

NEW YORK STATE DEPARTMENT OF HEALTH

**Office of Health Systems Management
Division of Residential Services**

A Request for Proposal for

Community Placement Assessments

RFP No. 1107151113

Schedule of Key Events

RFP Release Date	February 3, 2012
Written Questions Due	February 23, 2012
Letter of Interest Due (optional)	February 23, 2012
Response to Written Questions	March 8, 2012
Proposal Due Date	April 2, 2012

There will *NOT* be a bidders' conference held for this RFP

Contracts Pursuant to State Finance Law §§ 139-j and 139-k

Designated Contacts:

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contacts to whom all communications attempting to influence this procurement must be made:

Stephanie Heverly (518) 408-1297
New York State Department of Health
Division of Residential Services
875 Central Avenue, Albany, New York 12206

Permissible Subject Matter Contacts:

Pursuant to State Finance Law § 139-j(3)(a), the Department of Health also identifies the following allowable contacts for communications related to the following subjects:

Submission of Written Questions:

CPAssessments@health.state.ny.us

New York State Department of Health
Division of Residential Services
875 Central Avenue, Albany, New York 12206

Submission of Written Proposals:

Cathleen Bobrick (518) 408-1282
New York State Department of Health
Division of Residential Services
875 Central Avenue, Albany, New York 12206

Debriefings:

Stephanie Heverly (518) 408-1297
New York State Department of Health
Division of Residential Services
875 Central Avenue, Albany, New York 12206

Negotiation of Contract Terms after Award:

Valerie Deetz, Deputy Director (518) 408-1272
New York State Department of Health
Division of Residential Services
875 Central Avenue, Albany, New York 12206

For further information regarding these statutory provisions, see the Lobbying Statute summary in Section F-12 of this solicitation.

TABLE OF CONTENTS

A. PURPOSE OF REQUEST FOR PROPOSAL.....	5
B. BACKGROUND.....	5
1. OBRA 1987 Mandate	
2. PASRR Regulations	
C. DETAILED SPECIFICATIONS.....	6
1. Identified Individuals	
2. Contractor Scope of Work	
3. Reporting Requirements	
D. PROPOSAL REQUIREMENTS.....	10
1. Mandatory Pass/Fail Proposal Requirements	
2. Technical Proposal Component	
3. Financial Proposal Component	
E. METHOD OF AWARD.....	12
1. Best Value	
2. Evaluation Considerations	
3. Scoring	
F. ADMINISTRATIVE.....	14
1. Issuing Agency	
2. Letter of Interest	
3. Inquiries	
4. Submission of Proposals	
5. Reserved Rights	
6. Payment	
7. Term of Contract	
8. Debriefing	
9. Protest Procedures	
10. Vendor Responsibility Questionnaire	
11. State Consultant Services Reporting	
12. Lobbying Statute	
13. Accessibility of State Agency Web-based internet information and Applications	
14. Information Security Breach and Notification Act	
15. New York State Tax Law Section 5-a	
16. Piggybacking	
17. M/WBE Utilization Plan for Subcontracting and Purchasing	
G. APPENDICES TO THE CONTRACT.....	22
H. ATTACHMENTS TO RFP.....	23
1. Letter of Interest (optional)	
2. Proposal Cover Page	
3. Bidder's Assurance Form	
4. Bid Form	
5. No-Bid Form	

6. Vendor Responsibility Attestation Form
7. State Consultant Services Instructions
8. State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term
9. State Consultant Services Form B, Contractor's Annual Employment Report
10. M/WBE Procurement Forms
11. Reference Form
12. Cost Proposal Form
13. Stipulation and Order of Settlement No. 06-CV-1042 (BMC) (SMG)
14. NYS Level II PASRR Adult Mental Health Evaluation and Report
15. Standard New York State Contract and Appendices

A. PURPOSE OF REQUEST FOR PROPOSAL

The New York State Department of Health seeks a vendor to conduct assessments of certain nursing home residents and other individuals with serious mental illness (SMI) in order to determine whether their needs can be met in an appropriate community setting, consistent with the Stipulation and Order of Settlement in *Joseph S., et al. v. Hogan, et al.*, United States District Court for the Eastern District of New York, No. 06-CV-1042 (BMC) (SMG), (Attachment 13, hereinafter, Stipulation and Order of Settlement). There are approximately 2,500 individuals residing in both NYS and out-of-state nursing homes or other settings that may be eligible for assessment. It is estimated that the majority (64%) reside in the New York City Metropolitan Region (the five boroughs, Westchester and Nassau), and approximately 340 live in New Jersey, 30 in Pennsylvania and 140 in Massachusetts.

The anticipated start date for a 27-month contract resulting from this procurement is June 4, 2012. All assessments required under this contract must be completed **no later** than June 4, 2014, or 24 months after the approval date of the contract by the Office of the State Comptroller, whichever is later. A final report on this project and all other required activities must be completed no later than 27 months after the approval date of the contract by the Office of the State Comptroller.

B. BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 (OBRA 87) mandated that all individuals with serious mental illness (SMI) or mental retardation (MR) applying for nursing home placement be:

1. Identified (Level I Review);
2. Placed appropriately; and
3. Receive the SMI or MR services they require.

In addition, residents of nursing homes with SMI must be reevaluated when they experience a significant change in physical or mental status.

Preadmission Screen Resident Review (PASRR) regulations are detailed in 42 Code of Federal Regulations (CFR), Part 483, Subpart C. In the Level II PASRR process, for each nursing home applicant with SMI or MR, the state mental health or mental retardation authority (as appropriate) must determine, in accordance with 42 CFR §483.130, whether, because of the resident's physical and mental condition, the individual requires the level of services provided by the nursing home. For individuals with SMI, this review and determination (i.e., PASRR) is made by Island Peer Review Organization (IPRO) under contract to the Department of Health. A goal of these reviews is to ensure that an individual who can live in the community with needed supports and services, is not inappropriately admitted to nursing homes.

To further ensure that certain persons with SMI residing in nursing homes or other settings are provided the opportunity to live successfully in the most integrated setting appropriate to the needs of the individual with SMI, the Department of Health is proposing the development of a third review – a Community Placement Review - to support existing discharge planning systems for this population. The organization awarded the contract through this procurement will conduct this review and perform other activities as described in Section C. Detailed Specifications.

C. DETAILED SPECIFICATIONS

This contract is for a 27-month period with an anticipated start date of June 4, 2012. Therefore, all activities must be completed within that timeframe. The Department will identify the specific individuals to be assessed, their location and provide this information to the contractor.

I. Identified Individuals

The individuals to be assessed by the contractor are:

- New York State Medicaid recipients with SMI who meet these three criteria:
 - 1) were residents of nursing homes on September 6, 2011,
 - 2) their nursing home care is paid by the New York State Medicaid program, and
 - 3) immediately prior to their residence in nursing homes, resided in psychiatric hospitals; and
- New York State residents with SMI who meet these two criteria:
 - 1) were residents of psychiatric hospitals on September 6, 2011,
 - 2) have received a Revised Level II PASRR Evaluation while in a psychiatric hospital and are determined to have total needs such that placement into Community Housing is appropriate, but it is determined that Community Housing is not available at that time, and a nursing home is appropriate and desired, who are temporarily admitted to a nursing home.

For purposes of this RFP, psychiatric hospital means: (1) a psychiatric hospital operated by the New York State Office of Mental Health (OMH); or (2) a private hospital with an inpatient psychiatric unit operating pursuant to NY Mental Hygiene Law § 31.02 (a)(2).

Clause (2) above shall be interpreted to include all hospitals, as defined in subdivision 10 of section 1.03 of the NYS Mental Hygiene Law, which receive an operating certificate from OMH to operate one or more inpatient psychiatric units.

II. Contractor Scope of Work

The contractor shall assemble a team of trained professionals to assess these individuals using an assessment tool and process developed by the contractor consistent with the terms of the Stipulation and Order of Settlement (Attachment 13). The purpose of the assessment is to: (1) determine whether the total needs of the individuals are such that they can be met in an appropriate community setting; (2) identify for those individuals capable of and desiring to live in the community, the specific types of community housing and community services necessary to maintain them safely in the community. Results of the assessment will provide the nursing home discharge planner with the necessary information to facilitate the resident's transition to the community. Results will also be provided to the Department's Community Transition Coordinator who will oversee the discharge of these individuals to the community, as appropriate.

Community housing means the most integrated setting appropriate to the needs of an individual with SMI, where the setting is designed to promote independence in daily living, economic self-sufficiency and the ability to interact with non-disabled persons to the fullest extent possible. Community housing includes, but is not limited to: (1) Supportive Housing, including Community Residence Single Room Occupancy ("CR/SRO"), Supported Single Room Occupancy

("SP/SRO"), Apartment Treatment, and Family Care; (2) Supported Housing, including Scattered Site Apartment and Single Site Apartments; (3) independent housing with the person's family or friends; (4) independent housing not owned or operated by a social services entity; (5) Senior Housing; and (6) such other housing alternatives as are clinically appropriate for the particular individual. No adult home in New York City and no impacted adult home outside of New York City shall be considered to be community housing. For purposes of this RFP, an impacted adult home is an adult home in which at least 25 percent of the resident population or 25 residents, whichever is less, are individuals with mental disabilities who have been released or discharged from facilities operated or certified by an Office of the Department of Mental Hygiene.

Community services means services and supports provided in NYS that assist individuals with SMI to live in the community. Such services and supports include, but are not limited to, Assertive Community Treatment ("ACT"), Intensive Case Management ("ICM"), Case Management, Personalized Recovery Oriented Services ("PROS"), Continuing Day Treatment ("CDT"), Medicaid benefits for which the resident is eligible, including Home and Community Based Services ("HCBS") waivers, clinic services, certified home health care, personal care assistance, nursing and rehabilitative services.

The contractor shall:

- Verify that identified individuals meet the criteria specified above for individuals to be assessed, prior to initiating the assessment.
- Use persons or entities that employ and use trained professional staff with experience working with individuals with SMI, discharge planning/ assessment and familiarity with transitioning individuals to community settings.
- Complete assessments for all identified individuals within 24 months of contract approval by the Office of the State Comptroller. The assessments must:
 - Determine whether the total needs of each individual are such that they can be met in an appropriate community setting; and
 - Identify for those individuals capable of and desiring to live in the community, the specific types of community housing and community services necessary to maintain them safely in the community, if that is their preference. (Such assessments shall be consistent with the Revised PASRR Level II Process and the Stipulation and Order of Settlement included as Attachment 13 to this RFP).

In assessing whether community placement is appropriate for an individual, the contractor shall meet with the individual face-to-face and:

- Perform a medical, psychiatric and psychological evaluation of the individual; and
- Perform a functional assessment of the individual's abilities to engage in activities of daily living (ADLs) and instrumental activities of daily living (IADLs) necessary to safely live in a community setting.

In addition, the contractor shall consider:

- The range of community housing in NYS where the individual desires to reside;
- The community services required by the individual to live in the most integrated setting appropriate to his or her needs where he or she desires to reside;
- The individual's eligibility for NYS Medicaid waiver programs;
- Whether the individual has been provided with information about community housing and community services appropriate to the needs of the individual, in a manner calculated to allow the individual to make an informed choice regarding Community Housing and Community Services.

