

**RFA Number #0903030430  
New York State  
Department of Health  
Office of Long Term Care  
Division of Home and Community Based Services  
Bureau of Medicaid Long Term Care Waivers**

**Request for Applications**

**Money Follows the Person Demonstration  
Identification of and Outreach to  
Nursing Home Residents Project**

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*KEY DATES*

**RFA Release Date:** March 5, 2009  
**Questions Due:** April 8, 2009  
**RFA Updates Posted (if applicable):** April 15, 2009  
**Applications Due:** May 11, 2009

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# **I. Introduction**

## **A. Description of Program**

The goals of the Money Follows the Person (MFP) Demonstration Identification of and Outreach to Nursing Home Residents Project are to:

- 1) identify those individuals who are interested in moving from institutional to community based settings;
- 2) assist those who choose to leave nursing facilities in the transition/relocation to community based, integrated, accessible and affordable housing with the support services they need to live as independently as possible. This will involve a coordinated effort between selected contractors, nursing home discharge planners and other entities which arrange for and/or authorize home and community-based services; and
- 3) make the system changes necessary that will result in all individuals having a real equitable choice between institutional and community support services.

The purpose of this Request for Application (RFA) is to contract with qualified not-for-profit entities to identify and outreach to select nursing home residents to provide them with objective information about home and community-based options and make referrals as requested. It is expected that the contracts resulting from this RFA process will have an initial contract period of 10/1/2009 to 09/30/2010. These contracts will be eligible for one (1) additional twelve-month renewal, allowing for an end date of September 30, 2011. Renewals will be contingent upon successful completion of all program requirements, continued need of this project, and funding availability. [Note that the start date may be subject to change.]

## **B. Background/Intent**

In January 2007, the federal Centers for Medicare and Medicaid Services (CMS) approved New York's application to participate in the Money Follows the Person Federal Rebalancing Demonstration Program (MFP) that will provide enhanced Federal Medical Assistance Percentage (FMAP) reimbursement for select services for 365 days to persons who have resided in a nursing home for at least six months, were in receipt of Medicaid for at least one month prior to transitioning from the nursing home and are transitioning into a qualified residence<sup>1</sup>.

The purpose of New York State's MFP demonstration is to enable ongoing systems change that will assure individuals have access to community-based services when they are in need of long term care (LTC) supports. New York continues to promote a long term care agenda designed to restructure the State's health care priorities by shifting from institutionally-based care to a person-centered system that provides quality care

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<sup>1</sup> As defined by Section 6071(b)(6) of the DRA, the term "qualified residence" means, with respect to an eligible individual: (A) a home owned or leased by the individual or the individual's family member; (B) an apartment with an individual lease, with lockable access and egress, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control; or (C) a residence, in a community-based residential setting, in which no more than 4 unrelated individuals reside.

and services for long-term, home-based care. The MFP demonstration provides New York State the unique opportunity to further the State's rebalancing efforts which will result in a person centered system that is responsive to the long term care needs of all New Yorkers. Taking advantage of a portion of the savings obtained through the enhanced FMAP, the Identification and Outreach to Nursing Home Residents project set forth in this RFA will further support this effort.

### **C. Problem/Issue Resolution**

A MFP Application Work Group, comprised of representatives from advocacy groups and State agencies, was formed to assist the State with the development of the MFP Demonstration. The Work Group identified that despite existing efforts to provide information about home and community-based options, there may nursing home residents, particularly those with limited care needs as identified by the Long Term Care Minimum Data Set (MDS), who are unaware of available home and community-based long term care options. Input about this project was also gathered from institutional and community-based provider associations.

The Long Term Care MDS assessment is a federally mandated tool which collects data on a nursing home resident's physical, cognitive, medical, nutritional, behavioral and emotional statuses and on a nursing home resident's preferences. This is the primary tool that will be utilized to identify nursing home residents to be targeted. In addition, contractor(s) selected under this RFA may be called upon to contact other nursing home residents who have self-identified as being interested in transitioning to the community or who have been identified by professional staff or family members.

The Department is interested in developing the capacity to assure all individuals in nursing homes are provided with the objective information needed to make informed choices about their preference to transition into the community. Specifically, DOH seeks to contract with qualified not-for-profit entities to reach out to the identified nursing home residents, provide objective information on home and community based long term care options to those who are interested, and, as requested, make referrals to and work with the nursing home residents' discharge planner to facilitate the nursing home resident's transition into the community. These contracted entities will also develop and maintain relationships with institutional and community-based stakeholders. Any contracts resulting from this RFA are contingent upon continued approval from CMS of the MFP Operational Protocol and the availability of sufficient federal funding.

### **D. Availability of Funds**

Up to \$1.15 million is available to support nine (9) regions statewide. For the purpose of this initiative, the geographic regions are defined in Table 1 (See also Attachment 7: Map of New York State by Region).

It is expected that the contracts resulting from this RFA process will have an initial contract period of 10/01/2009 to 09/30/2010. These contracts will be eligible for one (1)

additional twelve-month renewal, allowing for an end date of September 30, 2011. The renewal will be contingent upon successful completion of all program requirements, continued need of this project and funding availability. [Note that the start date may be subject to change.]

If there is no winning application or no application received in a geographic region, the Department of Health reserves the right to award a contract to the highest scoring applicant among the contiguous regions. If the highest scoring applicant were not to agree to provide services in this area, the next highest scoring applicant from the contiguous regions will be contacted and offered a contract.

**Applicants may seek to serve more than one region.** However, separate applications **must** be submitted for each regional contract sought. Combined applications for two or more regions will not be evaluated. If an entity is the selected applicant for more than one region, for ease of administration, there may be one contract. Each application must stand on its own merits, using funding established for that region only.

**Regional Consortium Applications.**

In the event that organizations or entities are applying as a consortium for a regional contract, the application must identify a lead agency that meets the minimum eligibility requirements, from among consortium members, which is willing and able to act as the contractor to the State. The applicant must indicate the lead applicant on the Application Cover Sheet (Attachment 2). Organizations or entities can be members of more than one regional consortium in a region and/or in multiple regions. However, as noted above, separate applications **must** be submitted for each regional contract sought. The lead agency will be legally responsible for the fulfillment of the contractual responsibilities assumed by the consortium. Any subcontract shall be consistent with the terms of the DOH contract with the lead agency. Such subcontracts shall be subject to DOH review and prior written approval prior to execution of the subcontracts.

