

**New York State  
Department of Health  
Division of Quality and Evaluation**

**Request for Applications**

*Medicaid-Designated NYC Hospitals for Bariatric Surgery for  
Obesity*

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*KEY DATES*

<b>RFA Release Date:</b>	<b>February 13, 2009</b>
<b>Questions Due:</b>	<b>February 27, 2009</b>
<b>Letter of Interest Due:</b>	<b>February 27, 2009</b>
<b>Applicant Teleconference On:</b>	<b>March 4, 2009</b>
<b>Deadline for Registration:</b>	<b>February 27, 2009</b>
<b>RFA Updates Posted:</b>	<b>March 11, 2009</b>
<b>Applications Due:</b>	<b>April 6, 2009</b>
<b>DOH Contact Name &amp; Address:</b>	<b>Michael Lindsey, Ph. D Office of Health Insurance Programs NYS Department of Health Room 1938 Corning Tower Albany, New York 12237-0066</b>

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## **I. Introduction**

Section 21, Part E, Chapter 63 of the Laws of 2005 provide authority for the Commissioner of Health to establish directly negotiated rates of payment for specialty inpatient hospital services for Medicaid eligible patients in selected areas of the state. The Commissioner may select up to five hospitals and five specialty services for negotiated rates of payment to be established using criteria set forth in the statute. The specialty inpatient hospital services and hospitals eligible for reimbursement may be selected by the Commissioner based on a competitive bidding process. NYSDOH's ability to implement selective contracting is subject to Center for Medicare and Medicaid Services (CMS) approval. This approval will be sought through a waiver application that will be submitted to CMS as part of the competitive bidding process.

Bariatric surgery, surgical procedures performed for the treatment of severe obesity and obesity-related health problems, have been selected as one of the specialty inpatient hospital services for which payment rates for Medicaid beneficiaries in fee-for-service (FFS) will be established through a competitive bidding process. This request for applications (RFA) is being issued to all hospitals that performed bariatric surgery in the New York City (NYC) area during calendar year 2007 to provide these hospitals the opportunity to propose rates of payment for bariatric surgical procedures and inpatient treatment performed within the five boroughs of New York City for Medicaid FFS beneficiaries.

Selected hospitals will be designated by the NYSDOH to be "Bariatric Specialty Centers" for the length of their contracts, pending successful performance review and extension of legislative authority for the program. Medicaid FFS beneficiaries in NYC needing such services will be required to utilize these hospitals, and it is anticipated that the hospital's volume of bariatric surgical patients will increase. The Department anticipates working with successful bidders to develop a comprehensive approach to the treatment of obesity and related conditions. Medicaid managed care plans will also be encouraged to utilize these Specialty Centers for their members in need of bariatric surgery. The overarching vision for this program is to channel beneficiaries to experienced providers where they will receive the best care and have the best outcomes. In addition, short term economic efficiencies and post-care long term savings for the Medicaid program through reductions in complications of surgery will be realized.

It is well documented that the United States has experienced an "obesity epidemic" during recent decades. It is estimated that approximately 30% of adult Americans are obese, and that approximately 5% of adults are morbidly obese. Nationally, obesity rates continue to rise, and some estimates are that obesity-related health issues are responsible for over one-fourth of the growth in U.S. healthcare costs over the past 15 years. Perhaps most disturbing is that obesity rates among children and adolescents have increased steadily during the past three decades. Morbid obesity results in metabolic comorbid conditions such as type 2 diabetes, hypertension and cardiovascular disease, which increase health care costs and impairs quality of life.

Research has shown that diet, exercise, and the normally prescribed medical therapies are not always effective treatments for obesity in the long term, particularly for the severely and morbidly obese. While such therapies can lead to weight loss of up to 10 percent over four to six months, there is increasing evidence that many individuals gradually regain most of the lost weight over time. Bariatric surgery, a set of surgical techniques that restrict stomach size and/or bypass large portions of the small intestine, has emerged as an alternative method of weight loss and long term weight maintenance for many obese and morbidly obese individuals. In fact, a National Institutes of Health (NIH) funded consortium of clinical centers, the Longitudinal Assessment of Bariatric Surgery (LABS), have taken the position that bariatric surgery now constitutes the most effective means of losing substantial weight and maintaining that weight loss.

Bariatric surgery has become increasingly popular in the United States. Nationally, the number of bariatric surgeries grew by approximately 400% between 1998 and 2002, and it is estimated that slightly more than 103,000 bariatric surgeries were performed nationwide in 2003. In New York State, a significant and relatively stable number of bariatric surgeries were performed between 2004-2006. The number of primary obesity related bariatric surgeries (all payer) performed during each of these three years was 8,460, 8,837, and 8,416.

The many health benefits associated with long-term weight loss are well documented. Type 2 diabetes, hyperlipidemia, hypertension, and obstructive sleep apnea are among the obesity-related conditions that have been shown to improve with significant weight loss. In addition, long-term mortality rates decrease for those who significantly reduce their weight. Available evidence indicates that those achieving long-term weight loss through bariatric surgery do experience many of these benefits.

However, in addition to the substantial potential benefits there are also substantial potential risks. Bariatric surgery, of whatever type, requires a life-changing commitment from the patient. The modification of the digestive process (often irreversible, depending on the type of surgery) demands that eating habits profoundly change and that nutritional supplements must be taken regularly and permanently. Not all potential patients are capable of such commitment but, as the LABS consortium points out, little systematic research is available to provide guidance on appropriate patient selection.

An emerging literature indicates that there is a substantial risk of patient complications following bariatric surgery. Recent research using 2003 New York State hospital discharge data (SPARCS) reveals that 6.8% of the 7,868 adults undergoing a primary obesity-related bariatric procedure in 2003 experienced one or more postoperative complications. Respiratory complications, including pneumonia, collapsed lung and respiratory complications secondary to an operation, were the most common complications<sup>1</sup>. Using these same 2003 data, it was also found that 7.6% of patients undergoing bariatric surgery were readmitted to the hospital within 30 days of discharge after their operation. The most common readmission diagnosis was “digestive system complications of surgical care”. These same authors also found a significant relationship between the volume of bariatric surgery performed at the hospital and short-term readmission rates<sup>2</sup>. The complication and readmission rates discovered in these studies are consistent with such rates discovered in other states.