Additionally, the contractor shall:

- Provide the individual, and his/her guardian and/or community guardian, if any, information about community housing and community services appropriate to the needs of the individuals in a manner calculated to allow them to make an informed choice regarding community housing and community services.
- Explain the benefits, responsibilities and financial aspects of community housing and community services to the individual and make reasonable efforts to explore and address any of his/her concerns.
- Facilitate the individual's visits to community housing when appropriate.
- Render a report from the Community Placement assessment which includes all relevant information contained in the current PASRR New York State Level II Adult Mental Health Evaluation Report (Attachment 14), as it may be amended by DOH from time to time, the individual's desired placement, the individual's eligibility for Medicaid waiver programs, the individual's discharge preferences, and the specific community housing and community services necessary to meet the individual's needs, taking into account where the individual prefers to reside. This determination must be provided in writing to the assessed individual, their legal representative and the nursing home.
- Create a "Community Transition List" and include the individual on the list when it is determined that the individual is appropriate for and desires to reside in the community.
- Advise the assessed individual and their legal representative in writing of the right to appeal an adverse determination; participate in the adjudication of all such appeals on behalf of DOH through New York's fair hearing process; and provide free copies of documents in the case file in a timely manner to appellants who request them. Establish a toll-free telephone number for appellants to call to request documents.
- Maintain a case file for each individual assessed under this contract. The Contractor shall preserve and retain all records relating to Contractor performance of the contract in readily accessible form during the term of the contract and for a period of six (6) years thereafter, except that the Contractor shall retain medical records that are in the custody of the Contractor for six (6) years after the date of assessment or cessation of Contractor

operation. If the Contractor becomes aware of any litigation, claim, financial management review or audit that is started before the expiration of the six-year period, the records shall be retained by the Contractor until all litigation, claims, financial management reviews or audit findings involved in the record have been resolved and final action taken.

Additionally:

- Any identified individual discharged to community housing after September 6, 2011 and **prior** to the date that the contract is approved by the Office of the State Comptroller shall be referred to the contractor to confirm that pre-discharge assessment and discharge planning activities were consistent with the Stipulation and Order of Settlement (Attachment 13), and carry out assessments and discharge planning activities for those individuals for whom those activities were not consistent with that Stipulation.
- The contractor may communicate with counsel listed in Attachment 13 for any party in Joseph S., et al. v. Hogan, et al., United States District Court for the Eastern District of New York, No. 06-CV-1042 (BMC)(SMG) that contacts the contractor; provided, however, that such communication must not interfere with the work of the contractor; and provided, further, that the contractor shall not be obligated to provide counsel any information beyond the information that the contractor is required to develop or obtain under contract(s) it entered into pursuant to this RFP.
- Within sixty (60) days of the approval of the contract by the Office of the State Comptroller, a defined subset of up to three individuals shall be assessed and offered community housing and community services consistent with their clinical and other needs, capabilities, and preferences.

III. Reporting Requirements

The Contractor will meet quarterly as directed by NYSDOH to discuss the progress of the project. This meeting will also include representation from the Office of Mental Health and with the plaintiffs' counsel.

The Contractor will provide to the NYSDOH a monthly report, which shall include all of the following:

- A listing of individuals, by name and identification number, assessed by the contractor, the location where the assessment was completed and the date on which the assessment was completed;
- Identification of the required housing and services for the individual to be safely transitioned to the community;
- The identification of the individual's housing preference, if any;
- A determination as to whether the individual has the functional capabilities to live safely in the community; and

- The range of community services necessary for the safe and appropriate transition of the assessed individual.

D. PROPOSAL REQUIREMENTS

I. Mandatory Requirements (Pass/Fail)

The Bidder is required to meet and pass the following requirements. Proposals will be rejected without review and the bidders who submitted them will not eligible to be awarded the contract if:

- The proposal is not delivered to the address (NYS Department of Health, Division of Residential Services, 875 Central Avenue, Albany, NY 12206) by the date and time specified in section F.4 of the RFP; the proposal does not include completed Attachment 2, Proposal Cover page; or the proposal includes the Financial Bid Proposal in the bidder's Technical Bid Proposal as each must be in separate sealed envelopes.

II. Technical Proposal

Proposal Cover Page

Bidders must use Attachment 2 as the cover page for their proposal. The cover page must include the Bidder's name and address, Federal Employer ID number (FEIN), and the specific name and contact information of the responsible party for this proposal including phone number and E-mail address. Attachment 2 must be signed by an official authorized to bind the vendor to the provisions of the contract.

Table of Contents

The Table of Contents should include each section of the proposal and the page number for that section. All pages and attachments of the proposal must be numbered and well organized.

Narrative Sections

In addition to the mandatory requirements, the technical proposals must address the following areas which will be scored by the review team. The technical proposal, Sections I – V, should not exceed twenty-five (25) pages in total (not including Attachments such as the complete Assessment Tool, the Assessment and Determination Report, and resumes). Material in excess of twenty-five (25) pages may not be reviewed or considered at the Department's discretion.

Section I – Statement of Understanding

Provide a statement demonstrating that the bidder understands the purpose of the project, the scope of work, and the obligations under the Stipulation and Order of Settlement (Attachment 13).

Section II – Bidder's Qualifications to Undertake the Scope of Work

Organizational Qualifications

Provide a brief description of the bidder's organization, qualifications and any previous experience that the bidder has had working with individuals with SMI, nursing home discharge planning staff, assessment, discharge assessment, discharge planning, and community transitions.

- **Staff Qualifications:** Provide brief descriptions of the staff to be assigned to the

project, including their roles and responsibilities in completing deliverables and accomplishing project goals and objectives, and their experience working with:

- individuals with SMI,
- community services and supports licensed by the OMH or operating under OMH guidelines, and
- nursing home discharge planning staff.

Also, describe their experience with assessment of individuals with SMI, discharge assessment, discharge planning, and community transitions.

Attach resumes to the Technical Proposal (1) for those staff who will supervise the project; and (2) for key staff who will be assigned to the project. In addition, attach a list of detailed job descriptions for those positions required to meet the project deliverables.

Section III – Scope of Work

Provide a detailed work plan and timeline that demonstrates how the bidder will accomplish the scope of work within the 27- month term of the contract, as described in Section C. Detailed Specifications. This should include a work flow process. Specify in terms of Full Time Equivalents (FTE) (where 1 FTE is equal to 37.5 – 40 hours per week, 48 weeks per year) and in terms of employees or contractors, on an annual basis, how many assessors will be used to assess the approximately 2,500 individuals. If the bidder at the time of proposal preparation has insufficient staff to deploy as assessors, the work plan should address recruiting and training assessors. If a subcontractor(s) is to be utilized, describe the subcontractor's organization and function within the process.

Section IV – Assessment Tool and Process

Include the complete assessment tool developed; reporting tool and any materials used to standardize the assessment process. If the bidder does not own the assessment tool, the bidder must provide assurances from the assessment tool's owner that there are no impediments to its use by the bidder under the terms of the contract resulting from this RFP. The proposal must propose an assessment tool and describe a process that: (1) is consistent with the revised PASRR Level II process and the Stipulation and Order of Settlement; (2) allows the assessor to determine whether the individual's needs are such that they can be met in an appropriate community setting; (3) describes how assessors will be trained to administer the assessment and ensure adequate training; (4) provides for adequate supervision and management of the assessors and a quality assurance process.

Section V – Customer Satisfaction (2 page max.)

Describe how the bidder will ascertain the satisfaction of the contractor's customers, who for the purpose of this RFP include assessed individuals, their guardians or their community guardians, and nursing home provider staff, regarding the contractor's performance under the terms of the contract, and how the contractor will respond to dissatisfaction, if any.

Bidder's Assurances

Bidders should submit with their proposal a completed and signed Bidder's Assurances Form (Attachment 3). DOH must have a signed and completed Bidder's Assurances Form before we consider the bidder for an award.

References

Bidders must complete and submit a Reference Form (Attachment 11). References must include contact information for three organizations with whom the bidder has contracted in the past three years for similar types of work. Contact information includes the name and title of the manager most familiar with the bidder's performance who is still employed by the organization; his/her telephone number at the organization, and the organization's name, address and general telephone number. Each reference should include a description of the bidder's contractual deliverables to the organization, including the start and end dates for the contract.

Other Material

Bidders may include any other material they wish to submit in this section. However, the Department is under no obligation to review material in this section or consider it when evaluating bid proposals.

III. Financial Proposal

The Financial Proposal must include:

- Cost Proposal Form (Attachment 12);
- Bid Form (Attachment 4);
- Vendor Responsibility Attestation Form (Attachment 6);
- N.Y.S Taxation and Finance Contractor Certification Form ST-220-TD (download this form from http://www.tax.ny.gov/forms/form_number_order_st_y.htm);
- N.Y.S Taxation and Finance Contractor Certification Form ST-220-CA (download this form from http://www.tax.ny.gov/forms/form_number_order_st_y.htm);
- M/WBE Procurement Forms (Attachment 10); and
- State Consultant Services Form A, Contractor's Planned Employment from Contract Start Date through End of Contract Term (Attachment 8).

State Consultant Services Form B is also provided (Attachment 9) for use by only the bidder awarded the contract. Bidders do not complete and submit this form with their bid.

E. METHOD OF AWARD

I. Best Value Method

The Department will use a best value method of contracting for the services sought under this RFP. Under best value procurement, while price is an important consideration in the selection of a contractor, the contract will **not necessarily be awarded to the bidder with the lowest price**. In best value procurement the basis for awarding the contract is the bidder that optimizes quality, cost and efficiency among responsive and responsible bidders.

II. Evaluation Considerations

The evaluation of the bids will include but will not be limited to the following considerations:

- No proposal will be reviewed without a complete assessment tool;

- Bid proposals should be organized and structured as described throughout this RFP;
- The correct forms required by this RFP should be used and completed;
- Technical Proposals should be responsive to Narrative requirements and topics;
- The Bidder should demonstrate the ability to successfully undertake the scope of work;
- Bidder's past performance, if any, under a contract with the Department of Health;
- Vendor Responsibility.

III. Scoring Proposals

This section of the RFP sets forth the criteria to be used by the Department for scoring of the Technical and Financial proposals submitted in response to the Departments solicitation of RFP #1107151113.

The maximum total number of points a bid proposal can receive is 100. Technical Proposals may receive a maximum score of 75 points. Financial Proposals may receive a maximum score of 25 points.

Technical Proposal Score (75 points)

The Department will evaluate and score proposals based on each bidder's ability to perform the Scope of Work and Detailed Specifications described in this RFP. The evaluation will be based on the bidder's written technical proposal and responses to clarifying questions, if any. A raw technical score is the total technical points awarded by an evaluator. The average raw technical score is the sum of all raw technical scores divided by the number of evaluators.

The following formula will be used to determine each bidder's weighted technical proposal score:

$t = (x / y) * 75$ where:

x= average raw technical score of proposal being scored

y= average raw technical score of the proposal with the highest technical score,

75= total technical points are available, and

t= weighted technical score for proposal being scored.