**Table 1: Regional Areas and Estimated Funding Levels**

Applicants may apply to manage one or more of nine geographic regional areas as designated below:

<b>Regions</b>	<b>Service Provision Area</b>	<b>Estimated 1<sup>st</sup> Annual Funding Level (1)</b>
Albany North	Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saratoga, Warren, Washington	\$85,000
Albany South	Albany, Columbia, Greene, Rensselaer, Schenectady, Schoharie	\$85,000
Binghamton/ Southern Tier	Allegany, Broome, Cattaraugus, Cayuga, Chemung, Chenango, Cortland, Delaware, Otsego, Schuyler, Steuben, Tioga, Tompkins	\$100,000
Buffalo	Chautauqua, Erie, Niagara, Orleans, Wyoming	\$100,000
Long Island	Nassau, Suffolk	\$165,000
Lower Hudson Valley	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	\$165,000
NYC Region	Bronx, Brooklyn, Manhattan, Queens, Staten Island	\$250,000
Rochester	Genesee, Livingston, Monroe, Ontario, Seneca, Wayne, Yates	\$100,000
Syracuse	Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence	\$100,000

Note:

(1) Amounts reflect estimated funding level available for the initial 12-month period of the contract. Funds available for these activities reflect the estimated size of the identified population residing in nursing homes in the contracted region and other considerations. Contractors selected through this RFA will receive up to the amount requested, not to exceed the estimated funding level per region.

## II. Who May Apply

### A. Minimum Eligibility Requirements

1. Applications will be accepted only from not-for-profit corporations.
2. Applicants must have a computer system compatible with the Microsoft Office products used by the Department to organize, analyze and store participant data and information; and to identify what referrals were made and the referral outcome. Applicants must have the ability to electronically transfer information and reports using compatible encryption software to the DOH Bureau of Medicaid Long Term Care via e-mail [Attachment 3 **must** be signed and attached to the application to attest to compliance with this requirement].

### B. Preferred Qualifications

Applicants should have:

- knowledge of the principles of the most integrated setting mandate of Title II of the Americans with Disabilities Act (ADA) of 1990 and the independent living concepts of personal choice and control as well as the dignity of risk;
- experience with successfully assisting individuals with transitioning from nursing homes to the community;
- expertise in working with people with disabilities of all ages and seniors;
- knowledge about long term care programs and providers of institutional and community-based long term care services in the respective regions for which they are applying;
- knowledge of the resources for obtaining affordable, accessible and integrated housing;
- knowledge about and effective collaborative relationships with Long Term Care (LTC) community based entities, including Points of Entry (POE), Regional Resource Development Centers (RRDC), local departments of social services (LDSS), agencies on aging, Community Alternative Services Agencies (CASA), Home and Community Based Services (HCBS) waiver programs, including Long Term Home Health Care Programs (LTHHCP), and other pertinent community resources;
- an understanding of the issues regarding the LTC needs of individuals with disabilities of all ages and;
- the ability to provide peer based services; and
- the ability to provide culturally competent services to the population to be served per region.

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

#### **A. Goals of the Proposed Project**

The goals of this project are to:

- GOAL 1 Identify those individuals who are interested in moving from institutional to community based settings.
- GOAL 2 Assist those who choose to leave nursing facilities in the transition/relocation to community based, integrated, accessible and affordable housing with the support services they need to live as independently as possible. This will involve a coordinated effort between selected contractors, nursing home discharge planners and other entities which arrange for and/or authorize home and community-based services.
- GOAL 3 Make the system changes necessary that will result in all individuals having a real equitable choice between institutional and community support services.

#### **B. Program Activities**

To assure individuals in nursing homes have sufficient objective information about home and community-based services to make informed choices about their preferences, contractor(s) selected under this Request for Application must be successful in the following activities:

##### **1. Contact select nursing home residents and provide objective information about home and community based long term care options\***

Using the MDS, DOH will provide the names of nursing home residents to contractor(s) selected under this Request for Application (RFA). In addition, contractor(s) selected under this RFA may be called upon by DOH to contact other nursing home residents who have self-identified as being interested in transitioning to the community or who have been identified by professional staff or family members. The initiative funded under this RFA is discrete but complimentary to other outreach efforts so that the State has a coordinated and holistic approach for the identification of and outreach to nursing home residents who may be interested in transitioning into the community.

Using a peer-based, culturally competent person-centered approach, contractors will contact these nursing home residents and/or their legal guardians, per protocols to be finalized by the Department, to provide general information about home and community based long term care options. The peer-based approach utilized by contractors may be cross-disability and/or cross-generational. Contractor(s) may employ or subcontract with persons with disabilities and seniors

to provide this activity. Such employees/subcontractors will be considered as peers for the purposes of this RFA. Peers should meet face to face with these nursing home residents and/or their legal guardians. However, the contractor may experience geographic or other extenuating circumstances that prevent face to face meetings.

**2. Make referrals to and work with the nursing home discharge planner as requested by the nursing home resident and/or his/her legal guardian\***

After the provision of objective information, contractor(s) selected under this RFA will make referrals to the nursing home discharge planner upon request by the nursing home resident and/or his/her legal guardian. The discharge planner is responsible for providing the resident information regarding potential options for supports for community based living. While the project is not designed to supplant any existing responsibility that the discharge planner has for assisting a nursing home resident with transitioning into the community, contractor(s) selected under this RFA may be called upon to assist the nursing home discharge planner with the coordination of home and community-based services and supports so that all of the necessary pieces are put in place for a successful transition. Such community-based services and supports may include financial benefits, durable medical equipment, services to address medical needs, transportation, consumer-directed services, affordable, accessible and integrated housing, including funding for security deposits, utilities and other housing related expenses and other services and supports necessary for an individual to transition from a nursing home into the community.

\*NOTE: Final protocols for making referrals and following up with the nursing home residents both before and after they have transitioned into the community will be developed with contract awardees, key stakeholders and others working under MFP.

**3. Address linguistic and cultural barriers**

Contractor(s) must assure they have the capacity to meet the linguistic and cultural needs of the population to be served per region.

**4. Build and maintain relationships with nursing home discharge planners and nursing home Ombudsmen in the region**

To promote the success of this initiative, contractor(s) selected through this RFA must work cooperatively with nursing home discharge planners and nursing home Ombudsmen. This may involve meeting regularly with discharge planners and nursing home Ombudsmen to discuss various issues related to the transition of nursing home residents.