Preliminary research conducted by the NYSDOH and utilizing 2006 NYS hospital discharge data show very similar results (the results described here are based on all-payer data). The crude complication rate for the 29 NYC hospitals performing bariatric surgery in 2006 was 7.5 per 100 surgeries. There was tremendous variation among hospitals in these rates, however. The crude rate varied from 1.15 to 33.33. A logistic regression model predicting patient complications based on the patients age, gender, race/ethnicity, body mass index (BMI), and approximately 30 patient co-morbidities was used to risk-adjust these rates. Significant variation still existed among hospitals in terms of their risk-adjusted complication rates: these hospital risk-adjusted complication rates varied from 1.36 to 21.58.

In addition to this wide variation among hospitals in terms of performance, these analyses have also suggested the existence of a relationship between the volume of bariatric surgery performed by the hospital

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1 Weller, Rosati and Hannan. “Predictors of In-Hospital Postoperative Complications among Adults Undergoing Bariatric Procedures in New York State, 2003”. *Obesity Surgery*; 2006 6:702-708.

2 Weller, Rosati, and Hannan. “Relationship Between Surgeon and Hospital Volume and Readmission after Bariatric Operation”. *J Am Coll. Surg*; 2007 204:383-391.

and the hospital's complication rate, even when all patient co-morbidities are taken into account. The volume of bariatric surgery during calendar year 2006 was calculated for each hospital. Additional logistic regression analyses that added the hospital volume of bariatric surgery to the patient characteristics and co-morbidities delineated above were completed. Patients in the lowest volume NYC hospitals (those 14 hospitals with a volume of less than 65 surgeries in 2006) were 2.13 times more likely to experience a bariatric surgical complication than those patients receiving the surgery in the highest volume hospitals (those 5 hospitals with a volume of 144 or more surgeries in 2006).

These analyses suggest that: 1) there is a large number of bariatric surgeries performed in NYC hospitals, 2) the results of such surgeries, as measured by patient surgical complication rates, varies tremendously among these hospitals, even when relevant patient co-morbidities are taken into account, and 3) a significant relationship exists between the hospitals with higher volume of such surgeries and better patient outcomes.

Given such wide variation in performance among hospitals, this RFA initiates an effort to selectively contract with hospitals that have bariatric surgical experience and whose outcomes are good and may be expected to improve with increased patient volume. Such an effort is consistent with the Centers for Medicare and Medicaid Services (CMS) decision to certify bariatric surgical programs for Medicare coverage. In conjunction with the American College of Surgeons (ACS) and the American Society of Metabolic and Bariatric Surgery (ASMBS), CMS has developed a set of standards and minimum requirements that must be met on an ongoing basis. It is not necessary that the applicant hospital be certified by CMS; however, if no such certification has been attained, certain criteria must be met by the applicant hospital (refer to page 15, Section V-A-2-c-i, "Completing Application", for details) The CMS program is based on the belief that patients receiving care at certified hospitals will experience better outcomes, with significant financial savings over the long term. The goals of this RFA are the same.

## **II. Who May Apply**

The NYSDOH is seeking applications from NYC hospitals that performed any bariatric surgical procedures in 2007 and still provide these services in 2008. For the purposes of this RFA, a NYC hospital is a hospital located in one of the five boroughs. A patient receiving a bariatric surgical procedure is an inpatient with a principal diagnosis of Obesity, Unspecified (ICD-9-CM code of 278.00), Morbid Obesity (278.01) or Overweight (278.02) **AND** who undergoes any one of the following procedures: High Gastric Bypass (ICD-9-CM code 44.31), Laparoscopic Gastroenterostomy (44.38), Other Gastroenterostomy (44.39), Revision Gastric Anastomosis (44.5), Laparoscopic Gastroplasty (44.68), Other Repair of Stomach (44.69), Laparoscopic Gastric Restrictive Procedure (44.95), Laparoscopic Revision Gastric Restriction (44.96), Laparoscopic Removal Gastric Restriction Device (44.97), Adjustment Gastric Restriction Device (44.98), Gastric Operation NEC (44.99), Intestinal Anastomosis NOS (45.90) or Small to Small Bowel Anastomosis (45.91).

There were 25 hospitals in the five boroughs, identified with 2007 SPARCS data, that are currently operating and that performed such surgeries. The list of eligible hospitals for this RFA is included as Attachment 1.

## **III. Project Narrative/ Work Plan Outcomes**

The NYSDOH is interested in awarding contracts to NYC hospitals for the provision of bariatric surgical procedures for Medicaid FFS beneficiaries. Selected hospitals must be able to demonstrate that they are

providing high quality care with positive patient outcomes, such as comparatively low complication and hospital readmission rates.

Participation will be mandatory for all NYS Medicaid FFS beneficiaries not enrolled in a mandatory managed care program and residing in or having the procedure performed in the defined catchment area of a selected hospital during the length of these contracts. Hospitals not selected for contract by the NYSDOH will be precluded from billing the FFS Medicaid program for these procedures. The only exceptions would be: if an inpatient admission is the result of an emergency admission ; instances where the State determines that provision of services are necessary and a hospital has submitted prior approval to the Department; or where the State determines that travel times will create undue hardship for a beneficiary with special needs.

Because participation will be mandatory for beneficiaries in the selected provider's geographic area, the volume of patients receiving such services from each selected provider can be expected to increase during the course of the contract.