Financial Proposal Score (25 points)

The Department will score each bidder's financial proposal. The proposal should be complete and consistent with the instructions and the Financial Proposal Form requirements. The Financial Proposal may receive a maximum score of 25 points. The proposal with the lowest cost will receive a financial score of 25 points. All other bids will be scored as follows:

$c = (a / b) * 25$ where:

a= total cost of lowest cost proposal,
b= total cost of proposal being scored,
25= total cost points available, and
c= weighted financial score for bidder being scored.

Bidders will be ranked according to the sum of their weighted technical and weighted financial scores. In the event of a tie, the determining factor(s) for award, in descending order of importance, will be:

- Lowest cost;
- Minority/woman-owned business enterprise (MWBE) utilization;
- Prior experience.

F. ADMINISTRATIVE

1. Issuing Agency

This Request for Proposal (RFP) is a solicitation issued by the NYS Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

2. Letter of Interest

A letter of Interest (Attachment 1) should be submitted by February 23, 2012 in order to notify the New York State Department of Health of the Bidder's intention to develop a proposal in response to this RFP. Interested Bidders are requested, but not required, to submit a letter of interest by mail or fax to:

Cathleen Bobrick
NYS Department of Health
Division of Residential Services
875 Central Avenue
Albany, NY 12206
Fax: 518-408-1287

Or via Email to: CPAssessments@health.state.ny.us

3. Inquiries

Written questions concerning this solicitation may be submitted to Cathleen Bobrick via e-mail: CPAssessments@health.state.ny.us

Questions and inquiries will not be accepted via telephone and must be submitted by February 23, 2012. All questions received by the deadline will be

answered and collated into a single Questions and Answers document. There will be no bidder's conference held.

Questions and answers, as well as any RFP updates and/or modifications, will be posted on the Department of Health's website at: <http://www.health.ny.gov/funding/> by March 8, 2012.

4. Submission of Proposals

Proposals must be received no later than 4:30 p.m. on April 2, 2012.

Responses to this solicitation should be labeled as follows and delivered to:

Cathleen Bobrick
Community Placement Assessments
RFP #1107151113
NYS Department of Health
Division of Residential Services
875 Central Avenue
Albany, NY 12206

All requested RFP information, evidence, documentation and completed forms must be delivered to the address above by the date and time specified above. Material received after the submission deadline may not, in the sole discretion of the Department, be reviewed and considered during the bid proposal evaluation and scoring process. The Department is not responsible for failures in postal and other delivery systems.

Vendors are required to provide Technical Bid Proposals as follows:

- One (1) signed bound hardcopy original and five (5) bound paper copies.
- Two (2) electronic copies on flash drive. Electronic copies must be in Adobe Reader 8 or 9 format, or other commonly accessible electronic format.

Vendors are required to provide Financial Bid Proposals as follows:

- One (1) signed bound hardcopy original and five (5) bound paper copies.
- Two (2) electronic copies on flash drive. Electronic copies must be in Adobe Reader 8 or 9 format, or other commonly accessible electronic format.

Each binder and each flash drive for the Technical Bid Proposal **must be in a separate sealed envelope** and must be labeled as follows:

Community Placement Assessments
RFP #1107151113
Technical Proposal
Bidder Name

Each binder and flash drive for the Financial Bid Proposals must be in a separate, sealed envelope and must be labeled as follows:

Community Placement Assessments
RFP #1107151113
Financial Proposal
Bidder Name

No financial information should be included in a bidder's Technical Bid Proposal.

Pages of the Technical and Financial Bid proposal that the bidder believes contain proprietary information should be clearly labeled as such.

5. Reserved Rights

THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO:

1. Reject any or all proposals received in response to the RFP;
2. Withdraw the RFP at any time, at the agency's sole discretion;
3. Make an award under the RFP in whole or in part;
4. In the event that, as a result of Dispute Resolution under section VIII of the Stipulation and Order of Settlement, or future action by the District Court or other appellate courts, the obligations of the State are modified in any way, DOH reserves the right consistent with such Dispute Resolution or court actions, to take appropriate actions, including: (1) canceling existing contracts issued pursuant to this RFP on 90 days written notice to the agencies; (2) seeking no further funding for the contracts awarded pursuant to this RFP; and/or (3) modifying existing contracts issued pursuant to this RFP.
5. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
6. Seek clarifications and revisions of proposals;
7. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
8. Prior to the ***bid opening***, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
9. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
10. Change any of the scheduled dates;
11. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
12. Waive any requirements that are not material;

13. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
14. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
15. Utilize any and all ideas submitted in the proposals received;
16. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,
17. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.
18. Consider the bidder's performance under other contracts between the bidder and the Department.
19. Require the contractor to submit all project staffing changes to the Department for approval prior to making the change.
20. Disapprove any staffing change requested by the contractor.
21. Require that staff assigned to the project is assigned full time, i.e., they are not assigned to any other projects.

6. Payment

If awarded a contract, the contractor shall submit monthly invoices and/or vouchers to the State's designated payment office:

**Cathleen Bobrick
Community Placement Assessments
NYS Department of Health
Division of Residential Services
875 Central Avenue
Albany, NY 12206**

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at 518-486-1255. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9 must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>.

Completed W-9 forms should be submitted to the following address:

NYS Office of the State Comptroller
Bureau of Accounting Operations
Warrant & Payment Control Unit
110 State Street, 9th Floor
Albany, NY 12236

Payment of such invoices and/or vouchers 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:

A standard voucher requesting payment for the assessments completed in the prior month should be submitted 30 days following the submission of the associated monthly report. The Department shall have 30 days from the date the monthly report is received from the Contractor to review and approve or disapprove the report. If disapproved, the Contractor will be notified and additional information may be requested. A voucher associated with a disapproved monthly report will not be paid until the report is approved. Vouchers should be submitted to the address below:

**Cathleen Bobrick
Community Placement Assessments
NYS Department of Health
Division of Residential Services
875 Central Avenue
Albany, NY 12206**

7. Term of Contract

This agreement shall be effective upon approval of the NYS office of the State Comptroller. The anticipated time period for this non-renewable contract is 27 months. The contract period is expected to begin June 4, 2012.

This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

8. Debriefing

Once an award has been made, bidders may request a debriefing of their proposal. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's proposal, and will not include any discussion of other proposals. Requests must be received no later than ten (10) business days from the date of the award or non-award announcement.

9. Protest Procedures

In the event unsuccessful bidders wish to protest the award resulting from this RFP, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found on the OSC website at:

10. 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 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. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website 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. Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment 6).

11. State Consultant Services Reporting

Chapter 10 of the Laws of 2006 amended certain sections of State Finance Law and Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State.

The winning bidders for procurements involving consultant services must complete a "State Consultant Services Form A (Attachment 8), Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

Winning bidders must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" (Attachment 9) for each state fiscal year included in the resulting contract. This report must be submitted annually to the Department of Health, the Office of the State Comptroller, and Department of Civil Service.

12. Lobbying Statute

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, provides, among other things, the following as pertains to development of procurement contracts with governmental entities:

- a. Makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. Requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. Requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. Authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;

- e. Directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. Requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. Expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. Modifies the governance of the New York State Commission on Public Integrity;
- i. Provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. Increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. Establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended: (i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. Sections 139-j and 139-k are collectively referred to as “new State Finance Law.”

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York State Commission on Public Integrity regarding procurement lobbying, the Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Commission on Public Integrity.

13. Accessibility of State Agency Web-based Intranet and Internet Information and Applications.

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy NYS-P08-005, “Accessibility Web-based Information and Applications”, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and internet information and applications are accessible to persons with disabilities. Web content must conform to New York State Enterprise IT Standard NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by Department of Health, contractor or other,

and the results of such testing must be satisfactory to the Department of Health before web content will be considered a qualified deliverable under the contract or procurement.

14. Information Security Breach and Notification Act.

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach/>

15. New York State Tax Law Section 5-a.

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Tax and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law.

Contractor must complete and submit directly to the New York State Department of Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

Contractor must complete and submit to the Department of Health the form ST-220-CA attached hereto, certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

16. Piggybacking

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.state.ny.us/procurecounc/pgbguidelines.asp>) allows the Commissioner of the NYS Office of General Services to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

17. M/WBE Utilization Plan for Subcontracting and Purchasing.

The Department of Health encourages the use of Minority and/or Women Owned Business Enterprises (M/WBE's) for any subcontracting or purchasing related to this contract. Bidders who are not currently a New York State certified M/WBE must define the portion of all consumable products and personnel required for this proposal that will be sourced from an M/WBE. The amount must be stated in total dollars and as a percent of the total cost necessary to fulfill the RFP requirement. Supportive documentation must include a detail description of work that is required including products and services.

The goal for usage of M/WBE's is at least 20% of monies used for contract activities (Minority-owned – 10%; Women-owned – 10%). In order to assure a good-faith effort to attain this goal, the Department requires that bidders complete the M/WBE Utilization Plan (Attachment 10) and submit this Plan with their bid documents.

Bidders that are New York State certified MBE's or WBE's are not required to complete this form. Instead, such bidders must simply provide evidence of their certified status.

Failure to submit the above referenced Plan (or evidence of certified M/WBE status) may result in disqualification of the vendor from consideration for award.

G. APPENDICES

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposal will, itself, be referenced as an appendix of the contract.

- ❑ APPENDIX A - Standard Clauses for All New York State Contracts
- ❑ APPENDIX B - Request for Proposal
- ❑ APPENDIX C - Proposal

The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.

❑ APPENDIX D - General Specifications

❑ 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**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, 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**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
- **DB-120.1** – Certificate of Disability Benefits Insurance
- **DB-155** – Certificate of Disability Benefits Self-Insurance

❑ Appendix G - Notices

❑ Appendix H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)

❑ Appendix J– Stipulation and Order of Settlement No. 06-CV-1042 (BMC) (SMG)

❑ Appendix X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

H. ATTACHMENTS

1. Letter of Interest (optional)
2. Proposal Cover Page
3. Bidder's Assurance Form
4. Bid Form
5. No-Bid Form

6. Vendor Responsibility Attestation Form
7. State Consultant Services Instructions
8. State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term
9. State Consultant Services Form B, Contractor's Annual Employment Report
10. M/WBE Procurement Forms
11. Reference Form
12. Cost Proposal Form
13. Stipulation and Order of Settlement No. 06-CV-1042 (BMC) (SMG)
14. NYS Level II PASRR Adult Mental Health Evaluation and Report
15. Standard New York State Contract and Appendices

Attachment 1

Letter of Interest to Develop a Proposal in Response to RFP

This is to notify the New York State Department of Health of this Bidder's intention to develop a Proposal in response to this RFP. It is understood that this Letter of Interest is optional and not binding on either party but simply alerts the Department of Health of the Bidder's intentions.

This Notice should be returned via mail or fax to:

Cathleen Bobrick
NYS Department of Health
Division of Residential Services
875 Central Avenue
Albany, NY 12206
Phone: (518) 408-1282
Fax: (518) 408-1287

Or by Email to: CPAssessments@health.state.ny.us

1. Name of Potential Proposing Organization:

2. Organization Address:

Street: _____

City: _____ State: _____ Zip: _____

Telephone: (____) _____ Fax: (____) _____

E-mail: _____

Authorized Signature

Date

**New York State
Department of Health
Community Placement Assessments
RFP # 1107151113**

Attachment 2

PROPOSAL COVER PAGE

DIRECTIONS: COMPLETE THIS PAGE AND PLACE IT ON TOP OF TECHNICAL AND FINANCIAL COMPONENTS SUBMITTED IN RESPONSE TO THIS RFP. DO NOT PUT ANY INFORMATION ON THIS COVER PAGE OTHER THAN WHAT IS REQUESTED.