**5. Build and maintain knowledge about available home and community based**

## **services in the region**

It is critical that the contractor(s) selected through this RFA are knowledgeable about available home and community-based services that exist in the region. To build or maintain their knowledge, contractors must develop and maintain relationships with entities that authorize or provide services to gain a better understanding of what services are available. It is expected that the selected contractor will build and maintain relationships with various entities including:

- a. Certified Home Health Agencies (CHHA)
- b. Expanded In-home Services for the Elderly Programs (EISEP)
- c. Independent Living Centers
- d. Local Departments of Social Services
- e. Managed Long Term Care Plans
- f. New York State Office of Mental Health Single Point of Access (SPOA) offices
- g. New York State Office of Mental Retardation and Developmental Disabilities Developmental Disabilities Services Offices (DDSO)
- h. Nursing Home Transition and Diversion (NHTD) Waiver Regional Resource Development Centers (RRDC)
- i. NY Connects (Point of Entry)
- j. Programs for All Inclusive Care of the Elderly (PACE)
- k. Community Alternative Services Agencies (CASA)
- l. Adult Care Facilities (ACF)/Assisted Living Programs (ALP)
- m. Adult Day Health Care Programs (ADHC)
- n. Long Term Home Health Care Program (LTHHCP)
- o. Traumatic Brain Injury (TBI) Waiver RRDC
- p. Other Medicaid and non-Medicaid providers of home and community-based services

## **6. Comply with all requirements for New York State's MDS Data Use Agreement**

To ensure the integrity, security and confidentiality of information contained in the MDS, contractor(s) selected under this RFA must comply with New York State's MDS Data Use Agreement with CMS. A copy of a MDS Data Use Agreement template can be found in Attachment 5. This MDS Data Use Agreement template is for informational purposes only. Applicants should familiarize themselves with the requirements of the Data Use Agreement as the selected contractor(s) will be held to the same standards as the Department regarding data security and confidentiality that are set forth in the Data Use Agreement. All staff assigned to this project by contractor(s) selected through this RFA who have access to the MDS Data will be required to sign an Addendum to New York State's current MDS Data Use Agreement so that the State can request an addendum from the Centers for Medicare and Medicaid Services (CMS). A copy of an Addendum template can be found in Attachment 6. This Addendum template is for informational purposes only. Applicants should familiarize themselves with the information required on the Addendum template as all staff of contractor(s)

selected through this RFA must provide the information requested and sign the form. Any individual who has not signed the form will not be permitted access to the data.

## **7. Report Program Activities and Accomplishments to DOH**

The contractor will be **required** to report on a quarterly basis to DOH. Reports must be submitted to DOH no later than 30 days from the end of the calendar quarter.

The contractor shall submit Quarterly and Annual Reports using a standardized format provided by DOH. Quarterly reports **must include** the progress on meeting objectives and completing activities in the contractor's workplan. An annual report will replace the fourth quarter report.

The contractor will also participate, on at least a quarterly basis, in meetings with DOH. The venue for such meetings will be at the sole discretion of DOH. The purpose of the meetings will be to review the program progress and communicate program issues needing resolution. Contractors will also be subject to on-site reviews at the discretion of DOH.

## **8. Contract with DOH**

Successful applicants will be required to enter into a cost-reimbursement contract with DOH, and abide by all terms included in such contract. A copy of the standard DOH contract, including payment and reporting requirements, is included as Attachment 1.

## **IV. Administrative Requirements**

### **A. Issuing Agency**

This RFA is issued by the NYS Department of Health, Office of Long Term Care, Division of Home and Community Based Services, Bureau of Medicaid Long Term Care Waivers. 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 in writing to:

Tracie Crandell  
Bureau of Medicaid Long Term Care Waivers  
Division of Home and Community Based Services  
Office of Long Term Care  
New York State Department of Health  
99 Washington Avenue, Suite 826  
Albany, NY 12260

To the degree possible, each inquiry should cite the RFA section and paragraph to which it refers. Written questions will be accepted until 4:00 pm on the date posted on the cover of this RFA.

Questions of a technical nature can be addressed in writing at the above listed address, via telephone by calling Tracie Crandell at 518-486-3154, or via e-mail at [txc06@health.state.ny.us](mailto:txc06@health.state.ny.us). **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 clarifications 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.nyhealth.gov/funding/>. Questions and answers as well as any updates and/or modifications will also be posted on the Department of Health's website as noted above. All such updates will be posted by the date identified on the cover sheet of this RFA.

### **C. Applicant Conference**

**An Applicant Conference will not be held for this project.**

### **D. How to file an application**

Applications must be **received** at the following address by 4:00 PM on the date posted on the cover sheet of this RFA. **Late applications will not be accepted\***.

Tracie Crandell  
Bureau of Medicaid Long Term Care Waivers  
Division of Home and Community Based Services  
Office of Long Term Care  
New York State Department of Health  
99 Washington Avenue, Suite 826  
Albany, NY 12260

Applicants shall submit one (1) original, signed application and four (4) copies. 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 DEPARTMENT OF HEALTH RESERVES THE RIGHT TO**

1. Reject any or all applications received in response to this RFA.
2. Award more than one contract 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 DOH 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 Department of Health is unsuccessful in negotiating a contract with the selected applicant within an acceptable time frame, the Department of Health may begin contract negotiations with the next qualified applicant(s) in order to serve and realize the best interests of the State.
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 Contract**

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

It is expected that contracts resulting from this RFA will have an initial contract period of 10/1/2009 to 09/30/2010. These contracts will be eligible for one (1) additional twelve-month renewal, allowing for an end date of September 30, 2011. The renewal will be contingent upon successful completion of all program requirements, continued need of this project, and funding availability. [Note that the start date may be subject to change.].

Each contract period will require submission of renewal documents, which includes an annual workplan and an annual budget for review and approval. Renewals will be contingent upon successful completion of all program requirements, continued need of this project, and funding availability.

## **G. Payment & Reporting Requirements of Grant Awardees**

1. The State (NYS Department of Health) may, at its discretion, make an advance payment to not for profit grant contractors in an amount not to exceed twenty-five (25%) percent of the annual budget.
2. The grant contractor will be required to submit quarterly invoices and required reports of expenditures to:

Tracie Crandell  
Bureau of Medicaid Long Term Care Waivers  
Division of Home and Community Based Services  
Office of Long Term Care  
New York State Department of Health  
99 Washington Avenue, Suite 826  
Albany, NY 12260

Payment of such invoices by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be made on a cost-reimbursement basis pursuant to the negotiated contract budget and completion of work plan elements set for the period.

3. The grant contractor will be required to submit quarterly progress and expenditure reports. All payment and reporting requirements will be detailed in Appendix C of the final grant 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 4).