#### **A. Objectives**

Each submitted proposal should:

1. include a proposed rate of reimbursement for obesity-related bariatric surgical procedures and the inpatient care associated with those surgical procedures for Medicaid FFS beneficiaries that is lower than the current rate of reimbursement and is acceptable to the NYSDOH (see section B below);
2. accept reimbursement at the proposed rate, subject to Medicaid hospital trend factor updates established by NYS Division of Budget, for all such beneficiaries during the period of the contract;
3. demonstrate that pre-surgical programs are in place to screen prospective patients and to select those most likely to benefit from bariatric surgery, as reported in periodic required reports;
4. provide assurance of access to appropriate surgery by skilled surgeons;
5. demonstrate that the applicant be certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center or certified by the American Society for Metabolic & Bariatric Surgery (ASMBS), formerly American Society for Bariatric Surgery, as a Bariatric Surgery Center of Excellence (in keeping with requirements for Medicare) with certification in effect as of January 1, 2009. Applicants without such certification must describe in detail how they currently meet the standards described within these certification programs and include a plan for acquiring certification within the contract period; and
6. provide written assurance that clients will have appropriate access to transportation for surgery and required peri-operative visits.

Each contracted hospital must:

1. accept reimbursement at the proposed rate, subject to Medicaid hospital trend factor updates established by NYS Division of Budget, for all such beneficiaries during the period of the contract;
2. demonstrate ongoing positive patient outcomes and exhibit consistently low standardized (risk-adjusted) complication rates compared to other hospitals (as measured by the NYSDOH), as reported in period required reports;
3. demonstrate positive long-term patient outcomes beyond the inpatient stay for bariatric surgical patients; and

4. collect and share such hospital or patient-level data that will enable the NYSDOH to evaluate patient level outcomes.

Contracted hospitals failing to comply with these requirements during the term of this contract may be subject to termination of the contract with notice in writing of the fact and date of such termination.

### ***B. Reimbursement Rate***

The response to this RFA must include a proposed total rate of reimbursement for bariatric surgical care, including 72 hour pre-op charges, post-op charges (including any readmissions occurring within 30 days relative to post surgical follow up care and/or complications) and all inpatient care associated with the inpatient stay in which the surgical procedure took place (i.e. at minimum all charges currently included in Medicaid DRG payment). The proposed rate will be a percentage of the hospitals' Medicaid AP-DRG 288 (O.R. Procedures for Obesity) payment that is less than 100 percent. **This percentage will also apply to outlier payments (i.e. short stay, long stay and high cost).** Yearly changes to the DRG rate of payment will be the same as the trend factor approved by the NYS Division of Budget for Medicaid hospital DRG rates of payment. Payment will be upon discharge of the patient via the States' normal Medicaid Fee-For-Service payment process.

If the Department of Health modifies the Medicaid inpatient reimbursement system during the contract period, the contracted percentages will be applied to the appropriate DRGs related to bariatric surgery.

### ***C. Measures of Performance***

Frequently used measures of provider performance for bariatric surgery are the complications experienced by patients. Using 2006 SPARCS data, diagnostic codes were used to define 30 conditions that existed during the hospitalization in which the bariatric procedure was performed. These conditions were considered to be complications from the bariatric surgical procedure, and an individual was defined as having a complication resulting from the bariatric surgery if he/she had any one of these conditions. These conditions were a combination of those previously defined in prior studies of bariatric surgery (see the Weller, Rosati and Hannan paper cited in footnote 1 as well as the references they cite) and those identified by the Department's Office of Health Insurance Programs (OHIP). A list of these complications is included as Attachment 2 (the initial 17 complication categories are those defined in the literature; the final 13 complication categories are additional complications identified by OHIP).

The NYSDOH will continue to analyze such data in an effort to assess bariatric surgical performance. Using the approximately 30 comorbid conditions defined by previous research<sup>3</sup> (used by Weller, Rosati, and Hannan), and identified by the OHIP Medical Director, the Department will continue to model bariatric surgical patient outcomes, develop risk-adjusted hospital complication rates, and compare hospital performance based on these rates.

In addition, the Department will continue analyses of hospital readmissions after bariatric surgery as an additional indicator of bariatric surgical performance. These analyses will focus on those hospital readmissions for conditions in a reasonable amount of time after surgery (15, 30, 45, 60 days) that are the result of complications of bariatric surgery.

Both the hospital complication and readmission data will be used to evaluate the performance of the selected

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3 Elixhauser, Steiner, Harris, et al. "Comorbidity Measures for Use with Administrative Data". Medical Care; 1998 36: 8-27.

hospitals during the course of the contract.

The importance of providing preoperative counseling to individuals contemplating bariatric surgery is well documented. As part of the response to this RFA, hospitals must describe the pre-surgical programs they have in place, the type of information provided to patients, including what the individual can expect following the surgery and the implications the surgery will have for their day-to-day life, and any information collected from participants and how it is used. Similarly, hospitals must describe the types of programs available for the postoperative period to ensure appropriate clinical care as well as adequate support for the significant lifestyle modifications that patients must make in order to be successful in achieving weight loss.

The American College of Surgeons and the American Society for Metabolic and Bariatric Surgery have developed reporting requirements for Bariatric Surgery Centers that are used by CMS to certify bariatric surgical programs for Medicare coverage. Depending on the volume of services provided and the level of certification sought, surgical programs must collect and submit preoperative, intraoperative, and 30-day postoperative data. Such data permit the assessment of patient outcomes for the recovery period following the surgery. As part of the response to this RFA, hospitals must describe the availability of such data for their bariatric surgical program describing patient outcomes, describe the measures included in such data, and the intervals in which such data are collected. In addition to reporting the results of this evaluation, hospitals must describe how this data is used for evaluation of their quality and improvement of outcomes resulting in changes to the process of care to achieve better outcomes.

#### ***D. Data Collection***

The NYSDOH will work with selected hospitals to develop a format by which selected hospitals will be required to submit data describing patient characteristics and outcomes data to the Department. Every reasonable effort will be made to use the same data items and same data format as required by the American College of Surgeons so that requirements for additional data collection will be minimized. Every reasonable effort will also be made to standardize the data items collected in order to ensure that the data collected are standardized across participating hospitals. Post-surgical data must be submitted to the NYSDOH annually for each patient for a period of not less than five years. All surgeons and each patient receiving services under the terms of this contract must agree to provide all specified post-surgical data to the NYSDOH upon contract approval.

