPENDIX B TO 45 CFR PART 76 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

- a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d) The terms *covered transactions, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions.
- g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of

its principals. Each participant may, but is not required to, check the List of Parties Excluded From Federal Procurement and Non-procurement Programs.

- h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i) Except for transactions authorized under paragraph “e” of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

- a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by a Federal department agency.
- b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

6. The STATE, its employees, representatives and designees, shall have the right at any time during normal business hours to inspect the sites where services are performed and observe the services being performed by the CONTRACTOR. The CONTRACTOR shall render all assistance and cooperation to the STATE in making such inspections. The surveyors shall have the responsibility for determining contract compliance as well as the quality of service being rendered.

7. The CONTRACTOR will not discriminate in the terms, conditions and privileges of employment, against any employee, or against any applicant for employment because of race, creed, color, sex, national origin, age, disability, sexual orientation or marital status. The CONTRACTOR has an affirmative duty to take prompt, effective, investigative and remedial action where it has actual or constructive notice of discrimination in the terms, conditions or privileges of employment against (including harassment of) any of its employees by any of its other employees, including managerial personnel, based on any of the factors listed above.

8. The CONTRACTOR shall not discriminate on the basis of race, creed, color, sex, national origin, age, disability, sexual orientation or marital status against any person seeking services for which the CONTRACTOR may receive reimbursement or payment under this AGREEMENT.
9. The CONTRACTOR shall comply with all applicable federal, State and local civil rights and human rights laws with reference to equal employment opportunities and the provision of services.
10. The STATE may cancel this AGREEMENT at any time by giving the CONTRACTOR not less than thirty (30) days written notice that on or after a date therein specified, this AGREEMENT shall be deemed terminated and cancelled.
11. Other Modifications
 - a. Modifications of this AGREEMENT as specified below may be made within an existing PERIOD by mutual written agreement of both parties:
 - ◆ Appendix B – Budget line interchanges;
 - ◆ Appendix C – Section 11, Progress and Final Reports;
 - ◆ Appendix D – Program Workplan
 - b. To make any other modification of this AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s), and a Modification Agreement (Appendix X is the blank form to be used), which shall be effective only upon approval by the Office of the State Comptroller.
12. Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR'S insurance carrier and/or the Workers' Compensation Board, of coverage for
 - a. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
 - ◆ Certificate of Workers' Compensation Insurance, on the Workers' Compensation Board form C-105.2 or the State Insurance Fund Form U-26.3 (naming the Department of Health, Corning Tower, Room 1315, Albany, 12237-0016), or
 - ◆ Affidavit Certifying That Compensation Has Been Secured, form SI-12 or form GSI 105.2, or
 - ◆ Statement That Applicant Does Not Require Workers' Compensation or Disability Benefits Coverage, form 105.21, completed for workers' compensation; and
 - b. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
 - ◆ Certificate of Disability Benefits Insurance, form DB-120.1, or

- ◆ Notice of Qualification as Self Insurer Under Disability Benefits Law, form DB-155, or
- ◆ Statement That Applicant Does Not Require Workers' Compensation or Disability Benefits Coverage, form 105.21, completed for disability benefits insurance.

13. Additional clauses as may be required under this AGREEMENT are annexed hereto as appendices and are made a part hereof if so indicated on the face page of this AGREEMENT.

APPENDIX C

PAYMENT AND REPORTING SCHEDULE

1. Payment and Reporting Terms and Conditions

A. The STATE may, at its discretion, make an advance payment to the CONTRACTOR, during the initial or any subsequent PERIOD, in an amount to be determined by the STATE but not to exceed _____ percent of the maximum amount indicated in the budget as set forth in the most recently approved Appendix B. If this payment is to be made, it will be due thirty calendar days, excluding legal holidays, after the later of either:

- ◆ the first day of the contract term specified in the Initial Contract Period identified on the face page of the AGREEMENT or if renewed, in the PERIOD identified in the Appendix X, OR
- ◆ if this contract is wholly or partially supported by Federal funds, availability of the federal funds;

provided, however, that a STATE has not determined otherwise in a written notification to the CONTRACTOR suspending a Written Directive associated with this AGREEMENT, and that a proper voucher for such advance has been received in the STATE's designated payment office. If no advance payment is to be made, the initial payment under this AGREEMENT shall be due thirty calendar days, excluding legal holidays, after the later of either:

- ◆ the end of the first monthly/quarterly period of this AGREEMENT; or
- ◆ if this contract is wholly or partially supported by federal funds, availability of the federal funds:

provided, however, that the proper voucher for this payment has been received in the STATE's designated payment office.

B. No payment under this AGREEMENT, other than advances as authorized herein, will be made by the STATE to the CONTRACTOR unless proof of performance of required services or accomplishments is provided. If the CONTRACTOR fails to perform the services required under this AGREEMENT the STATE shall, in addition to any remedies available by law or equity, recoup payments made but not earned, by set-off against any other public funds owed to CONTRACTOR.

C. Any optional advance payment(s) shall be applied by the STATE to future payments due to the CONTRACTOR for services provided during initial or subsequent PERIODS. Should funds for subsequent PERIODS not be appropriated or budgeted by the STATE for the purpose herein specified, the STATE shall, in accordance with Section 41 of the State Finance Law, have no liability under this AGREEMENT to the CONTRACTOR, and this AGREEMENT shall be considered terminated and cancelled.