## **I. General Specifications**

1. By signing the “Applicant Attestation” (see Attachment 3) 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, including the terms and conditions of the contract. Any exceptions allowed by the Department during the Question and Answer Phase (Section IV.B.) 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 Department 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 judgement of the Department of Health, the Applicant acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate any contract resulting from this RFA by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgement of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

## J. Appendices

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

- APPENDIX A - Standard Clauses for All New York State Contracts
- APPENDIX A-1 Agency Specific Clauses
- APPENDIX A-2 Program Specific Clauses
- APPENDIX B - Budget
- APPENDIX C - Payment and Reporting Schedule
- APPENDIX D - Workplan
- APPENDIX H - Federal Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement
- APPENDIX E - Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

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

- **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

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

## V. Completing the Application

### A. Application Content

The contractors will be selected based on a submitted application demonstrating their ability to fully implement the Money Follows the Person Demonstration Identification of and Outreach to Nursing Home Residents Project and assure effective oversight of all project functions. Please submit your application(s) according to the following pertinent content-specific format:

A completed application consists of the following sections, clearly labeled and presented in the order indicated below.

- 1. Application Cover Sheet** (use Attachment 2: Grant Application Summary Form)
- 2. Table of Contents**
- 3. Program Summary**
- 4. Narrative Section**
  - a. Applicant Capability*
  - b. Workplan (narrative section), Timeline, and Evaluation Plan*
- 5. Budget/Cost Sheet** (use Attachment 8)
- 6. Applicant Attestation** (use Attachment 3)
- 7. Vendor Responsibility Attestation** (use Attachment 4)

#### 1. Application Cover Sheet

A form is provided (Attachment 2) that will serve as the Application Cover Sheet. This form may be recreated on the applicant's computer, provided the applicant strictly adheres to the given format.

The Cover Sheet should provide the name of a person who should be contacted by those seeking information about your application. Needed contact information includes: a full mailing address, telephone number and extension, fax number and e-mail address. See Attachment 7 for a map of the nine (9) regions of the state.

#### 2. Table of Contents

The Table of Contents should indicate by page number the location of all components of your application including attachments.

#### 3. Program Summary

Summarize your agency's policies and procedures that will be in place to meet the objectives in this RFA. Explain how your agency will meet the overall goals of this RFA. Explain how your project will result in the identification and successful transition of individuals with disabilities and seniors from nursing homes to the community.

#### **4. Narrative Section (Total = 75 points)**

##### **a. Applicant Capability (30 points)**

###### *1. Organization Mission/Structure/Staff/Commitment*

Describe your agency, its mission, services and capacity.

Describe the organizational structure of your proposed program, including essential staff and their qualifications (degrees, licensure, certification, relevant experience, etc.).

Describe the composition of your agency's Board of Directors, including a discussion of how significantly individuals with disabilities and/or seniors are represented on your agency's Board of Directors.

Discuss how your proposed staffing will be integrated into your current organizational structure and include an Organizational Chart covering personnel names/titles, to whom the primary staff person will report to and lines of communication and decision making with your application.

Discuss your organization's ability to hire/train/retain sufficient qualified staff to effectively meet the objectives of the demonstration project. In addition, describe the qualifications you will be asking for with the staff you plan on hiring to carry out these objectives and describe your agency's staffing plan for this project.

Describe your agency's establishment and utilization of Information Technology (IT) capacity related to securely maintaining and tracking data.

Discuss how your agency will avoid any duplication of effort if it is currently conducting similar outreach efforts. Also include the procedures that your organization would implement and follow to prevent conflicts of interest and assure against influence in regard to referrals.

###### *2. Experience*

Given the catchment area:

Describe how this project fits into your agency's overall mission.

Describe your agency's experience with assisting people with disabilities and seniors to obtain financial benefits, durable medical equipment, services to address medical needs, transportation, consumer-directed services, affordable, accessible and integrated housing, including funding for security deposits, utilities and other housing related expenses and other services and supports necessary for an individual to transition from a nursing home into

the community. This should include a discussion of your agency's experience with working with nursing home discharge planners as necessary to coordinate and facilitate obtaining the home and community based services and supports necessary for the nursing home resident to transition into the community once the individual chooses to transition.

Describe your agency's experience serving individuals with disabilities of all ages and/or seniors who may prefer to live in their community.

Describe your agency's experience in assisting individuals with disabilities of all ages and/or seniors in obtaining affordable, accessible and integrated housing and other housing related supports such as funding for security or utility deposits.

Describe your agency's experience in working with individuals with disabilities of all ages and seniors by either showing a history of providing peer support with services or providing a plan for developing a peer based initiative.

Describe your agency's experience with providing objective information regarding the long term care system.

Describe how your agency develops/enhances opportunities for collaborating among and between state and local level long term care service stakeholders to increase participation, improve services, etc.

Describe your agency's experience in developing informational materials. This may include your agency's experience in developing marketing materials.

Describe your agency's knowledge of the principles of the most integrated setting mandate of Title II of the Americans with Disabilities Act (ADA) of 1990 and the independent living concepts of personal choice and control as well as the dignity of risk.

**b. Workplan, Timeline, and Evaluation Plan (45 points)**

Applicants should submit a narrative section describing how each of the required program activities will be accomplished, the timeframes for program implementation and an evaluation plan based on the activities listed below.

This narrative should describe the goal-related objectives, activities, timeframes and evaluation methods for the development and implementation of the project. It should cover partnering and planning, key linkages, staffing, range of services and how they will be provided, based on the activities of your proposed Workplan. Additionally, the narrative should demonstrate an understanding of the social, cultural, economic and service issues likely to impact this population.

In cases where the proposed activities require collaboration with other entities, include a description of such an agreement and the roles of key entities involved (see Regional Consortium Applications, Section I.D). Describe any challenges you anticipate in providing outreach under this RFA and how you plan to address them.

*1. Contact select nursing home residents and provide objective information about home and community based long term care options\**

Applicants should describe plans for contacting nursing home residents, legal guardians, and key nursing home staff. This description should address plans for both face to face meetings and plans for other communication with those for whom face to face meetings cannot be accommodated. Applicants should describe how they will work effectively with legal guardians.

Applicants should describe a plan to assure information is provided to nursing home residents and/or their legal guardians in an objective manner so as not to influence any decisions made by nursing home residents, especially if the applicant is a provider of services. The information to be provided should include a range of available home and community based long term care options, not just those home and community based services provided by the applicant.

*2. Make referrals to and work with the nursing home discharge planner as requested by the nursing home resident and/or his/her legal guardian\**

Applicants should discuss their approach for following up with the nursing home residents and/or their legal guardians and the nursing home residents' discharge planner and other ideas for successfully completing this activity.