#### ***E. Project Timeline***

The following is a timeline for the RFA process and project development.

<b>DESCRIPTION</b>	<b>DEADLINE</b>
Publish RFA	February 13, 2009
Letter of Interest Due	February 27, 2009
Applicant Teleconference	March 4 ,2009
RFA Submissions Due to DOH	April 6, 2009

## ***F. Reports***

1. Beginning one year after the approval of the contract, and on a yearly basis after that, each contractor must submit patient demographic and patient outcome data for all beneficiaries receiving bariatric surgical services under the terms of the negotiated contract according to uniform specifications.
2. A yearly report at the end of each contract year and a final report, at the end of the contract period, will also be required. The yearly report will describe the number of beneficiaries receiving bariatric surgical services at the hospital under the terms of the contract, the number of beneficiaries screened for such services, and any other such information describing the utilization of bariatric surgical services.
3. Beginning one year after the initiation of the contract, and on a yearly basis after that, each contractor must submit a financial report for all beneficiaries who received bariatric surgical services under the terms of the negotiated contract. Financial reports should capture all costs including 60-day post surgery costs and charges, utilization and clinical data, and any other data deemed necessary by the Commissioner of Health associated with bariatric surgical services for the period of time described in the terms of the contract.
4. Any additional reports the Department may deem appropriate during the course of the contract.

## **IV. Administrative Requirements**

### **A. Issuing Agency**

This RFA is issued by the NYSDOH, Office of Health Insurance Programs, Bureau of Outcomes Research. The Department is responsible for the requirements specified herein and for the evaluation of all applications.

### **B. Question and Answer Phase:**

All substantive questions must be submitted either in writing or by e-mail to:

Michael Lindsey, Ph.D  
Office of Health Insurance Programs  
New York State Department of Health  
Room 1938, Corning Tower  
Albany, New York 12237-0066  
MLL01@health.state.ny.us

To the degree possible, each inquiry should cite the RFA section and paragraph to which it refers. Written or e-mailed questions will only be accepted until the date posted on the cover of this RFA.

Questions of a technical nature can be addressed in writing or via e-mail by contacting Michael Lindsey, at the above address. Questions are of a technical nature if they are limited to how to prepare your application (e.g., formatting) rather than relating to the substance of the application.

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.

This RFA has been posted on the Department of Health's public website at <http://www.health.state.ny.us/funding/>. Questions and answers, as well as any updates and/or modifications, will be posted on the NYSDOH's website. All such updates will be posted by the date posted on the cover sheet of this RFA.

If prospective applicants would like to receive notification when updates/modifications are posted (including responses to written questions, *responses to questions raised at the applicant teleconference, official applicant conference minutes*), please complete and submit a letter of interest (see attachment 6). Prospective applicants may also use the letter of interest to request actual (hard copy) documents containing update information.

Submission of a letter of interest is not a requirement for submitting an application.

## C. Applicant Conference

**1. An Applicant Teleconference will be held.** The teleconference will be held on the date and time posted on the cover sheet of this RFA. In order to participate, interested applicants must send an e-mail message to Michael Lindsey at [MLL01@Health.State.NY.US](mailto:MLL01@Health.State.NY.US) by the date posted on the cover sheet of this RFA. This e-mail must include:

- The interested participant's name(s)
- The hospital affiliation of each interested participant
- And the e-mail address of each participant.

When final arrangements for the teleconference have been completed, the Department will notify each interested participant at the provided e-mail address of the date and time of the conference, and the call-in number(s) for the teleconference.

Participation in the teleconference is not mandatory, and failure to participate will not preclude the submission of an application. All answers provided during this teleconference will not be official. All questions posed and the Department's official answers to these questions will be posted after the teleconference on the Department's web site.

#### **D. How to File an Application**

Complete applications to this RFA must include the written responses as described in the Application Contents section of this RFA as well as the information requested in the electronic workbook (BARIATRIC RFA TABLES.xls) included as Attachment 5.

Applications must be **received** at the following address by the date and time posted on the cover sheet of this RFA. **Late applications will not be accepted\***.

Applications should be sent to:

**Michael Lindsey, Ph. D.**  
**Office of Health Insurance Programs**  
**New York State Department of Health**  
**Room 1938 Corning Tower**  
**Albany, New York 12237-0066**

Applicants shall submit one original, signed application and five (5) copies, and one (1) CD or DVD containing the completed BARIATRIC RFA Tables.xls workbook. Application packages should be clearly labeled with the name and number of the RFA as listed on the cover of this RFA document. Applications will not be accepted via fax or e-mail.

\* It is the applicant's responsibility to see that applications are delivered to the address above prior to the date and time specified. Late applications due to a documentable delay by the carrier may be considered at the Department of Health's discretion.

#### **E. THE NYSDOH RESERVES THE RIGHT TO:**

1. Reject any or all applications received in response to this RFA.
2. Award up to five contracts resulting from this RFA.
3. Waive or modify minor irregularities in applications received after prior notification to the applicant.
4. Adjust or correct cost figures with the concurrence of the applicant if errors exist and can be documented to the satisfaction of the NYSDOH and the State Comptroller.
5. Negotiate with applicants responding to this RFA within the requirements to serve the best interests of the State.
6. Eliminate mandatory requirements unmet by all applicants.
7. If the NYSDOH is unsuccessful in negotiating a contract with the selected applicant within an acceptable time frame, the Department may begin contract negotiations with the next qualified applicant(s) in order to serve and realize the best interests of the State.
8. The Department of Health reserves the right to award grants based on geographic or regional considerations to serve the best interests of the state.

## **F. Term of the Contract**

Any contract resulting from this RFA will be effective only upon approval by the New York State Office of the Comptroller and waiver approval from the Federal Center for Medicare and Medicaid Services (CMS).