Bidder's Full Legal Name:

Address: _____

City State Zip Code

Federal Employer ID Number (FEIN):

Contact Person:

(This person must be able to speak for and represent the Bidder in any negotiation with the Department)

Name Title

(____) (____) _____
Phone Fax E-mail address

Authorized Signature

Date

Bidder's Assurances Form

The Bidder's Assurances form **MUST** be signed in ink by an official authorized to bind the organization to the provisions of the RFP and Proposal for the bid.

- The Bidder accepts the terms and conditions as stated in the RFP.
- The bid is valid for a period of two hundred forty (240) calendar days from the date of submission of the Proposal.
- The Bidder agrees to be responsible to the Department for performance of all work specified in the RFP, including work assigned to subcontractors.
- The Bidder assures that the detailed work plan and schedule of deliverables set forth by the organization as its Technical Proposal will fulfill all statewide requirements as described in the RFP and will provide for the dedicated qualified staff, space, expertise and capacity to fulfill contract deliverables for the Component of the RFP.
- The Bidder assures the organization and its employees, subcontractors, consultants and volunteers and subsidiaries are not and will not be directly or indirectly involved with any provider or parties whose activities would represent a conflict of interest with respect to conducting the duties and responsibilities outlined in this RFP. In particular, the Bidder assures that the organization and its employees or its subsidiaries, affiliates or proposed subcontractors did not review materials in connection with litigation in Joseph S., et al., v. Hogan, et al., United States District Court for the Eastern District of New York, No. 06-CV-1042 (BMC)(SMG)..
- The Bidder assures the organization and its employees, subcontractors, consultants and volunteers will implement and maintain policies and procedures to assure the confidentiality of personally identifiable data and information or records pertaining to patient care including compliance with all pertinent Health Insurance Portability and Accountability Act (HIPAA) requirements, Article 27F of the Public Health Law, and the privacy and confidentiality requirements of the Medicaid program.
- The Bidder assures its ability to secure an indemnity (for at least \$5,000,000) to protect the organization and, in turn, the State against any loss of claim incurred as a result of carrying out the duties and responsibilities of this program.
- The Bidder assures that no funds were paid or will be paid, by or on behalf of the Bidder, to any person for the purpose of influencing or attempting to influence any officer or employee of the federal or state government with regard to obtaining a contract for this RFP.
- The Bidder assures that it conforms to vendor responsibility requirements of State Finance Law. The Bidder has completed the Vendor Responsibility Attestation (Attachment 6).

Name of Organization

Signature of Authorized Official

Date

Printed Name of Authorized Official

NEW YORK STATE
DEPARTMENT OF HEALTH

BID FORM

PROCUREMENT TITLE: Community Placement Assessments

FAU # 1107151113

Bidder Name:

Bidder Address:

Bidder Fed ID No:

A. _____ bids a total price of \$ _____
(Name of Offerer/Bidder)

B. Affirmations & Disclosures related to State Finance Law §§ 139-j & 139-k:

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the Department of Health relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid or Request for Proposal* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid, Request for Proposal, or other solicitation document*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period; the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

- 1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

2b. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

C. Offerer/Bidder certifies that all information provided to the Department of Health with respect to State Finance Law §139-k is complete, true and accurate.

D. Offerer/Bidder agrees to provide the following documentation either *with their submitted bid/proposal or upon award* as indicated below:

With Bid Upon Award

☐☐

1. A completed N.Y.S Taxation and Finance Contractor Certification Form ST-220.

☐☐

2. A completed N.Y.S. Office of the State Comptroller Vendor Responsibility Questionnaire (for procurements greater than or equal to \$100,000)

☐☐

3. A completed State Consultant Services Form A, Contractor's Planned Employment from Contract Start Date through End of Contract Term

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(e-mail Address)

NEW YORK STATE
DEPARTMENT OF HEALTH

NO-BID FORM

PROCUREMENT TITLE: Community Placement Assessments

FAU #1107151113

Bidders choosing not to bid are requested to complete the portion of the form below:

☐ We do not provide the requested services. Please remove our firm from your mailing list

☐ We are unable to bid at this time because:

☐ Please retain our firm on your mailing list.

(Firm Name)

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(e-mail Address)

FAILURE TO RESPOND TO BID INVITATIONS MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE.

Vendor Responsibility Attestation Form

To comply with the Vendor Responsibility Requirements outlined in Section F, Administrative, 10. 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 proposal/bid 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: _____

Instructions

State Consultant Services

Form A: Contractor's Planned Employment

And

Form B: Contractor's Annual Employment Report

Form A: This report must be completed before work begins on a contract. Typically it is completed as a part of the original bid proposal. The report is submitted only to the soliciting agency who will in turn submit the report to the NYS Office of the State Comptroller.

Form B: This report must be completed annually for the period April 1 through March 31. The report must be submitted by May 15th of each year to the following three addresses:

1. the designated payment office (DPO) outlined in the consulting contract.
2. NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting
or via fax to –
(518) 474-8030 or (518) 473-8808
3. NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239
Attn: Consultant Reporting

Completing the Reports:

Scope of Contract (Form B only): a general classification of the single category that best fits the predominate nature of the services provided under the contract.

Employment Category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)

Number of Employees: the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.

Number of hours (to be) worked: for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the Report Period by the employees in the employment category.

Amount Payable under the Contract: the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

State Consultant Services

FORM A

OSC Use Only

Reporting Code:

Category Code:

Date Contract Approved:

Contractor's Planned Employment From Contract Start Date through End of Contract Term

New York State Department of Health
Contractor Name:

Agency Code 12000

Contract Number:

Contract Start Date: / /

Contract End Date: / /

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
Totals this page:	0	0	\$ 0.00
Grand Total:	0	0	\$ 0.00

Name of person who prepared this report:

Title:

Phone #:

Preparer's signature:

Date Prepared: / /

Page of
(use additional pages if necessary)

State Consultant Services

FORM B

OSC Use Only

Reporting Code:

Category Code:

Contractor's Annual Employment Report

Report Period: April 1, ____ to March 31, ____

New York State Department of Health

Agency Code 12000

Contract Number:

Contract Start Date: / /

Contract End Date: / /

Contractor Name:

Contractor Address:

Description of Services Being Provided:

Scope of Contract (Chose one that best fits):

Analysis	Evaluation	Research
Training	Data Processing	Computer Programming
Other IT Consulting	Engineering	Architect Services
Surveying	Environmental Services	Health Services
Mental Health Services	Accounting	Auditing
Paralegal	Legal	Other Consulting

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
Totals this page:	0	0	\$ 0.00
Grand Total:	0	0	\$ 0.00

Name of person who prepared this report:

Title:

Phone #:

Preparer's signature:

Date Prepared: / /

Page of

(use additional pages if necessary)

M/WBE Procurement Forms

The following forms are required to maintain maximum participation in M/WBE procurement and contracting:

1. Bidders Proposed M/WBE Utilization Form
2. Minority Owned Business Enterprise Information
3. Women Owned Business Enterprise Information
4. M/WBE Utilization Plan
- 5 M/WBE Letter of Intent to Participate
6. M/WBE Staffing Plan

New York State Department of Health

BIDDERS PROPOSED M/WBE UTILIZATION PLAN

Bidder Name:	
RFP Title:	RFP Number

Description of Plan to Meet M/WBE Goals

--

PROJECTED M/WBE USAGE

	%	Amount
1. Total Dollar Value of Proposal Bid	100	\$
2. MBE Goal Applied to the Contract		\$
3. WBE Goal Applied to the Contract		\$
4. M/WBE Combined Totals		\$

New York State Department of Health

MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION

In order to achieve the MBE Goals, bidder expects to subcontract with New York State certified MINORITY-OWNED entities as follows:

MBE Firm (Exactly as Registered)	Description of Work (Products/Services) [MBE]	Projected MBE Dollar Amount
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____

New York State Department of Health WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION

In order to achieve the WBE Goals, bidder expects to subcontract with New York State certified WOMEN-OWNED entities as follows:

WBE Firm (Exactly as Registered)	Description of Work (Products/Services) [WBE]	Projected WBE Dollar Amount
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____

New York State Department of Health
M/WBE UTILIZATION PLAN

Agency Contract: _____
 Telephone: _____
 Contract Number: _____ Dollar
 Value: _____
 Date Bid: _____ Date Let: _____ Completion
 Date: _____

Contract Awardee/Recipient: _____
 Name

 Address

 Telephone

Description of Contract/Project

Location: _____

Subcontractors Purchase with Majority Vendors:

Participation Goals Anticipated: _____ % MBE _____ %
 WBE

Participation Goals Achieved: _____ % MBE _____ %
 WBE

Subcontractors/Suppliers:

Firm Name and City	Description of Work	Dollar Value	Date of Subcontract	Identify if MBE or WBE or NYS Certified

Contractor's Agreement: My firm proposes to use the MBEs listed on this form

Prepared By: (Signature of Contractor)	Print Contractor's Name:	Telephone #:	Date:
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Grant Recipient Affirmative Action Officer Signature (If applicable):

FOR OFFICE USE ONLY

Reviewed: By:	Date:
M/WBE Firms Certified: _____ Not Certified: _____	
CBO: _____	MCBO: _____

New York State Department of Health

MWBE ONLY

MWBE SUBCONTRACTORS AND SUPPLIERS
LETTER OF INTENT TO PARTICIPATE

To: _____ Federal ID Number: _____
(Name of Contractor)

Proposal/ Contract Number: _____

Contract Scope of Work:

The undersigned intends to perform services or provide material, supplies or equipment
as: _____

Name of MWBE:

Address:

Federal ID Number:

Telephone Number:

Designation:

☐ MBE - Subcontractor Joint venture with:

☐ WBE - Subcontractor Name: _____

Address: _____

☐ MBE - Supplier _____

☐ WBE - Supplier Fed ID Number: _____

MBE ☐

WBE ☐

Are you New York State Certified MWBE? _____ Yes _____ No

The undersigned is prepared to perform the following work or services or supply the following materials, supplies or equipment in connection with the above proposal/contract. (Specify in detail the particular items of work or services to be performed or the materials to be supplied):

at the following price: \$ _____

The contractor proposes, and the undersigned agrees to, the following beginning and completion dates for such work.

Date Proposal/ Contract to be started:

Date Proposal/ Contract to be Completed:

Date Supplies ordered: _____ Delivery Date: _____

The above work will not further subcontracted without the express written permission of the contractor and notification of the Office. The undersigned will enter into a formal agreement for the above work with the contractor ONLY upon the Contractor's execution of a contract with the Office.

Date

Signature of M/WBE Contractor

Printed/Typed Name of M/WBE Contractor

**INSTRUCTIONS FOR M/WBE SUBCONTRACTORS AND SUPPLIERS LETTER OF
INTENT TO PARTICIPATE**

This form is to be submitted with bid attached to the Subcontractor's Information Form in a sealed envelope for each certified Minority or Women-Owned Business enterprise the Bidder/Awardee/Contractor proposes to utilize as subcontractors, service providers or suppliers.