Applicants should describe their ability to tailor their approach linking with key nursing home personnel based on the uniqueness of the specific nursing home.

\*NOTE: Final protocols for making referrals and following up with the nursing home residents both before and after they have transitioned into the community will be developed with contract awardees, key stakeholders and others working under MFP.

*3. Address linguistic and cultural barriers*

Applicants should describe how they will develop the capacity to meet the linguistic and cultural needs of the population to be served per region.

*4. Build and maintain relationships with nursing home discharge planners and nursing home Ombudsmen in the region*

Applicants should discuss their approach for building and maintaining relationships with nursing home discharge planners and nursing home Ombudsmen in the region

5. *Build and maintain knowledge about available home and community based services in the region*

Applicants should describe how they will build and maintain staff knowledge about available home and community based long term care options in the region. Included in this discussion should be a description of plans for developing and maintaining relationships with entities in the region that authorize or provide services and other plans for completing this activity.

6. *Comply with all requirements for New York State's MDS Data Use Agreement*

Applicants should describe their plan to assure that MDS Data Use Agreement requirements will be fulfilled. Included in this discussion must be a description of how the applicant will appropriately safeguard any confidential personal health information.

The applicant should describe the methods they will use to monitor progress for achieving objectives for each of the activities. Also describe how results of these evaluation activities will help with modifying and/or establishing new objectives.

**5. Budget/Cost Sheet (25 points)**

Assuming an October 1, 2009 start date, applicants should follow the instructions and complete and submit Attachment 8 in its entirety. All costs must be related to the provision of Identification of and Outreach to Nursing Home Residents, as well as be consistent with the scope of services, reasonable and cost effective.

Please note the indirect rate is limited to up to ten percent (10%) of the total direct costs.

Funding received for this contract may only be used for expanded and/or new activities pursuant to this RFA and may not supplant existing funds for current staff or activities.

Ineligible budget items will be removed from the budget before the budget is scored. The budget amount requested will be reduced to reflect the removal of the ineligible items.

**B. Application Format**

ALL APPLICATIONS SHOULD CONFORM TO THE FORMAT PRESCRIBED BELOW.

All applications should be submitted on double spaced typed pages (not including the cover page and attachments), using a normal (12) font or larger, and 1 inch margins all around. The value assigned to each section (see below) is an indication of the relative weight that will be given when scoring your application.

**APPLICATIONS FAILING TO INCLUDE ALL OF THE FOLLOWING SECTIONS WILL BE REMOVED FROM CONSIDERATION.**

<b>Application Section</b>	<b>Maximum Score in Points</b>
Applicant Capability	<b>30</b>
Workplan/Timeline	<b>45</b>
Budget/Cost Sheet (Attachment 8)	<b>25</b>
<b>Total</b>	<b>100 Points</b>

**C. Review & Award Process**

The minimum passing score is 50 points.

Applications meeting the guidelines set forth above will be reviewed and evaluated competitively by the Department of Health. Staff from other State agencies may also participate in the application review and evaluation. Important considerations in the review process will be:

- the appropriateness of the goal-related, measurable objectives and how well the activities reflect the process to achieve the stated objectives;
- the extent to which the applicant demonstrates commitment to the principles of community integration, person centered planning and independent living philosophy;
- the extent to which the proposed outcomes and program design support the needs of the population;
- the extent to which the program design proposed is likely to meet the goals of this project;
- how progress will be assessed;
- a clear and appropriate budget justification and how consistent the proposed budget is with the scope of activities to be conducted including the overall staffing pattern; and
- the extent to which the requirements of the RFA have been fully addressed.

In the situation of a tie in the highest scoring applicants for a regional contract, the application that has the highest score excluding the budget (Attachment 8) will be awarded the contract.

Following the award of grants from this RFA, applicants may request a debriefing from the NYS DOH Office of Long Term Care no later than three months from the date of the award(s) announcement. This debriefing will be limited to the positive and negative aspects of the subject application.

## **VI. Attachments**

Attachment 1: Standard Grant Contract with Appendices

Attachment 2: Grant Application Summary Form

Attachment 3: Applicant Attestation

Attachment 4: Vendor Responsibility Attestation

Attachment 5: MDS Data Use Agreement

Attachment 6: Data Use Agreement Addendum

Attachment 7: Map of New York State by Regions

Attachment 8: Budget Instructions and Budget Forms

# 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:
	.	
CHARITIES REGISTRATION NUMBER:	.	FUNDING AMOUNT FOR INITIAL PERIOD:
____ - ____ - ____ or ( ) EXEMPT:	.	
(If EXEMPT, indicate basis for exemption):	.	_____
	.	MULTI-YEAR TERM (if applicable):
	.	FROM:
CONTRACTOR HAS( ) HAS NOT( ) TIMELY	.	TO:
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	Budget
_____	APPENDIX C	Payment and Reporting Schedule
_____	APPENDIX D	Program Workplan
_____	APPENDIX X	Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

**OTHER APPENDICES**

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

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates

below their signatures.

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

CONTRACTOR

By: \_\_\_\_\_  
(Print Name)

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

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

\_\_\_\_\_  
Contract No. \_\_\_\_\_

STATE AGENCY

By: \_\_\_\_\_  
(Print Name)

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

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

State Agency Certification:

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

STATE OF NEW YORK )  
 ) SS:  
County of \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

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

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

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

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**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;

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(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.

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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.



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

- 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 A-2

### **Project Direction**

The Contractor, no later than the effective date of this Agreement, will identify by name and title the individual the Contractor has authorized to provide executive direction of Contractor's performance of the contract services, including response to issues and concerns communicated by DOH. Contractor will provide a telephone number to DOH. Contractor agrees to immediately notify DOH of any changes to the contact information, including those that are temporary.

### **New York State's Medicaid Agency Data Use Agreement**

The Contractor will comply with all requirements of New York State's Medicaid Agency Data Use Agreement (DUA), DUA Number 15407, with the Centers for Medicare and Medicaid Services (CMS). In addition, the Contractor agrees that all staff assigned to the project and/or having access to such data will sign an Addendum to New York State's DUA (DUA Number 15407), which signifies their understanding of and agreement to comply with the terms of the DUA.

### **Work Products**

The Contractor agrees to include the following attribution and disclaimer on all materials developed for public distribution, which are funded under this contract:

“This document was developed under grant CFDA 93.791 from the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services. However, these contents do not necessarily represent the policy of the U.S. Department of Health and Human Services, and you should not assume endorsement by the Federal Government.”

In addition, the contractor agrees that all materials developed through this contract must be made accessible to people with special needs (e.g. people with visual or hearing impairments).