It is expected that contracts resulting from this RFA will have the following time period: May 11, 2009 through March 31, 2010, with the option of 3 one-year renewals subject to extension of current law.

## **G. Payment and Reporting Requirements**

1. Claims for services rendered under the terms of this contract will be paid through the EmedNY system.
2. The contractor shall submit the following periodic reports:
  - On a yearly basis, each contractor must submit patient and patient outcome data for all beneficiaries receiving bariatric surgical services under the terms of the contract according to uniform specifications.
  - A yearly report and a final report will also be required. The yearly report(s) will describe the number of beneficiaries receiving bariatric surgical services at the hospital under the terms of the contract, the number of beneficiaries screened for such services, and any other such information describing the utilization of bariatric surgical services.
  - On a yearly basis, each contractor must submit a financial report for all beneficiaries who received bariatric surgical services under the terms of the contract. These reports must be submitted upon the periodic basis for the specified timeframe agreed upon in the contract. Financial reports should capture all costs including 60-day post surgery costs and charges, utilization and clinical data, and any other data deemed necessary by the Commissioner of Health associated with bariatric surgical services for the period of time described in the terms of the contract.

## **H. Vendor Responsibility Questionnaire**

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Applicants should also complete and submit the Vendor Responsibility Attestation (Attachment 3).

## **I. General Specifications**

1. By signing the “Letter of Transmittal Form” each applicant attests to its express authority to sign on behalf of the applicant.
2. 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.
3. Submission of an application indicates the applicant’s acceptance of all conditions and terms contained in this RFA. If the applicant does not accept a certain condition or term, this must be clearly noted in a cover letter attached to the application.
4. 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.
5. Provisions Upon Default
  - a. The services to be performed by the Applicant shall be at all times subject to the direction and control of the NYSDOH as to all matters arising in connection with or relating to the contract resulting from this RFA.
  - b. 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.
  - c. If, in the judgment of the NYSDOH, the Applicant acts in such a way which is likely to or does impair or prejudice the interests of the State, the NYSDOH 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 judgment 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.

## **J. Contract and Appendices**

The standard grant contract can be found in Attachment 4. The following will be incorporated as appendices into any contract(s) resulting from the Request for Applications.

APPENDIX A - Standard Clauses for All New York State Contracts

APPENDIX A-1 - Agency Specific Clauses

APPENDIX B - Negotiated Reimbursement Rate(s)

- APPENDIX C - Payment and Reporting Schedule
- APPENDIX D - Services Covered (Workplan)
- 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 Worker's Compensation Board, of coverage for:

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

- **CE-200** - Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage is Not Required; OR
- **C-105.2** -- Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
- **SI-12** -- Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** -- Certificate of Participation in Workers' Compensation Group Self-Insurance

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

- **CE-200** - Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage is Not Required; OR
- **DB-120.1** -- Certificate of Disability Benefits Insurance OR
- **DB-155** -- Certificate of Disability Benefits Self-Insurance

APPENDIX H - Federal Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement (if applicable)

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

## V. Completing the Application

### A. Application Contents (page totals DO NOT include the contents of the EXCEL workbook, BARIATRIC RFA TABLES.xls)

The completed application package should contain the following materials in the following order.

#### 1) Letter of Transmittal

A Letter of Transmittal must accompany the application. The letter must be signed by the Chief Executive Officer of the hospital. The letter should include:

- a) A statement affirming that the signature is authorized to bind the applicant to the requirements of this RFA;
- b) A statement designating the name of the organization that will contract with the NYSDOH. Include the name, title, address and phone number of the representative whom NYSDOH staff may contact during the review process; and
- c) A statement attesting to the accuracy and truthfulness of all information contained in the application.

#### 2) Application Outline

The project narrative should be no longer than 20 double-spaced, one-sided pages, using at least 12-point font and 1 inch margins on all sides. The page limit does not include the letter of transmittal, title page, the abstract, and appendices. Responses should be clear, concise and organized according to the following outline.

Some of the information requested below in the Project Narrative part of the application must be included in the BARIATRIC RFA TABLES.xls workbook included as Attachment 5. When this is the case, the table in the spreadsheet in which the requested information must be included is clearly indicated.

- a) Title Page, should include:
  - i) Title of project.
  - ii) Name, address, phone and fax numbers of lead applicant.
  - iii) Name, phone and fax numbers of contact person.
- b) Abstract
  - i) One-page summary of the application.
- c) Project Narrative (Up to 20 pages, not including material included in any of the tables of the EXCEL spreadsheet)
  - i) Experience and Qualifications of Applicant
    - Provide a description of the bariatric surgical program at the hospital. This information must be provided in the narrative part of the application.
    - Indicate whether the bariatric surgical program has been certified by CMS, the American College of Surgeons (ACS) and/or the American Society of Metabolic and Bariatric Surgery (ASMBS), or by any other certification program. **This information must be provided in Table 1 of the BARIATRIC RFA TABLES.xls workbook as provided in Attachment 5 (this information DOES NOT also have to be included in the written narrative).** Applicants without certification must describe in detail, in the narrative part of the application, how they currently meet the standards described

within certification programs and include a plan for acquiring certification within the contract period.

- Describe the bariatric surgical experience, qualifications, and employment status of all surgeons that perform bariatric surgery in the program, as defined in Table 2 of the BARIATRIC RFA TABLES.xls workbook. **This information must be provided in Table 2 of the BARIATRIC RFA TABLES workbook (this information DOES NOT also have to be included in the written narrative).**
- Describe the overall volume of bariatric surgeries at the hospital for the past year (2007), as defined in Table 3 of the BARIATRIC RFA TABLES.xls workbook. **This information must be provided in Table 3 of the BARIATRIC RFA TABLES.xls workbook (this information DOES NOT also have to be included in the written narrative).**
- Describe the preoperative screening programs (including criteria for not selecting candidates for surgery), as well as the types of information collected at such programs, that are associated with the bariatric surgical program. Indicate whether or not such preoperative programs are mandatory for potential bariatric surgical patients. **This information must be provided in the narrative part of the application.**
- Describe the postoperative follow-up programs that monitor and support the progress of patients. Describe any data that is collected in such programs and how these data are used (reports, quality initiatives, etc.). **This information must be provided in the narrative part of the application.**