If the MBE or WBE proposed for portion of this proposal/contract is part of a joint or other temporarily-formed business entity of independent business entities, the name and address of the joint venture or temporarily-formed business should be indicated.

New York State Department of Health M/WBE STAFFING PLAN

Check applicable categories:

☐ Project Staff ☐ Consultants ☐ Subcontractors

Contractor

Name _____

Address _____

	Total	Male	Female	Black	Hispani c	Asian/ Pacific Islande r	Other
STAFF							
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

(Name and Title)

Date

REFERENCE FORM

Provide the name, address and telephone number of the responsible official of the company or agency who may be contacted by the Department. Three references must be provided, one of which must be the Bidder's last engagement.

Reference #1			
Organization/Agency Name:			
Name:			
Address:			
Telephone Number:		Fax Number:	
E-Mail Address:			
Reference #2			
Organization/Agency Name:			
Name:			
Address:			
Telephone Number:		Fax Number:	
E-Mail Address:			
Reference #3			
Organization/Agency Name:			
Name:			
Address:			
Telephone Number:		Fax Number:	
E-Mail Address:			

COST PROPOSAL FORM

Community Placement Assessments
RFP No. 1107151113

Instructions

Please use this form to detail your cost proposal. The cost proposal form and the Bid Form are submitted with the Financial Proposal ONLY.

1. Determine a unit price per assessment for Individuals residing in NYS and Out-of State Individuals that are identified as eligible for an assessment **(Column 2). The unit price shall be inclusive of all overhead and expenses, including travel expense.**
2. Multiply the unit price in Column 2 by the projected number of assessments in Column 3.
3. There will be a total bid for NYS Individuals and one for Out-of-State.
(Column 2 x Column 3 = Column 4)
4. Combine the NYS and Out-of State Bid Price in Column 4 **(Row A + Row B = Row C)**
5. **This is the Total Bid Price for the 27 month contract term and must be recorded on the Bid Form (Attachment- 4).**

Bidder's Name and Address:

Column 1	Column 2	Column 3	Column 4
<i>Community Placement Assessment</i>	<i>Cost per Assessment</i>	<i>Number of Assessments Anticipated*</i>	<i>Bid Price</i>
NYS Individuals (A)		*2,090	
Out-of-State Individuals (B)		*410	
TOTAL (C)		*2,500	

This number reflects a projection only and is not a guarantee of the number of assessments expected. It is provided for the purpose of pricing the assessments in NYS and the assessments out-of state and to create a total bid price which is recorded **on Attachment 4-Bid Form.*

Signature

Date

Title

Attachment 13

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----~~STEPHEN~~-----x

JOSEPH S. and ~~STEVEN~~ W.; and :
DISABILITY ADVOCATES, INC., :
 :
Plaintiffs, :

**STIPULATION AND
ORDER OF SETTLEMENT**

-against- :
 :

No. 06-CV-1042 (BMC)(SMG)

MICHAEL F. HOGAN, in his official capacity :
as Commissioner of the New York State :
Office of Mental Health; THE NEW YORK :
STATE OFFICE OF MENTAL HEALTH; :
NIRAV R. SHAH, in his official capacity as :
Commissioner of the New York State Department :
of Health; THE NEW YORK STATE :
DEPARTMENT OF HEALTH; and ANDREW :
CUOMO, in his official capacity as Governor of :
the State of New York, :
 :
Defendants. :

-----x

WHEREAS, Plaintiffs Joseph S.; ~~Steven~~ ^{Stephen} W.; and Disability Advocates, Inc.;
(collectively, "Plaintiffs") brought this action by the filing of a Complaint seeking
declaratory and injunctive relief against Defendants alleging unlawful segregation of
individuals with a serious mental illness in nursing homes in violation of Title II of the
Americans with Disabilities Act, 42 U.S.C. § 12101 ("ADA"); Section 504 of the
Rehabilitation Act of 1973, 29 U.S.C. § 794; and the Nursing Home Reform Act, 42
U.S.C. § 1396r ("NHRA"); and

WHEREAS, Plaintiffs further allege that the Defendants have denied New
Yorkers with a serious mental illness the opportunity to live in integrated community
settings where they could lead more independent and productive lives because
Defendants failed to properly implement the federally mandated Preadmission Screen and
Resident Review ("PASRR") system; and

WHEREAS, Defendants Commissioner of the New York State Office of Mental
Health, Commissioner of the New York State Department of Health, and the Governor of
the State of New York, all in their official capacities, and the New York State Office of
Mental Health ("OMH") and the New York State Department of Health ("DOH"),
(collectively, "Defendants" or "the State"), answered the Complaint; and

WHEREAS, Defendants deny that they have violated the ADA, the
Rehabilitation Act, or the NHRA; and

WHEREAS, DOH has, since 2008, undertaken, and will continue to carry out, state-wide, through September 30, 2016, the Centers for Medicare and Medicaid Services (“CMS”) Money Follows the Person Demonstration Project (“the MFP Demonstration Project”), a federal demonstration project through which nursing home residents, including nursing home residents with mental illness, are provided information they need to make informed decisions about long-term care options; and

WHEREAS, on September 21, 2010, DOH issued a “Dear Administrator” letter advising administrators of all New York State nursing homes that Section Q of Version 3.0 of the Minimum Data Set (“MDS”) was revised so that all nursing home residents are periodically assessed to determine the feasibility of, and interest in, their discharge to the community, and that if discharge is determined to be feasible, and the resident expresses an interest in returning to the community, the nursing home must make a referral to a designated local agency, as set forth in the letter, within ten business days; and

WHEREAS, on April 12, 2011, DOH issued two revised PASRR forms, the New York State Level II Adult Mental Health Evaluation and the New York State Level II Adult Mental Health Evaluation Report, both of which include, among other elements, an independent assessment of whether the total needs of individuals with a serious mental illnesses who are proposed for nursing home admission are such that they can be met in appropriate community settings; and

WHEREAS, DOH has completed an instruction manual for PASRR evaluators who will utilize the revised PASRR forms; and

WHEREAS, on August 2, 2011, DOH issued a “Dear Administrator” letter (1) advising all New York State nursing home administrators that all nursing home residents previously identified through the PASRR process as having mental illness or mental retardation and who have experienced a significant change in status require a new Level II PASRR evaluation; and (2) providing to those administrators the new PASRR New York State Level II Adult Mental Health Evaluation Report; and

WHEREAS, on August 4, 2011, DOH issued a “Dear Hospital CEO” letter advising the Chief Executive Officers of all New York State hospitals of the importance of accurate completion of the SCREEN form and the Hospital and Community Patient Review Instrument when considering nursing home placement in discharge planning; and

WHEREAS, in 2006, OMH directed State psychiatric hospitals in the New York City area to obtain approval from OMH’s Central Office for all proposed discharges to nursing homes, and in 2011 directed State psychiatric hospitals and OMH-operated residences in the rest of the state to similarly require such approval, and such directives will remain in effect until the implementation of the Revised PASRR Level II Process; and

WHEREAS, DOH, in consultation with OMH, has agreed to issue one or more Requests for Proposals (“RFPs”) for an Assessment Contractor(s) to perform assessments of certain individuals with a serious mental illness who reside in nursing homes in order to determine whether their total needs can be met in appropriate community settings; and

WHEREAS, OMH has agreed, subject to approval by the Office of the State Comptroller, to develop 200 supported housing units to expand community housing capacity for Remedy Members, as defined below, and has agreed to create this additional capacity as quickly as possible by amending existing housing contracts on an as needed basis for up to 50 of the 200 units with the remaining 150 units to be developed by the issuance of an RFP; and

WHEREAS, the parties have conducted extensive fact and expert discovery, and have engaged in motion practice before the Court; and

WHEREAS, in order to resolve all issues pending between these parties without the expense, risks, delays, and uncertainties of a trial and any appeals that might follow such a trial, the Plaintiffs and Defendants agree to the terms of this Stipulation and Order of Settlement (“Stipulation”) as stated below; and

WHEREAS, all parties acknowledge that the Court has subject-matter jurisdiction over this case, and authority to enter this Stipulation and to enforce its terms; and Defendants acknowledge they are subject to personal jurisdiction of the Court, and that venue is proper in this Court;

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned that this action is settled and dismissed, without prejudice subject to the approval of the Court, on the following terms and conditions:

I. JURISDICTION

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 as a case arising under the laws of the United States and 28 U.S.C. § 1343(a) for actions under laws providing for the protection of civil rights.

II. DEFINITIONS

- A. “ADL” means activities of daily living.
- B. “IADL” means instrumental activities of daily living.
- C. “Serious Mental Illness” is as defined at 42 C.F.R. § 483.102.
- D. “Psychiatric Hospital” means: (1) a psychiatric hospital operated by OMH; or (2) a private hospital in New York State with an inpatient

psychiatric unit operating pursuant to New York Mental Hygiene Law § 31.02(a)(2).

- E. “PASRR” means the Preadmission Screen and Resident Review process required by the Nursing Home Reform Act, 42 U.S.C. § 1396r, and its implementing regulations.
- F. “PASRR Evaluator” means the independent evaluator that conducts the Level II PASRR assessments pursuant to the Nursing Home Reform Act.
- G. “Assessment Contractor(s)” shall mean the independent entity or entities that conduct the assessments required by Section V below.
- H. “Named Plaintiffs” means plaintiffs Joseph S. and Steven W.
- I. “Remedy Members” means persons entitled to a remedy under this Stipulation who are NH Remedy Members or PH Remedy Members.
- J. “NH Remedy Members” means New Yorkers with Serious Mental Illness who are residents of nursing homes on the date that this Stipulation is executed by the parties, whose nursing home care is paid for by the New York State Medicaid program and who immediately prior to their current residence in nursing homes resided in Psychiatric Hospitals.
- K. “PH Remedy Members” means persons with Serious Mental Illness who are residents of Psychiatric Hospitals on the date that this Stipulation is executed by the parties who have received a PASRR Level I Screen and have been referred to the PASRR Evaluator for a Level II PASRR Evaluation but have not yet been evaluated using the Revised PASRR Level II Process for discharge to a nursing home, unless they are discharged from the Psychiatric Hospital to a placement other than a nursing home.
- L. “Community Services” means services and supports provided in New York State that assist individuals with Serious Mental Illness to live in the community. Such services and supports include, but are not limited to, Assertive Community Treatment (“ACT”), Intensive Case Management (“ICM”), Case Management, Personalized Recovery Oriented Services (“PROS”), Continuing Day Treatment (“CDT”), Medicaid benefits for which the Remedy Member is eligible, including home and community based services (“HCBS”) waivers, clinic services, certified home health care, personal care assistance, nursing and rehabilitative services.
- M. “Community Housing” means the most integrated setting appropriate to the needs of a person with Serious Mental Illness, where the setting is designed to promote independence in daily living, economic self-

sufficiency and the ability to interact with non-disabled persons to the fullest extent possible. Community Housing includes, but is not limited to: (1) Supportive Housing, including Community Residence Single Room Occupancy ("CR/SRO"), Supported Single Room Occupancy ("SP/SRO"), Apartment Treatment, and Family Care; (2) Supported Housing, including Scattered Site Apartment and Single Site Apartments; (3) independent housing with the person's family or friends; (4) independent housing not owned or operated by a social service entity; (5) Senior Housing; and (6) such other housing alternatives as are clinically appropriate for the particular Remedy Members. No adult home in New York City and no impacted adult home outside of New York City shall be considered to be Community Housing. For purposes of this paragraph, an impacted adult home is an adult home in which at least 25 percent of the resident population or 25 residents, whichever is less, are persons with mental disabilities who have been released or discharged from facilities operated or certified by an Office of the Department of Mental Hygiene. Notwithstanding any other provision of this paragraph, an individual may make an informed choice to live in housing that is not Community Housing.