APPENDIX B

BUDGET  
(sample format)

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

Budget Period: Commencing on: \_\_\_\_\_ Ending on: \_\_\_\_\_

Personal Service

Number	Title	% Time	Total Amount
		Annual Salary	Devoted to This Project

Total Salary \_\_\_\_\_  
Fringe Benefits (specify rate) \_\_\_\_\_  
TOTAL PERSONAL SERVICE: \_\_\_\_\_

Other Than Personal Service Amount

Category  
Supplies  
Travel  
Telephone  
Postage  
Photocopy  
Other Contractual Services (specify)  
Equipment (Defray Cost of Defibrillator) \_\_\_\_\_

TOTAL OTHER THAN PERSONAL SERVICE \_\_\_\_\_

GRAND TOTAL \_\_\_\_\_

**Federal funds are being used to support this contract. Code of Federal Domestic Assistance (CFDA) numbers for these funds are: (required) \_\_\_\_\_**

## 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 twenty five percent of the maximum amount indicated in the budget as set forth in the most recently approved Appendix B. If this payment is to be made, it will be due thirty calendar days, excluding legal holidays, after the later of either:

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

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

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

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

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

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

D. The CONTRACTOR will be entitled to receive payments for work, projects, and services rendered as detailed and described in the program workplan, Appendix D. All payments shall be in conformance with the rules and regulations of the Office of the State Comptroller.

- E. The CONTRACTOR will provide the STATE with the reports of progress or other specific work products pursuant to this AGREEMENT as described in this Appendix below. In addition, a final report must be submitted by the CONTRACTOR no later than 30 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 30 days after the end date of the period for which reimbursement is being claimed. In no event shall the amount received by the CONTRACTOR exceed the budget amount approved by the 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. Narrative/Qualitative Report

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

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

### B. Statistical/Quantitative Report

\_\_\_\_\_ (Organization Name) will submit, on a quarterly basis, not later than 30 days from the end of the quarter, a detailed report analyzing the

quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

C. Expenditure Report

\_\_\_\_\_ (Organization Name) \_\_\_\_\_ will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, a detailed expenditure report, by object of expense. This report will accompany the voucher submitted for such period.

D. Final Report

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

**APPENDIX D**

PROGRAM WORKPLAN  
(sample format)

To be completed by the awarded contractor and approved by DOH.

**APPENDIX D**

**Money Follows the Person (MFP) Identification of and Outreach to Nursing Home Residents Project**

CONTRACTUAL OBLIGATIONS	SPECIFIC ACTIVITIES	TIME FRAME	PERSON RESPONSIBLE	EVALUATION MEASURES

**Federal Health Insurance Portability and Accountability Act (HIPAA)  
Business Associate Appendix**

I. Definitions:

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

II. Obligations and Activities of the Business Associate:

- (a) The Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- (b) The Business Associate agrees to use the appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement 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 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. No such disclosures shall be made without the prior written permission of the New York State Department of Health, Office of Medicaid Management.
- (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, and only with the prior written permission of the Department 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) 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. Such Medicaid Protected Health Data may not be in any way permanently combined with other information gained from other sources.

## VI. Term and Termination

- (a) *Term.* Effective April 14, 2003 in the event of termination for any reason, 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.

**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:

\$ \_\_\_\_\_

(Value before amendment)

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

(Initial start date)

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

\$ \_\_\_\_\_

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

This will result in new contract terms of:

\$ \_\_\_\_\_

(All years thus far combined)

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

(Initial start date)

(Amendment end date)



**Attachment 2**

**NEW YORK STATE DEPARTMENT OF HEALTH  
GRANT APPLICATION SUMMARY FORM**

(Please submit a separate form for each contract/regional application.)

<b>PROGRAM</b> MFP Demonstration Identification of and Outreach to Nursing Home Residents Project	<b>REGION</b>
<b>Lead Applicant (if applying as a regional consortium)</b>	
<b>1. TITLE OF PROJECT (PROGRAM)</b>	
<b>2. NAME AND ADDRESS OF APPLICANT</b>	Internet Address(s): e-Mail _____ Web-site _____
<b>3. EMPLOYER IDENTIFICATION NUMBER</b> (Fed EIN) _____	<b>6. BUDGET PERIOD</b>
<b>4. NOT-FOR-PROFIT STATUS</b> Yes <input type="checkbox"/> No <input type="checkbox"/> <b>NYS Charity Registration Number</b> _____	<b>7. AMOUNT REQUESTED FOR BUDGET PERIOD</b>
<b>5. DIRECTOR OF PROJECT</b> (Program or Center Director, Coordinator or Principal Investigator)  <b>NAME</b>  <b>TITLE</b>  <b>OFFICE TELEPHONE</b>  <b>OFFICE FAX NUMBER</b>  <b>e-Mail Address</b>	<b>8. FINANCIAL MANAGEMENT OFFICIAL</b>  <b>NAME</b>  <b>TITLE</b>  <b>OFFICE TELEPHONE</b>  <b>OFFICE FAX NUMBER</b>  <b>e-Mail Address</b>

**Attachment 3**

**Applicant Attestation**

(Must be attached to application packet)

I certify that the information provided is correct. I understand and agree that, at any time, the State may review all employer records and documentation necessary to ensure compliance with the requirements of the demonstration and that any monies found to have been expended which are not in compliance with the terms and conditions of the grant may be recouped by the State. The applicant further agrees to comply with the requirements of the RFA including all appendices.

I certify that my organization will provide, and our staff able to use, computer software compatible with the products used by the Department to organize, analyze and store data and information about available community resources and to transfer reports and other information to the DOH Bureau of Medicaid Long Term Care via e-mail using compatible encryption software.

[Note: At least one copy of the submitted applications must contain original signatures.]

Signature of official from lead organization: \_\_\_\_\_

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

Title and Organization: \_\_\_\_\_

Correspondence Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E-mail Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax Number: \_\_\_\_\_

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

**Attachment 4**

## **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: \_\_\_\_\_

**MEDICAID AGENCY DATA USE AGREEMENT**

**AGREEMENT FOR USE OF CENTERS FOR MEDICARE & MEDICAID SERVICES  
(CMS) DATA CONTAINING INDIVIDUAL-SPECIFIC INFORMATION**

In order to secure Medicare data that resides in a CMS Privacy Act System of Records, and in order to ensure the integrity, security, and confidentiality of information maintained by CMS, and to permit appropriate disclosure and use of such data as permitted by law, CMS and the State of \_\_\_\_\_ enter into this agreement to comply with the following specific paragraphs.