ii) Proposed Reimbursement Rate

- Describe the proposed Medicaid FFS rate of reimbursement for bariatric surgical procedures defined by AP-DRG 288 and the associated inpatient care. **This information must be provided in Table 4 in the BARIATRIC RFA TABLES.xls workbook as provided in Attachment 5 (this information DOES NOT also have to be included in the narrative).** Include:
  - the mean current dollar amount per discharge for AP-DRG 288 patients during calendar year 2007 as defined in Table 4 of Attachment 5;
  - the proposed dollar bid per discharge for AP-DRG 288 patients under the terms of this contract as defined in Table 4 of Attachment 5;
  - the estimated savings under the terms of this contract as described in the formula in Table 4 in Attachment 5.
  - a description of all services that will be included in the proposed rate (including outliers and post-operative readmissions). **This information must be provided in the narrative part of the application.**

**All of the remaining requested information must be provided in the written narrative part of the application.**

iii) Patient Outcomes

- Describe any quality assurance programs for bariatric surgery currently in place, and any quality assurance programs that might be implemented during the period of this contract.
- Describe and guarantee how the applicant will handle the increased volume of surgeries and ensure access for the Medicaid clients to the appropriate surgery and skilled surgeons.

- Describe how the hospital will ensure patient access to appropriate transportation for surgery and required peri-operative visits (transportation claims are usually paid through separate Fee-For-Service payment and are not required to be included in the RFA price proposal unless currently paid in hospital's Medicaid DRG payment).
- Describe any preoperative, intraoperative and postoperative data that are collected by the bariatric surgical program that will be shared with the NYSDOH. Demonstrate ongoing ability to collect such information and how the information has been and will be used to describe bariatric surgical utilization and monitor patient outcomes.

iv) Reports (describe how you will meet each of the following deliverables)

- On a yearly basis, each contractor must submit patient and patient outcome data for all beneficiaries receiving bariatric surgical services under the terms of the contract according to uniform specifications.
- A yearly report and a final report at the end of the contract period will also be required. The yearly report will describe the number of beneficiaries receiving bariatric surgical services at the hospital under the terms of the contract, the number of beneficiaries screened for such services, and any other such information describing the utilization of bariatric surgical services.
- On a yearly basis, each contractor must submit a financial report for all beneficiaries who received bariatric surgical services under the terms of the contract. These reports must be submitted upon the periodic basis for the specified timeframe agreed upon in the contract. Financial reports should capture all costs including 60-day post surgery costs and charges, utilization and clinical data, and any other data deemed necessary by the Commissioner of Health associated with bariatric surgical services for the period of time described in the terms of the contract.

3) Budget

A budget is not required for this application. The proposed reimbursement rate will be based on the price per discharge for all AP-DRG 288 cases as defined in Table 4 of the BARIATRIC RFA TABLES.xls Workbook provided in Attachment 5 .

**B. Application Format**

**ALL APPLICATIONS SHOULD CONFORM TO THE FORMAT PRESCRIBED BELOW. POINTS WILL BE DEDUCTED FROM APPLICATIONS WHICH DEVIATE FROM THE PRESCRIBED FORMAT.**

Applications should not exceed 20 double-spaced typed pages (not including the letter of transmittal, title page, abstract and appendices), using a minimum 12-point font. The value assigned to each section is an indication of the relative weight that will be given when scoring your application.

The workbook included as Attachment 5, BARIATRIC RFA TABLES.xls, must be completed and submitted on CD or DVD as stated on page 13. A complete application package must include both the written application as described above and the Excel workbook.

1.	Experience and Qualifications of the Applicant	8 pages or less	Maximum score: 40 points
2.	Proposed Reimbursement Rate	4 pages or less	Maximum score: 20 points
3.	Patient Outcomes	8 pages or less	Maximum score: 40 points

## C. Review and Award Process

Applications meeting the requirements set forth above will be reviewed and evaluated competitively by the NYSDOH, Office of Health Insurance Programs, Division of Quality and Evaluation.

The value assigned to each section of the application is an indication of the relative weight that will be given when scoring the application (see Evaluation Section below).

### *Evaluation of Applications*

Applications will be scored based upon their ability to address the requirements set forth in this RFA and using the scoring criteria described below. Applications that meet these requirements and those with the highest scores will be accepted.

**Only the 25 NYC hospitals that performed any bariatric surgery for weight loss in 2007 as identified in Attachment 1 may submit an application in response to this RFA.**

**The evaluation will include two levels of review. First, the following four criteria must be met. If any of these criteria are not met, the application will be disqualified and will not be considered for further review and scoring.**

- 1) Applications must be received no later than 1:00 p.m., on the date posted on the cover sheet.
- 2) A Letter of Transmittal must accompany the application. The letter must be signed by the Chief Executive Officer of the applicant.
- 3) Applicants must propose a percentage of Medicaid AP-DRG 288 reimbursement rate for primary obesity related bariatric surgical patients that is less than 100 percent of the current reimbursement rate.
- 4) Applicants must clearly indicate that the proposed percentage of AP-DRG 288 Medicaid reimbursement rate will cover the surgical procedure(s) and all care associated with that inpatient stay until discharge, includes outlier payments (i.e. short stay, long stay and high cost) and readmissions (related to or resulting from the original admission) within 30 days post-op.

Applications that meet all of the criteria listed above will then be subjected to the second level of review. The remaining applications will be evaluated according to the following guidelines.

- 1) Experience and Qualifications of Applicant (40 points)
  - a) Applicants must demonstrate that they have experience performing bariatric surgery, as evidenced by the hospital's overall volume of such surgeries in the past and volume of such surgeries performed by individual surgeons.
  - b) Applicants must provide evidence that they offer pre-surgical counseling and post-surgical follow-up care to patients undergoing bariatric surgery.
  - c) The applicant must state that they have a quality assurance process and programs in place for bariatric surgery.
  - d) Information indicating whether or not the bariatric surgical program has been certified by CMS, the American College of Surgeons (ACS) and/or the American Society for Bariatric Surgery, and, if certified by the ACS, the level of certification (1a, 2a, etc.) must be provided.