- N. "Community Transition List" means one or more lists maintained for the purpose of facilitating discharge efforts into community housing at a reasonable pace.

III. REVISED PASRR LEVEL II PROCESS

- A. Within thirty (30) days of approval of this Stipulation by the Court, no person with a Serious Mental Illness may be placed in a nursing home until he or she first receives a PASRR Level I evaluation and a Level II evaluation that is consistent with procedures set forth in section III(B) ("Revised PASRR Level II Process").
- B. The Revised PASRR Level II Process shall utilize the revised PASRR forms developed by DOH, annexed hereto as Exhibit A, which include an assessment by a PASRR Evaluator of whether an individual's total needs are such that they can be met in an appropriate community setting.
1. In assessing whether community placement is appropriate for an individual, the PASRR Evaluator shall meet face-to-face with the individual and:
 - a. Perform a medical, psychiatric and psychosocial evaluation of the individual; and

- b. Perform a functional assessment of the individual's abilities to engage in ADLs and IADLs necessary to live safely in a community setting.
- 2. In addition, the PASRR Evaluator shall consider:
 - a. The range of Community Housing in New York State where the individual prefers to reside;
 - b. The Community Services required by the individual to live in the most integrated setting appropriate to his or her needs where the individual will reside;
 - c. The individual's eligibility for Medicaid waiver programs; and
 - d. Whether the individual has been provided with information about Community Housing and Community Services, appropriate to the needs of that individual, in a manner calculated to allow the person to make an informed choice regarding such Community Housing and Community Services.
- 3. A finding that an individual meets the minimum requirements for skilled nursing facility level of care pursuant to 10 NYCRR § 400.12 shall not be interpreted to mean that the individual "requires" skilled nursing facility care.
- 4. If the PASRR Evaluator determines that the individual's total needs are such that placement into Community Housing is appropriate, but it is determined that Community Housing is not available at such time, and the NH is appropriate and desired, then the individual may be temporarily admitted to a NH. That individual shall also be included on a Community Transition List. A Community Transition List will facilitate the discharge of such individuals to Community Housing with Community Services at a reasonable pace; provided, however, that "reasonable pace" shall be interpreted in a manner that recognizes the Defendants' obligations to Remedy Members under this Stipulation.
- 5. Upon completion of the PASRR Level II Review, the PASRR Evaluator shall provide to the individuals and entities listed in 42 C.F.R. § 483.128(1) an Evaluation Report that shall contain the information required by 42 C.F.R. § 483.128(i).

6. Simultaneous with the issuance of the Evaluation Report, the PASRR Evaluator shall provide to the evaluated individual, and to the individuals and entities listed in 42 C.F.R. § 483.130(k), a written notice of the PASRR determination. The notice shall contain all of the information required by applicable statute and regulation, including 42 C.F.R. § 483.130(l) and 42 C.F.R. § 431.206(b).
- C. Within thirty (30) days of approval of this Stipulation by the Court, the PASRR Evaluators shall be trained to conduct the Revised PASRR Level II Process using revised PASRR forms. PASRR Evaluators hired after the initial training shall be trained thereafter as necessary. Training of PASRR Evaluators shall include information on all types of Community Housing, Community Services, and waiver programs.
 - D. Within thirty (30) days of approval of this Stipulation by the Court, DOH shall issue a directive to all nursing homes explaining the circumstances in which the nursing home must request a PASRR Level II Resident Review by the PASRR Evaluator. The directive shall:
 1. Advise nursing homes that, consistent with the MDS 3.0 definition, a Significant Change in Status is a decline or improvement in a resident's status that: will not normally resolve itself without intervention by staff or by implementing standard disease-related clinical interventions; is not "self-limiting" (for declines only); impacts more than one area of the resident's health status; and requires interdisciplinary review and/or revision of the health care plan.
 2. Advise nursing homes that they must contact the PASRR Evaluator for a Level II Resident Review when there is evidence that a resident has experienced a Significant Change in Status; and
 3. Advise nursing homes that when a resident or his or her legal guardian expresses a desire to leave the nursing home, in every instance, the nursing home must evaluate the resident for discharge to the community pursuant to 10 N.Y.C.R.R. § 415.3(h)(1).
 - E. When the PASRR Evaluator determines that a nursing home resident can live in the community:
 1. The PASRR Evaluator shall report its determination to the Defendants and the nursing home where the resident resides, and the nursing home resident and his or her legal representative;

2. The nursing home shall initiate discharge planning for the safe and orderly discharge of the resident from the nursing home to the most integrated appropriate Community Housing with appropriate Community Services and prepare and orient the resident for such discharge; and
 3. Defendants shall include the individual on a Community Transition List.
- F. Within sixty (60) days of approval of this Stipulation by the Court, DOH will send a "Dear Administrator Letter" to nursing homes reminding them of their discharge planning obligations, including those described in Section III(E)(2), and the potential penalties that may be imposed for lack of compliance. A copy shall be provided to Plaintiffs' counsel.

IV. PH REMEDY MEMBERS

- A. Within forty-five (45) days of approval of this Stipulation by the Court, Defendants shall identify all PH Remedy Members.
- B. Within ninety (90) days of approval of this Stipulation by the Court, Defendants shall complete the Revised PASRR Level II Process for all PH Remedy Members.
- C. PH Remedy Members who are evaluated using the Revised PASRR Level II Process while in a Psychiatric Hospital and are determined to have total needs such that placement in a home and community based waiver program was considered, but for whom placement was determined not to be feasible at the time of that evaluation, shall be referred to the Assessment Contractor(s) (see section V(E) below).
- D. Defendants shall provide written materials to Psychiatric Hospitals for their information and for distribution to PH Remedy Members, PH Remedy Members' guardians and community guardians. These materials shall discuss Community Housing, Community Services and waiver program options available to PH Remedy Members. Defendants shall provide draft written materials to Plaintiffs' counsel within 90 days of approval of this Stipulation by the Court, with an opportunity to provide comments within seven (7) work days; provided, however, that Defendants shall take such comments under consideration in good faith but shall not be bound to accept them.

V. NH REMEDY MEMBERS

- A. Within ninety (90) days of approval of this Stipulation by the Court, Defendants shall identify all NH Remedy Members, subject to verification by the Assessment Contractor(s).
- B. Within forty-five (45) days of approval of this Stipulation by the Court, Defendants shall provide Plaintiffs' counsel with one or more draft RFPs to secure one or more contractors ("Assessment Contractor(s)") that will use trained professionals to assess all NH Remedy Members to identify needed Community Housing and Community Services.
 - 1. The RFP or RFPs will specify that the Assessment Contractor(s) shall be persons or entities that employ and use trained professional staff with experience working with people with mental illness and the ability to successfully perform the functions outlined in Section V(C).
 - 2. Plaintiffs' counsel shall have eleven (11) work days to comment on such RFP or RFPs prior to the official issuance thereof; provided, however that, while Defendants shall take any such comments received from Plaintiffs under consideration in good faith, this paragraph shall not be interpreted to require the State to incorporate any such comments, or to otherwise limit the State's authority to establish the terms of the RFP or select the organization(s) to be awarded the contract; and provided, further, that defendants may require plaintiffs' counsel to sign a stipulation of confidentiality prior to receipt of such RFP or RFPs.
 - 3. After Defendants have received comments from Plaintiffs, defendants shall issue the RFP or RFPs in a reasonably prompt manner, and the selection of the Assessment Contractor(s) shall proceed as expeditiously as possible under applicable State law. All contract awards are subject to approval by the Office of the State Comptroller.
- C. Within twenty-four (24) months of approval by the Office of the State Comptroller of the contract or contracts with the Assessment Contractor(s) (see Section V(B) above), Defendants shall complete assessments for all NH Remedy Members.
 - 1. The purpose of the assessments is to:
 - a. determine whether the total needs of each NH Remedy Member are such that they can be met in an appropriate community setting; and

- b. identify for those NH Remedy Members capable of and desiring to live in the community, the specific types of Community Housing and Community Services necessary to maintain them safely in the community, if that is their preference. Such assessments shall be consistent with the Revised PASRR Level II Process and this Stipulation.
2. Neither such assessment nor any other activity undertaken by the Assessment Contractor(s) pursuant to this Stipulation shall relieve any nursing home of its discharge planning obligations with respect to any NH Remedy Member; provided, however that the nursing homes' duties in respect to discharge planning do not relieve Defendants of their obligations under this Stipulation
3. In assessing whether community placement is appropriate for an individual NH Remedy Member, the Assessment Contractor(s) shall meet with the individual face-to-face and:
 - a. Perform a medical, psychiatric and psychosocial evaluation of the individual; and
 - b. Perform a functional assessment of the individual's abilities to engage in ADLs and IADLs necessary to safely live in a community setting.
4. In addition, the Assessment Contractor(s) shall consider:
 - a. The range of Community Housing in New York State where the individual prefers to reside;
 - b. The Community Services required by the Remedy Member to successfully live in the most integrated setting appropriate to his or her needs where he or she will reside;
 - c. The NH Remedy Member's eligibility for Medicaid waiver programs; and
 - d. Whether the individual has been provided with information about Community Housing and Community Services, appropriate to the needs of that individual, in a manner calculated to allow the person to make an informed choice regarding such Community Housing and Community Services.

5. Assessment Contractor(s) engaged in the assessment of individual NH Remedy Members shall:
 - a. Explain the benefits, responsibilities and financial aspects of Community Housing and Community Services for the NH Remedy Member and make reasonable efforts to explore and address concerns for the NH Remedy Member;
 - b. Facilitate NH Remedy Member visits to Community Housing when appropriate; and
 - c. Provide to nursing home staff responsible for discharge planning information regarding the Community Housing and Community Services available where the NH Remedy Member prefers to reside, the individual's eligibility for Medicaid waiver programs, and the individual's discharge preferences.
 6. An assessment determination shall include that information required to be contained in the PASRR New York State Level II Adult Mental Health Evaluation Report. Such determination shall be appealable to the extent permitted by state or federal law.
 7. When the Assessment Contractor(s) determines that an NH Remedy Member can live in the community, defendants shall include the individual on a Community Transition List. NH Remedy Members shall be a "priority population" for those who otherwise meet the eligibility criteria for OMH Community Housing programs.
- D. Defendants shall provide written materials to nursing homes for their information and for distribution to NH Remedy Members' and Members' guardians and community guardians. These materials will discuss Community Housing, Community Services and Medicaid waiver program options available to NH Remedy Members. Defendants shall provide draft written materials to Plaintiffs' counsel within 90 days of approval of this Stipulation by the Court, with an opportunity to provide comments within seven (7) work days; provided, however, that Defendants shall take such comments under consideration in good faith but shall not be bound to accept them.
- E. Any NH Remedy Member discharged to Community Housing prior to the date on which the contract or contract(s) with the Assessment Contractor(s) is approved by the Office of the State Comptroller shall be referred to the Assessment Contractor(s); provided, however, that for such NH Remedy Members, the Assessment Contractor(s) shall confirm that

pre-discharge assessment and discharge planning activities were consistent with this Stipulation, and carry out assessments and discharge planning activities for those NH Remedy Members for whom those activities were not consistent with this Stipulation.