1. This Agreement is by and between CMS, a component of the U.S. Department of Health and Human Services (DHHS), and the State of \_\_\_\_\_, hereinafter termed “User.”
2. This Agreement addresses the conditions under which CMS will disclose and the User will obtain and use the Medicare Long Term Care Minimum Data Set (LTC/MDS) in section 7. This Agreement supersedes any and all agreements between the parties with respect to the use of the LTC/MDS and preempts and overrides any instructions, directions, agreements or other prior communication from the Department of Health and Human Services with respect to the data specified herein. Further, the terms of this Agreement can be changed only by a written modification to this Agreement, or by the parties adopting a new agreement. The parties agree further that instructions or interpretations issued to the User concerning this Agreement or the data specified herein, shall not be valid unless issued in writing by the CMS point-of-contact specified in section 5, or the CMS signatory to this Agreement shown in section 18. CMS reserves the right to terminate this agreement at any time if there is evidence that: (1) the agreement is not being complied with; (2) there is a violation of law in the manner of compliance; or (3) the agreement no longer complies with changes to statutory or regulatory requirements. Upon such notice, CMS will cease releasing data to the User under this Agreement and will notify the User either to return all previously released data files to CMS at the User’s expense or destroy such data.
3. The parties mutually agree that CMS retains all ownership rights to the data file(s) referred to in this Agreement, and that the User does not obtain any right, title, or interest in any of the data furnished by CMS.
4. The parties mutually agree that the following named individual is designated as “Custodian” of the file(s) on behalf of the User, and will be responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use. The User agrees to notify CMS within fifteen (15) days of any change of custodianship. The parties mutually agree that CMS may disapprove the appointment of a custodian, or may require the appointment of a new custodian at any time.

---

(Name of Custodian)

---

(Company/Organization)

---

(Street Address)

---

(City/State/ZIP Code)

---

(Phone Number Including Area Code and E-mail Address if applicable)

5. The parties mutually agree that the following named individual will be designated as “point-of-contact” for the Agreement on behalf of CMS.

---

(Name of CMS Contact)

---

(Title/Component)

---

(Street Address)

---

(City/State/ZIP Code)

---

(Phone Number Including Area Code and E-mail Address if applicable)

6. The User represents, and in furnishing the Medicare LTC/MDS, CMS relies upon such representation, that this file(s) will be used solely for the purpose(s) outlined below.

To facilitate the administration of a Federal health program for the purposes of determining participation requirements, evaluating and/or assessing cost effectiveness, and/or the quality of health care services provided, and/or for setting long term care Nursing Facility reimbursement rates in the State that are directly related to the administration of the State Medicaid Program. To facilitate State compliance with the requirements of the Americans for Disabilities Act.

The User shall not, unless explicitly provided for under contract, disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement to any person(s). The User agrees that, within the User organization, access to the data covered by this Agreement shall be limited to the minimum number of individuals necessary to achieve the purpose stated in this section. The User may issue reports, based on data

covered by this Agreement, that are directly related to the administration of the State Medicaid Program to the specific long term care Nursing Facility that has submitted the data.

7. The following file(s) and timeframe are covered under this Agreement:

<u>File</u>	<u>Year(s)</u>
LTC/MDS Resident Assessment Data File(s)	

8. The parties mutually agree that the aforesaid file(s) (and/or any derivative file(s), including any file that maintains or continues identification of individuals) may be retained by the User for a maximum period of 10 years from the effective date of this agreement, hereinafter known as the retention date. The User agrees to notify CMS at least 30 days prior to the expiration of the aforementioned retention date in order to renegotiate this agreement. The User acknowledges that stringent adherence to the aforementioned retention date is required.
9. The User agrees to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data, and to prevent its unauthorized use or access. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III--Security of Federal Automated Information Resources (<http://www.whitehouse.gov/omb/circulars/a130/a130.html>), which sets forth guidelines for security plans for automated information systems in Federal agencies. The User acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable or deducible information derived from the file(s) specified in section 7 is strictly prohibited. Further, the User agrees that the data must not be physically moved or transmitted in any way without written approval from CMS.
10. The User agrees that the authorized representatives of CMS, DHHS Office of the Inspector General or Comptroller General, will be granted access to premises where the aforesaid file(s) are kept for the purpose of inspecting security arrangements confirming whether the User is in compliance with the security requirements specified in section 9.
11. The User agrees that no findings, listing, or information derived from the file(s) specified in section 7, with or without identifiers, may be released if such findings, listing, or information contain any combination of data elements that might allow the deduction of a beneficiary's identification without first obtaining written authorization from the appropriate System Manager or the person designated in item number 18 of this Agreement unless the information derived from the files specified in section 7 are being used for purposes outlined in section 6. The User will notify any entity to which the data is transferred of the need to maintain the confidentiality of the data provided. Examples of such data elements include but are not limited to geographic indicator, age, sex, diagnosis, procedure, admission/discharge date(s), or date of death. The User agrees further that CMS shall be the sole judge as to whether any finding, listing, information, or any combination of data extracted or derived from CMS's files identifies or would, with reasonable effort, permit one to identify an individual or to deduce the identity of an individual to a reasonable degree of certainty.

12. The User agrees that in the event CMS determines or has a reasonable belief that the User has made or may have made disclosure of the aforesaid file(s) that is not authorized by this Agreement, or other written authorization from the appropriate Systems Manager or the person designated in section 18, CMS in its sole discretion may require the User to: (a) promptly investigate and report to CMS the User's determinations regarding any alleged or actual unauthorized disclosure, (b) promptly resolve any problems identified by the investigation; (c) if requested by CMS, submit a formal written response to an allegation of unauthorized disclosure; (d) if requested by CMS, submit a corrective action plan with steps designed to prevent any future unauthorized disclosures; and (e) if requested by CMS, return data files to CMS immediately. The User understands that as a result of CMS's determination or reasonable belief that unauthorized disclosures have taken place, CMS may refuse to release further CMS data to the User for a period of time to be determined by CMS.
13. The User hereby acknowledges that criminal penalties under §1106(a) of the Social Security Act (42 U.S.C. §1306(a)), the Privacy Act (5 U.S.C. §552a(i)(3)), and 18 U.S.C. §641, which govern the use of these data, may apply to disclosures of information that are covered by this agreement.
14. By signing this Agreement, the User agrees to abide by all provisions set out in this Agreement for protection of the data file(s) specified in section 7.
15. The disclosure provision(s) that allow the discretionary release of CMS data for the purpose(s) stated in paragraph 6 follow(s).