2) Proposed Reimbursement Rate (20 points)

- a) The reimbursement rate must cover all services associated with the inpatient stay in which the bariatric surgery took place (at minimum all services currently included in Medicaid DRG payment) and includes readmissions within 30 days.
- b) The proposed rate applies to outlier payments.
- c) The proposed rate applies to any successor Medicaid DRG (e.g. APR-DRG).
- d) The proposed rate results in savings compared to current Medicaid FFS payments.
- e) Patients will have access to the three main types of bariatric procedures (Open Bypass, Laparoscopic Bypass and Banding).

3) Patient Outcomes (40 points)

- a) Demonstrated ability of the applicant to collect patient preoperative and postoperative patient data.
- b) Demonstrated ability of the applicant to use preoperative patient data to determine the appropriateness of individuals for bariatric surgery.
- c) Demonstrated ability of the applicant to use postoperative patient data to monitor the condition of patients who have undergone bariatric surgery.
- d) Demonstrated ability of the applicant to use such data in ongoing quality assurance bariatric surgery programs.
- e) Stated willingness of the applicant to share such information with the NYSDOH as the basis for evaluation of the program.
- f) Assurance that candidates have appropriate access to transportation.

The total score for each application will be computed by simply summing the point totals for the “Experience and Qualifications of Applicants”, the “Proposed Reimbursement Rate” and “Patient Outcomes” sections of the application.

**A minimum score of 70 is required to be considered eligible for selection to contract.**

All applications will be rank ordered based on their scores. From the rank order listing, awards will be made from the highest scoring application to the next scoring application until up to five contracts have been awarded.

**VI. Attachments**

- Attachment 1: Eligible Applicant Hospitals
- Attachment 2: Bariatric Surgical Complications
- Attachment 3: Vendor Responsibility Attestation
- Attachment 4: Standard Contract with Appendices
- Attachment 5: Excel Workbook, BARIATRIC RFA TABLES.xls
- Attachment 6: Sample Letter of Interest

## ATTACHMENT 1

### ELIGIBLE APPLICANT HOSPITALS

Beth Israel Medical Center/Petrie Campus  
Brookdale Hospital Medical Center  
Brooklyn Hospital Center@Downtown Campus  
Coney Island Hospital  
Forest Hills Hospital  
Harlem Hospital Center  
Jacobi Medical Center  
Lenox Hill Hospital  
Long Island College Hospital  
Long Island Jewish Medical Center  
Lutheran Medical Center  
Maimonides Medical Center  
Montefiore Medical Center@Henry & Lucy Moses Division  
Montefiore Medical Center@Jack D. Weiler Hospital of Albert Einstein Division  
Mount Sinai Hospital  
New York Hospital Medical Center of Queens  
New York Methodist Hospital  
New York Presbyterian Hospital@Columbia Presbyterian Center  
New York Presbyterian Hospital@New York Weill Cornell Center  
North General Hospital  
NYU Hospital Center  
St. Lukes Roosevelt Hospital Center@Roosevelt Hospital Division  
St. Lukes Roosevelt Hospital@St. Lukes Hospital Division  
Staten Island University Hospital—North  
University Hospital of Brooklyn

## ATTACHMENT 2

### BARIATRIC SURGICAL COMPLICATIONS

Drainage of Intraoperative Abscess or Hematoma  
Anastomotic Leakage  
Cardiac Arrest  
Cardiac Complications  
Collapsed Lung  
Dehiscence  
Mechanical Ventilation  
Myocardial Infarction  
Pneumonia  
Pulmonary Edema  
Pulmonary Embolus  
Renal Failure  
Reoperation for Hemorrhage  
Respiratory Arrest  
Respiratory Failure  
Shock  
Tracheostomy

Bacterial Disease  
Hypertension  
Atherosclerosis  
Phlebitis  
Enteritis  
Intestinal Disorders  
Systemic Inflammatory Syndrome  
Nervous System Disorders  
Vascular System Disorders  
Digestive System Disorders  
Hemorrhage  
Liver Disease  
Surgical Error

**ATTACHMENT 3**

**VENDOR RESPONSIBILITY ATTESTATION**

To comply with the Vendor Responsibility Requirements outlined in Section IV, Administrative Requirements, H. Vendor Responsibility Questionnaire, I hereby certify:

**Choose one:**

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.
- A hard copy Vendor Responsibility Questionnaire is included with this application and is dated within the last six months.
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: \_\_\_\_\_

Print/type Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date Signed: \_\_\_\_\_

# 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
_____	.	FROM:
MUNICIPALITY NO. (if applicable):	.	TO:
_____	.	FUNDING AMOUNT FOR INITIAL PERIOD:
CHARITIES REGISTRATION NUMBER:	.	_____
____ - ____ - ____ or ( ) EXEMPT:	.	MULTI-YEAR TERM (if applicable):
(If EXEMPT, indicate basis for exemption):	.	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 10/08)
_____	APPENDIX B	Negotiated Reimbursement Rate
_____	APPENDIX C	Payment and Reporting Schedule
_____	APPENDIX D	Services Covered
_____	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 _____	_____



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-2.

#### 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.

**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 \$50,000 (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 \$85,000 (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 affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms 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 overstated 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, 110 State Street, 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 -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<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.

APPENDIX A-1  
(REV 10/08)

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 certifies 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 Educational 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 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 \$500,000 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 \$500,000, 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 either 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 \$1000 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 and 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 transaction*, *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 Transaction," 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 any 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. Where the STATE does not provide notice to the NOT-FOR-PROFIT CONTRACTOR of its intent to not renew this contract by the date by which such notice is required by Section 179-t(1) of the State Finance Law, then this contract shall be deemed continued until the date that the agency provides the notice required by Section 179-t, and the expenses incurred during such extension shall be reimbursable under the terms of this contract.
  12. 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; Any proposed modification to the contract which results in a change of greater than 10 percent to any budget category, must be submitted to OSC for approval;

- ◆ Appendix C - Section 11, Progress and Final Reports;
- ◆ Appendix D - Program Workplan will require OSC approval.