- F. PH Remedy Members referenced in Section IV(C) shall be referred to the Assessment Contractor(s) and the provisions of this Section shall apply to them to the same extent as to NH Remedy Members; provided, however, that the Assessment Contractor(s) shall not be required to duplicate the evaluation that was already conducted under the Revised PASRR Level II Process or discharge planning activities already undertaken as to such PH Remedy Members, but shall use best efforts to reasonably further the purposes of this Section with respect to such individuals.
- G. The parties' counsel may freely communicate ex parte with the Assessment Contractor(s); provided, however that such communication may not interfere with the work of the Assessment Contractors(s); and provided, further, that nothing in this paragraph shall obligate the Assessment Contractor(s) to provide any information beyond that required under the contract(s).

VI. COMMUNITY HOUSING

- A. Within sixty (60) days of the approval by the Office of the State Comptroller of the contract(s) with the Assessment Contractor(s), the Named Plaintiffs shall be assessed and offered Community Housing and Community Services consistent with their clinical and other needs, capabilities and preferences.
- B. Within three (3) years of the approval by the Office of the State Comptroller of the contract with the Assessment Contractor(s) (see Section V(B) above), all NH Remedy Members who are capable of and willing to live in the community, as determined by the Assessment Contractor, will be provided with, or otherwise obtain, Community Housing and Community Services consistent with their needs and preferences.
- C. Defendants shall use reasonable efforts to obtain Community Housing for Remedy Members in neighborhoods with access to public transportation, community services and wheelchair accessible housing appropriate to their needs.
- D. Defendants shall ensure that the housing of any Remedy Member who is hospitalized or placed in a treatment facility after obtaining Community Housing remains available to them for sixty (60) days or for such other period of time as may be provided in statute or regulation or OMH model.

to the extent they have jurisdiction to do so, unless there is no prospect of the Remedy Member returning.

- E. Upon the approval of this Stipulation by the Court, the Defendants shall initiate an ongoing assessment of the existing Community Housing, taking into account the results of the assessment process required in Section V(C) of this Stipulation and assessments by the PASRR Evaluator, to determine what Community Housing is reasonably required to serve Remedy Members capable of living in the community.

VII. COMMUNITY SERVICES

- A. Upon the approval of this Stipulation by the Court, the Defendants shall initiate an ongoing assessment of the existing Community Services, guided by the results of the assessment process required in Section V(C) of this Stipulation and assessments by the PASRR Evaluator, to determine what services are reasonably required to serve Remedy Members capable of living in the community.
- B. All Remedy Members determined by the Assessment Contractor and PASRR Evaluator as able to move to Community Housing, and who do move to Community Housing, will have reasonable access to the array and intensity of Community Services consistent with their clinical needs that are necessary to transition to and live in Community Housing.
- C. Defendants shall consider development of federal Medicaid waivers to facilitate meeting the goals of this Stipulation.
- D. Defendants shall designate or retain one or more persons, in accordance with applicable provisions of law, who will serve as Community Transition Coordinator(s), for the purpose of facilitating the discharge of Remedy Members to the community, as appropriate. Such Community Transition Coordinator(s) shall have experience directly relevant to facilitating discharges to or among community settings.

VIII. ENFORCEMENT

- A. The Court shall retain jurisdiction to assure compliance with this Stipulation but not for more than four years from the date this Stipulation is approved by the Court, at which time this Stipulation shall expire. Plaintiffs may move to extend the Court's jurisdiction, which motion shall be granted if the Plaintiffs show by a preponderance of the evidence that significant actions required by this agreement have not yet been completed.

- B. During the four (4) years after this Stipulation is approved by the Court, Defendants shall provide to Plaintiffs' counsel:
1. A copy of the PASRR Evaluator's monthly program report;
 2. A copy of the Assessment Contractor(s)'s monthly report, which shall include:
 - a. A listing of nursing home residents (name and location where the assessment was completed) assessed by the Assessment Contractor and the dates on which the assessment were completed;
 - b. The identification of the assessed nursing home resident's housing preference, if any;
 - c. A determination as to whether or not the individual has the functional capabilities to live safely in the community; and
 - d. The range of community services necessary for the safe and appropriate transition of the assessed nursing home resident.
 3. The Evaluation Reports completed by the Assessment Contractor(s) for those NH Remedy Members for whom community placement was found not appropriate.
 4. A quarterly report completed by the Community Transition Coordinator, which shall include the discharge locations for each assessed nursing home resident.
 5. A copy of that portion of any Community Transition List applicable to any person on such a list as a result of this Stipulation, updated quarterly.
 6. Any requests by the Plaintiffs' counsel for relevant information in addition to the information set forth in this section shall not be unreasonably denied. The parties shall negotiate in good faith any areas of disagreement as to whether such information shall be made available.
 7. Defendants shall provide information to Plaintiffs' counsel regarding the development of Community Housing at the quarterly meeting described in paragraph VIII(C) below.

C. The parties will meet on a quarterly basis, together with representatives of the Assessment Contractor(s) and the Community Transition Coordinator, to discuss progress and reporting issues.

D. Dispute Resolution

1. In the event of any reported non-compliance by Defendants with a material provision of this Stipulation, counsel to the parties shall meet and confer in an effort to resolve the reported non-compliance within 30 days of receipt of written notice by Defendants' counsel.
2. In the event of a claimed pattern of non-compliance with a material provision of this Stipulation and a failure to achieve a resolution of the issue within 60 days of the meet and confer, either side may seek non-binding mediation by the Court, *provided that the Court may decline to provide or conduct such mediation.*
3. If such mediation fails to achieve a resolution, Plaintiffs may bring a motion for enforcement of this Stipulation and the Court shall determine a reasonable schedule for the hearing and determination of such motion. In the event of such a motion, Defendants will be considered to be in "compliance" unless Plaintiffs establish that Defendants' failures or omissions to meet the terms of this Stipulation were not minimal or isolated but were substantial and sufficiently frequent or widespread to be systemic.
4. For purposes of such a motion addressing systemic non-compliance, non-systemic individual and isolated violations of this Stipulation shall not form a basis for a finding that Defendants are not in compliance with this Stipulation nor shall they serve as the basis for a finding of contempt under this Stipulation. This paragraph shall not be construed to interfere with any right of Plaintiffs to seek a remedy of contempt based on an alleged violation by the Defendants of a written order of the court (if any) that was itself the result of a prior successful application of the Plaintiffs to enforce one or more specific provisions of this Stipulation.

IX. ATTORNEYS' FEES AND COSTS

- A. In full settlement of all attorneys' fees and other costs that have been or will be incurred in connection with the litigation, Defendants shall pay to Plaintiffs' counsel \$2.5 million; provided, however, that additional fees or costs arising from a motion for enforcement pursuant to Section VIII(D) above may be payable as approved by the court.

- B. Payment of the \$2.5 million amount referenced in paragraph A will be made as follows:
 - 1. Within 30 days of the enactment of the New York State budget for fiscal year 2012-13, Defendants shall provide to Plaintiffs' counsel a check for one million dollars.
 - 2. Within 30 days of the enactment of the New York State budget for fiscal year 2013-14, Defendants shall provide to Plaintiffs' counsel a check for one million dollars.
 - 3. Within 30 days of the enactment of the New York State budget for fiscal year 2014-15, Defendants shall provide to Plaintiffs' counsel a check for \$500,000 dollars.
- C. Payment of each of the amounts referred to in this Section is subject to the approval of all appropriate New York State officials in accordance with the provisions of Section 17 of the New York Public Officers Law and, for each fiscal year, shall be subject to appropriation. Defendants will use their best efforts to secure such approvals and appropriations.

X. MISCELLANEOUS

- A. Approval of this Stipulation shall be deemed to occur on the date the Court "So Orders" the Stipulation and the Stipulation shall be deemed effective on that date.
- B. Nothing contained herein shall be deemed to be an admission by the Defendants that they have in any manner or way violated the Named Plaintiffs' or any Remedy Member's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the State of New York.
- C. This Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except in an action or proceeding by the Plaintiffs to enforce the terms of this Stipulation.
- D. The parties and their counsel shall, during the period that this Stipulation is in effect, continue to be bound by all Protective Orders entered in this litigation. This obligation shall encompass information obtained pursuant to this Stipulation.
- E. Nothing in this Stipulation shall be interpreted to require a fundamental alteration of the State's services.

- F. Nothing contained herein shall be deemed to constitute a policy or practice of the Defendants or the State of New York.
- G. This Stipulation contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.
- H. All parties to this Stipulation have participated in its drafting; consequently, any ambiguity shall not be construed for or against any party.
- I. If any of the dates or periods of time described in this Stipulation fall or end on a public holiday or on a weekend, the date or period of time shall be extended to the next business day.
- J. All correspondence concerning this Stipulation should be sent to the following (or to such other address as the recipient named below shall specify by notice in writing hereunder):

To Defendants:

John Gasior, Assistant Attorney General
Office of the Attorney General
120 Broadway 24th floor
New York, New York 10271
Tel: 212-416-8570
e-mail: john.gasior@ag.ny.gov

To Plaintiffs:

Amy E. Lowenstein, Esq.
Disability Advocates, Inc.
5 Clinton Square, 3rd Floor
Albany New York 12210
Tel. 518-432-7861
e-mail: AL@DisabilityAdvocates.org

Veronica S. Jung, Esq.
New York Lawyers for the Public Interest, Inc.
vjung@nylpi.org

- K. This Stipulation may not be modified without the express written agreement of counsel for the parties. Absent such agreement, the parties

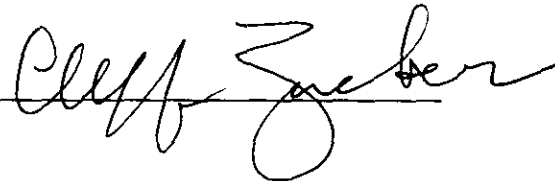
may seek a modification of this Stipulation only for good cause shown, with the Court's approval, upon thirty (30) days' written notice to counsel for the other parties.

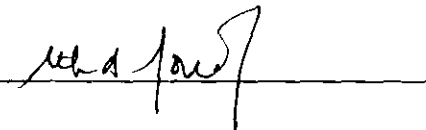
L. This Stipulation may be executed in counterparts, and each counterpart, when executed shall have the full efficacy of a signed original. Photocopies of such signed counterparts may be used in lieu of the originals for any purpose.


M. Signatories

1. The undersigned representative of the Defendants to this litigation and the Attorney General of the State of New York certifies that he is authorized to enter into the terms and conditions of this Stipulation and to execute and bind legally such Defendants to this document.
2. Each undersigned representative of Plaintiffs certifies that he or she is authorized to enter into the terms and conditions of the Stipulation and to bind legally the Plaintiffs to this document.