**Long Term Care Minimum Data Set, System of Records #09-70-1517, routine use #2(c)**

16. On behalf of the User, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

---

(Name/Title of Individual)

---

(State Agency/Organization)

---

(Street Address)

---

(City/State/ZIP Code)

---

(Phone Number Including Area Code and E-mail Address if applicable)

---

Signature

---

Date

17. The Custodian, as named in paragraph 4, hereby acknowledges his/her appointment as custodian of the aforesaid file(s) on behalf of the User, and agrees to comply with all of the provisions of this Agreement on behalf of the User.

\_\_\_\_\_  
(Typed or Printed Name and Title of Custodian of File(s))

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

18. On behalf of CMS the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

a. \_\_\_\_\_  
(Typed or Printed Name and Title of CMS Representative)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

b. Concur/Nonconcur \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of CMS System Manager or Business Owner)

c. Concur/Nonconcur \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of CMS Protocol or Project Review Representative)

## **INSTRUCTIONS FOR COMPLETING THE MEDICAID AGENCY DATA USE AGREEMENT (DUA)**

This agreement, which ensures compliance with the requirements of the Privacy Act, is required for a State Medicaid Agency to receive LTC/MDS data deriving from Medicare and private pay residents, and must be completed prior to the release of these files to the Medicaid Agency. No DUA is needed for release of LTC/MDS data derived exclusively from Medicaid residents; however, see the instruction below for item #7 in regard to this. Note that all data releases to the Medicaid Agency, including releases for Medicaid-only residents, must be electronically tracked for purposes of HIPAA compliance.

Instructions for the completion of the agreement follow:

**Before completing the DUA, please note that the language contained in this agreement cannot be altered in any form .**

- First paragraph, enter the name of the State.
- Item #1, enter the name of the State.
- Item #4, enter the Custodian's name, the State Medicaid Agency organizational unit, Address, Phone Number (including area code), and E-Mail Address (if applicable). The Custodian of files is defined as that person who will have actual possession of and responsibility for the data files. This will typically be the manager of the Medicaid agency unit with responsibility for the data files. If the person signing for the Medicaid agency as User is the same person as the Custodian, that person can appear and sign in both places.

If there are additional Custodians who are not direct Medicaid agency employees, such as academic or other consulting contractors, who assist the Medicaid agency in its use of the data for the purposes indicated in Item #6, an appropriate lead or managerial person from each such organization must complete and sign the Multi-Signature Addendum form.

Additional Custodian individuals or organizations can be included under the primary DUA as necessary over the life of the primary DUA. Each such individual or organization must be approved by CMS before they are permitted to function under the DUA. To include a new Custodian under an existing Medicaid agency DUA, submit the following to the CMS Regional Office: a letter from the Medicaid agency describing the activities planned for the new Custodian and the length of time over which the Custodian will serve; and a Multi-Signature Addendum completed and signed by an appropriate lead or managerial person from the Custodian organization. The Multi-Signature Addendum must show the DUA number of the existing primary Medicaid agency DUA. [end of 3<sup>rd</sup> bullet]

- Item #5 will be completed by the CMS Regional Office.
- Item #7, "Files," is pre-completed to show "LTC/MDS Resident Assessment Data File(s)." This wording is general and covers all MDS data. This all-inclusive language will reliably guide the technical staff who must retrieve the data.
- Medicaid Agencies must remain aware that the use of all the MDS data, regardless of program source, is limited to the purpose indicated in Item #6, i.e., for Medicaid program

use. In addition, Medicaid Agencies must abide by all the restrictions regarding the MDS data, regardless of source, that are based on the Privacy Act and other law and regulation, and as expressed throughout this DUA.

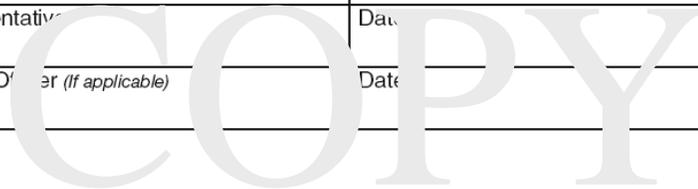
- Item #7, Year(s): The Medicaid Agency may choose the time period for which it wishes to receive data, from a point in the past through up to 10 years into the future (see the Item #8 discussion of retention date). Examples are: "1998-2000;" "2001;" and "From 1998 through [insert date 10 years in the future]."
- Item #8 says that the group of data files indicated in Item #7 may be retained by the Medicaid Agency for a period of 10 years after the approval date (CMS' signature date) of the DUA. This date, which is 10 years in the future, is called the "retention date." For cases in which the Medicaid Agency receives data in an ongoing manner, the retention date does not move forward with each data release. For example, data released two months prior to the retention date (9 years and 10 months after the DUA approval date) may only be kept by the Medicaid Agency for two months. If it wishes to continue receiving data beyond the 10 year point, the Medicaid Agency must contact CMS at least 30 days prior to the retention date (and preferably 3-4 months prior) to request another DUA covering the period following the 10 year retention date.
- Item #16 is to be completed by the State Medicaid Agency.
- Item #17 is to be completed by the State Medicaid Agency Custodian.
- Item #18 will be completed by the CMS Regional Office.

# Attachment 6

## ADDENDUM TO DATA USE AGREEMENT (DUA)

Addendum to DUA for \_\_\_\_\_. If this is an addendum to a previously approved DUA, insert the CMS assigned DUA number here: \_\_\_\_\_. The following individual(s) may/will have access to CMS data that is being requested for this agreement. Their signatures attest to their agreement to the terms of this Data Use Agreement:

Name and Title of Individual <i>(typed or printed)</i>		
Task / Role of this individual in this project	Company / Organization	
Street Address		
City	State	ZIP Code
Office Telephone <i>(Include Area Code)</i>	E-Mail Address <i>(If applicable)</i>	
Signature of Individual	Date	
Signature of CMS Representative	Date	
Signature of CMS Project Officer <i>(If applicable)</i>	Date	



Name and Title of Individual <i>(typed or printed)</i>		
Task / Role of this individual in this project	Company / Organization	
Street Address		
City	State	ZIP Code
Office Telephone <i>(Include Area Code)</i>	E-Mail Address <i>(If applicable)</i>	
Signature of Individual	Date	
Signature of CMS Representative	Date	
Signature of CMS Project Officer <i>(If applicable)</i>	Date	

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0734. The time required to complete this information collection is estimated to average 30 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: Reports Clearance Officer, Baltimore, Maryland 21244-1850.

Attachment 7

New York State Department of Health  
Office of Long Term Care

Regions for the Money Follows the Person  
Demonstration Identification of and Outreach  
to Nursing Home Residents Project