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.

13. 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:**

- **CE-200** - Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage is Not Required; OR
- **C-105.2** -- Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
- **SI-12** -- Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** -- Certificate of Participation in Workers' Compensation Group Self-Insurance

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

- **CE-200** - Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage is Not Required; OR
- **DB-120.1** -- Certificate of Disability Benefits Insurance OR
- **DB-155** -- Certificate of Disability Benefits Self-Insurance

14. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

15. All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.

16. 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 B

### NEGOTIATED REIMBURSEMENT RATE

Table 4 in the BARIATRIC RFA TABLES.xls spreadsheet contains the negotiated dollar bid per discharge for AP-DRG patients under the terms of this contract. Include the dollar bid per discharge in this Appendix as part of the contract between your hospital and the NYSDOH.

## 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 0 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:

- ❶ 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
- ❶ 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:

- ❶ the end of the first monthly/quarterly period of this AGREEMENT; or
- ❶ 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.

- G. If the CONTRACTOR is eligible for an annual cost of living adjustment (COLA), enacted in New York State Law, that is associated with this grant AGREEMENT, payment of such COLA shall be made separate from payments under this AGREEMENT and shall not be applied toward or amend amounts payable under Appendix B of this AGREEMENT.

Before payment of a COLA can be made, the STATE shall notify the CONTRACTOR, in writing, of eligibility for any COLA. The CONTRACTOR shall be required to submit a written certification attesting that all COLA funding will be used to promote the recruitment and retention of staff or respond to other critical non-personal service costs during the State fiscal year for which the cost of living adjustment was allocated, or provide any other such certification as may be required in the enacted legislation authorizing the COLA.

II. Progress and Final Reports

Organization Name: \_\_\_\_\_

Report Type:

A. Interim/Final Report

\_\_\_\_\_ (Organization Name) will submit, one interim and a final report describing the number of beneficiaries receiving bariatric surgical services at the hospital under the terms of the contract, the number of beneficiaries screened for such services, and any other such information describing the utilization of bariatric surgical services., not later than \_\_\_\_\_ days from the end of the quarter, a report, in narrative form, summarizing the services rendered during the quarter.

(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. Financial Report

\_\_\_\_\_ (Organization Name) will submit, on a periodic basis, a financial report for all beneficiaries who received bariatric surgical services under the terms of the contract. These reports must be submitted upon the periodic basis for the specified timeframe agreed upon in the contract. Financial reports should capture all costs including 60-day post surgery costs and charges, utilization and clinical data, and any other data deemed necessary by the Commissioner of Health associated with bariatric surgical services for the period of time described in the terms of the contract.

C. Annual Report

\_\_\_\_\_ (Organization Name) will submit, on an annual basis, patient demographic and patient outcome data for all beneficiaries receiving bariatric surgical services under the terms of the negotiated contract according to uniform specifications.

## APPENDIX D

### SERVICES COVERED

List all services that will be included and provided at the negotiated rate of reimbursement under the terms of this contract in this Appendix.

**Agency Code 12000**  
**APPENDIX X**

Contract Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

Amendment Number X-\_\_\_\_\_

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through NYS Department of Health, having its principal office at Albany, New York, (hereinafter referred to as the STATE), and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR), for amendment of this contract.

This amendment makes the following changes to the contract (check all that apply):

- \_\_\_\_\_ Modifies the contract period at no additional cost
- \_\_\_\_\_ Modifies the contract period at additional cost
- \_\_\_\_\_ Modifies the budget or payment terms
- \_\_\_\_\_ Modifies the work plan or deliverables
- \_\_\_\_\_ Replaces appendix(es) \_\_\_\_\_ with the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Adds the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Other: (describe) \_\_\_\_\_

This amendment *is* / *is not* a contract renewal as allowed for in the existing contract.

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

Prior to this amendment, the contract value and period were:

\$ \_\_\_\_\_ From \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_ .  
(Value before amendment) (Initial start date)

This amendment provides the following addition (complete only items being modified):

\$ \_\_\_\_\_ From \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_ .

This will result in new contract terms of:

\$ \_\_\_\_\_ From \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_ .  
(All years thus far combined) (Initial start date) (Amendment end date)



## Appendix H

### **Federal Health Insurance Portability and Accountability Act ("HIPAA") Business Associate Agreement ("Agreement") Governing Privacy and Security**

#### I. Definitions:

- (a) Business Associate shall mean the CONTRACTOR.
- (b) 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 and to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information that it creates receives, maintains or transmits on behalf of the Covered Entity pursuant to 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. The Business Associate also agrees to report to the Covered Entity any security incident 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 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, 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 infeasible, the Business Associate shall provide to the Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, 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 infeasible, 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.

## *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.

(HIPAA Appendix H) 6/05

## **ATTACHMENT 5**

### **EXCEL Workbook**

Please open and enter the requested data into the BARIATRIC RFA TABLES.xls workbook that accompanies this RFA.

**Attachment 6**

Sample

Letter of Interest

or

Letter to Receive Notification of RFA Updates and Modifications

DOH Contact  
DOH Address

Re: RFA #  
RFA Title

Dear \_\_\_\_\_:

This letter is to indicate our interest in the above Request for Applications (RFA) and to request: *(please check one)*

- that our organization be notified, via the e-mail address below, when any updates, official responses to questions, or amendments to the RFA are posted on the Department of Health website:  
<http://www.nyhealth.gov/funding/>.

E-mail address: \_\_\_\_\_

- that our organization is unable or prefers not to use the Department of Health's website and requests the actual documents containing any updates, official responses to questions, or amendments to the RFA be mailed to the address below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sincerely,