- D. The CONTRACTOR will be entitled to receive payments for work, projects, and services rendered as detailed and described in the program workplan, Appendix D. All payments shall be in conformance with the rules and regulations of the Office of the State Comptroller.
- E. The CONTRACTOR will provide the STATE with the reports of progress or other specific work products pursuant to this AGREEMENT as described in this Appendix below. In addition, a final report must be submitted by the CONTRACTOR no later than ____ days after the end of this AGREEMENT. All required reports or other work products developed under this AGREEMENT must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the STATE in order for the CONTRACTOR to be eligible for payment.
- F. The CONTRACTOR shall submit to the STATE monthly/quarterly voucher claims and reports of expenditures on such forms and in such detail as the STATE shall require. The CONTRACTOR shall submit vouchers to the State's designated payment office located in the _____.

All vouchers submitted by the CONTRACTOR pursuant to this AGREEMENT shall be submitted to the STATE no later than _____ days after the end date of the period for which reimbursement is being claimed. In no event shall the amount received by the CONTRACTOR exceed the budget amount approved by the STATE, and, if actual expenditures by the CONTRACTOR are less than such sum, the amount payable by the STATE to the CONTRACTOR shall not exceed the amount of actual expenditures. All contract advances in excess of actual expenditures will be recouped by the STATE prior to the end of the applicable budget period.

II. Progress and Final Reports

Organization Name: _____

Report Type:

A. Narrative/Qualitative Report

_____ (Organization Name) will submit, on a quarterly basis, not later than _____ days from the end of the quarter, a report, in narrative form, summarizing the services rendered during the quarter. This report will detail how the _____ (Organization) _____ has progressed toward attaining the qualitative goals enumerated in the Program Workplan (Appendix D).

(Note: This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.)

B. Statistical/Quantitative Report

_____ (Organization Name) will submit, on a quarterly basis, not later than _____ days from the end of the quarter, 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.)

C. Expenditure Report

_____ (Organization Name) _____ will submit, on a quarterly basis, not later than _____ days after the end date for which reimbursement is being claimed, a detailed expenditure report, by object of expense. This report will accompany the voucher submitted for such period.

D. Final Report

_____ (Organization Name) _____ will submit a final report, as required by the contract, reporting on all aspects of the program, detailing how the use of grant funds were utilized in achieving the goals set forth in the program Workplan.

APPENDIX D

PROGRAM WORKPLAN (sample format)

A well written, concise workplan is required to ensure that the Department and the contractor are both clear about what the expectations under the contract are. When a contractor is selected through an RFP or receives continuing funding based on an application, the proposal submitted by the contractor may serve as the contract's work plan if the format is designed appropriately. The following are suggested elements of an RFP or application designed to ensure that the minimum necessary information is obtained. Program managers may require additional information if it is deemed necessary.

I. CORPORATE INFORMATION

Include the full corporate or business name of the organization as well as the address, federal employer identification number and the name and telephone number(s) of the person(s) responsible for the plan's development. An indication as to whether the contract is a not-for-profit or governmental organization should also be included. All not-for-profit organizations must include their New York State charity registration number; if the organization is exempt AN EXPLANATION OF THE EXEMPTION MUST BE ATTACHED.

II. SUMMARY STATEMENT

This section should include a narrative summary describing the project which will be funded by the contract. This overview should be concise and to the point. Further details can be included in the section which addresses specific deliverables.

III. PROGRAM GOALS

This section should include a listing, in an abbreviated format (i.e., bullets), of the goals to be accomplished under the contract. Project goals should be as quantifiable as possible, thereby providing a useful measure with which to judge the contractor's performance.

IV. SPECIFIC DELIVERABLES

A listing of specific services or work projects should be included. Deliverables should be broken down into discrete items which will be performed or delivered as a unit (i.e., a report, number of clients served, etc.) Whenever possible a specific date should be associated with each deliverable, thus making each expected completion date clear to both parties.

Language contained in Appendix C of the contract states that the contractor is not eligible for payment "unless proof of performance of required services or accomplishments is provided." The workplan as a whole should be structured around this concept to ensure that the Department does not pay for services that have not been rendered.

APPENDIX X

Agency Code _____

Contract No. _____

Period _____

Funding Amount for Period _____

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through _____, having its principal office at _____ (hereinafter referred to as the STATE), and _____ (hereinafter referred to as the CONTRACTOR), for modification of Contract Number as amended in attached Appendix(ices)_____.

All other provisions of said AGREEMENT shall remain in full force and effect

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under this signatures.

CONTRACTOR SIGNATURE

By: _____

Printed Name

Title: _____

Date: _____

STATE AGENCY SIGNATURE

By: _____

Printed Name

Title: _____

Date: _____

State Agency Certification:

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

STATE OF NEW YORK)

County of _____) SS:

On the ___ day of _____ 20___, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the corporation described herein which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary) _____

STATE COMPTROLLER'S SIGNATURE

Title: _____

Date: _____

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this 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 the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. 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 this contract shall be performed within the State of New York, 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 this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, 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 this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. 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 prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. 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 this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this 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 the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours 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. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") 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 the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) 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 principal 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.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting 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 agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting 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:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will 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, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, 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 will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency 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 contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment 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.

16. NO ARBITRATION. Disputes involving this 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.

17. 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. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. 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.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York 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 New York 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 this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their 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 they offer will 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 they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.