For Plaintiffs JOSEPH S.; STEVEN W.; and DISABILITY ADVOCATES, INC.:

Dated: 9/6/2011 By: 
Cliff Zucker
Timothy A. Clune
Nina Loewenstein
Amy E. Lowenstein
DISABILITY ADVOCATES, INC.
5 Clinton Square, 3rd Floor
Albany, New York 12207
(518) 432-7861

Dated: 9/6/11 By: 
Beth D. Jacob
Robert H. Rickner
SCHIFF HARDIN LLP
666 Fifth Avenue, Suite 1700
New York, New York 10103
(212) 753-5000

Dated: 9/6/11 By: 
Veronica S. Jung

Kelly McAnnany
Aditi Kothekar Shah
NEW YORK LAWYERS FOR THE PUBLIC
INTEREST, INC.
151 West 30th Street, 11th Floor
New York, New York 10001
(212) 244-4664

For Defendants GOVERNOR ANDREW M. CUOMO, MICHAEL F. HOGAN, THE
NEW YORK STATE OFFICE OF MENTAL HEALTH, NIRAV R. SHAH, and THE
NEW YORK STATE DEPARTMENT OF HEALTH:

Dated: September 6, 2011 By: [Signature]
John Gasior
Joshua Pepper
ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271
(212) 416-8570

SO ORDERED

Dated: Brooklyn, New York

September 6, 2011

[Signature]

s/ BMC

BRIAN M. COGAN

United States District Judge

PREADMISSION SCREEN RESIDENT REVIEW (PASRR) NYS LEVEL II ADULT MENTAL HEALTH EVALUATION

A. IDENTIFICATION

Assessment Date: _____

Individual's Name: _____

Date of Birth: _____

Medicaid #: _____ PASRR Case #: _____

Current Location: _____

Telephone: _____

Evaluator's Name: _____

Others in Attendance & Relationship to Individual:

B. DOCUMENTATION

The following information is required to complete the assessment. If the information is not provided by the referring entity, the evaluator must obtain the information before proceeding.

_____ A comprehensive history and physical examination, including a complete medical history, review of all body systems, specific evaluation of the individual's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves and abnormal reflexes.

_____ A functional assessment of the individual's ability to engage in ADL's and IADL's. The assessment must address self-monitoring of health status, self-administering and scheduling of medical treatment, including medication compliance, self-monitoring of nutritional status, handling of money, dressing appropriately, and grooming.

_____ Psychosocial evaluation, including current living arrangements, medical and support systems.

_____ A comprehensive psychiatric evaluation, including a complete psychiatric history, evaluation of intellectual functioning, memory functioning and orientation, description of current attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations.

_____ PRI or H/C PRI

_____ SCREEN

_____ Physician request for RHCF placement or current RHCF monthly order sheet.

_____ Social Service and Discharge Planning documentation relevant to PASRR request.

_____ RHCF progress notes and psychiatric/applicable consults related to significant change.

C. MEDICAL REVIEW

Medical History: Please check condition(s) that the individual has or has had in the past. (Check all that apply)

- ___ Alcoholism
- ___ Alzheimer/Dementia
- ___ Amputation
- ___ Arthritis
- ___ Anemia
- ___ Cancer
- ___ CVA (stroke)
- ___ Diabetes
- ___ Drug Abuse
- ___ Epilepsy/Seizure Disorder
- ___ Gastric Disease
- ___ Glaucoma/Cataract
- ___ Heart Disease
- ___ High Blood Pressure
- ___ Kidney Disease
- ___ Mental Illness
- ___ Paralysis
- ___ Parkinson's Disease
- ___ Respiratory: Asthma/ Bronchitis/Emphysema
- ___ Skeletal Trauma
- ___ Skin Disease/Ulcers
- ___ TBI
- ___ Thyroid Disease
- ___ Tuberculosis
- ___ Nutritional Deficit
- ___ Other (Specify below):

Please check adaptive equipment that the individual uses:

- ___ Artificial Limb
- ___ Walker
- ___ Cane
- ___ Bedside Commode
- ___ Wheelchair
- ___ Hospital Bed
- ___ Other (specify)

Comments: _____

Medications: List all medications the individual is currently taking. Include the dose, route and frequency.

Current Medications:	Dose/Route/Frequency:

List all discontinued medications the individual has taken in the last 30 days. Include the dose, route, frequency and note the date of the last dose.

Discontinued Medications:	Dose/Route/Frequency:	Date of Last Dose:

D. MENTAL HEALTH EVALUATION

Complete this section based upon the documentation provided and interview with the individual and/or the individual's representative.

- 1) Does the individual have a diagnosed mental health problem or a history of receiving mental health services within the past two years?

_____ 1=Yes
2=No

- 2) If the answer to question D.1 is **Yes**:

- a. Indicate where the mental health services were provided and with what frequency in the past 30 days.

- b. Below, list the specific mental health services that the individual is currently receiving. Specify the professional title of the individual providing the mental health service (MSW, psychologist, psychiatrist, etc.).

- 3) **Indicate, using the scale provided, if the individual exhibits the following behaviors.**

1=No problem 2=Minor problem 3=Moderate problem 4=Serious problem

_____ Emotional withdrawal
_____ Depressive mood
_____ Suspiciousness
_____ Uncooperativeness
_____ Inappropriate behavior in group settings
_____ Takes others' property without permission
_____ Reacts poorly to criticism, stress or frustration
_____ Has a problem/history of drug/alcohol abuse

- 4) Identify positive and negative behavioral traits, including a description of current attitudes and mood:

5) Memory Deficit:

Known history of forgetful behavior that is dangerous to self or others:

- _____ 1=No/minimal problem
2=Occurs less than once per week
3=Occurs once per week or more or a special problem exists

- 6) Impaired Decision Making:** Makes seriously inappropriate decisions or unable to make decisions regarding routine matters - not due to lack of knowledge.

- _____ 1=No/minimal problem
2=Occurs less than once per week
3=Occurs once per week or more or a special problem exists

- 7) Delusions/Hallucinations:** Experienced at least once per week during the past four weeks, visual, auditory or tactile perceptions that have no basis in external reality.

- _____ 1=Yes
2=No

If yes, describe the content of the delusions/hallucinations: _____

- 8) Orientation:** Ability to identify familiar people, to recognize date and time, and to recognize the environment.

- _____ 1=Good mental clarity, generally oriented to time, place and person
2=Occasional episodes of disorientation (i.e., 1-3 days during the past month)
3=Frequent episodes (i.e., once per week during the past month but not daily)
4=Daily intermittent episodes of disorientation
5=Total disorientation on a daily basis

9) Wandering: Unsafe roaming without purpose and without regard to safety.

- _____ 1=Does not wander
2=Wanders safely
3=Occasionally (i.e., less than once per week) jeopardizing safety
4=Frequently (i.e., at least once per week) jeopardizing safety

10) Verbal Disruption: Yelling, baiting, threatening.

- _____ 1=None in the past four weeks
2=Occurred in past four weeks but not at least once per week
3=Predictable behavior occurred in past four weeks regardless of frequency
4=Unpredictable, disruptive behavior at least once per week but not daily
5=Daily episodes of unpredictable, disruptive behavior

11) Disruptive, Infantile or Socially Inappropriate Behavior: Childish, repetitive or anti-social physical behavior that creates disruption to others. Does not include verbal abuse.

- _____ 1=None in the past four weeks
2=Occurred in past four weeks but not at least once per week
3=Predictable behavior occurred in past four weeks regardless of frequency
4=Unpredictable, disruptive behavior at least once per week but not daily
5=Daily episodes of unpredictable, disruptive behavior

12) Physical Aggression: Combative or assaultive to self or others.

- _____ 1=None in the past four weeks
2=Occurred in past four weeks but not at least once per week
3=Predictable behavior occurred in past four weeks regardless of frequency
4=Unpredictable, disruptive behavior at least once per week but not daily
5=Daily episodes of unpredictable, disruptive behavior

13) Danger to Self or Others: Based on your interview with the individual (and/or available informants), and/or a review of this individual's medical record, is there any evidence to suggest that this individual is, or may have been, a danger to self or others during the past two years?

- _____ 1=Yes
2=No

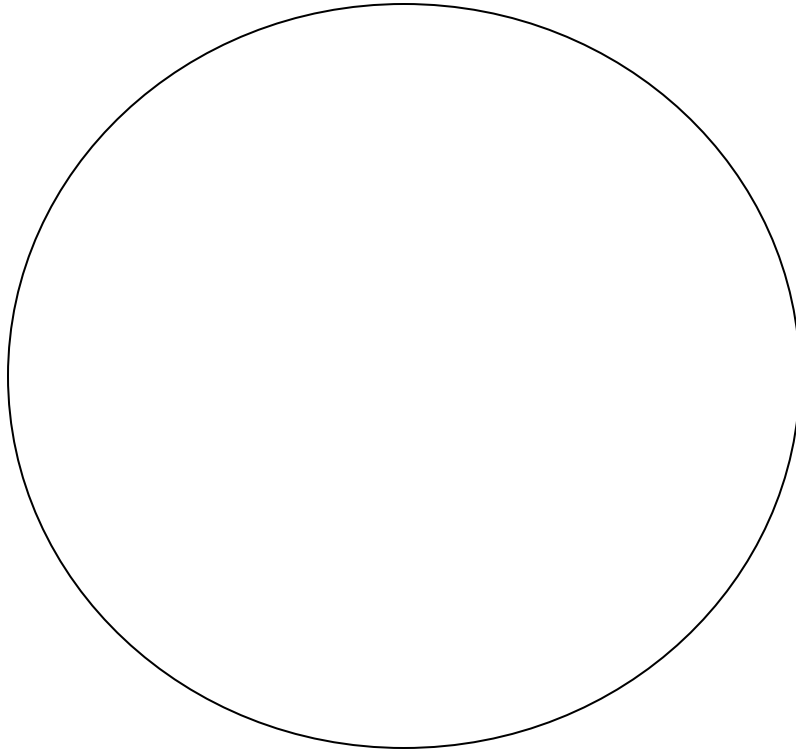
E. SAINT LOUIS UNIVERSITY MENTAL STATUS (SLUMS) EXAMINATION

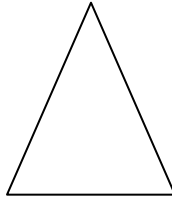
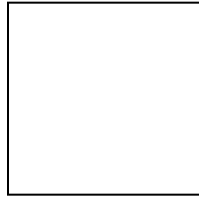
- ____ 1) What day of the week is it? (1 point for the right answer)
- ____ 2) What is the year? (1 point)
- ____ 3) What state are we in? (1 point)
- 4) Please remember these five objects. I will ask you what they are later:
- Apple, Pen, Tie, House, Car. (No points yet)
- ____ 5) You have \$100 and you go to the store and buy a dozen apples for \$3 and a tricycle for \$20.
- How much did you spend? (1 point)
 - How much do you have left? (2 points)
- ____ 6) Please name as many animals as you can in one minute. (No point for naming 0-4; 1 point for naming 5-9; 2 points for naming 10-14; and 3 points for naming 15 or more.)
- ____ 7) What were the five objects I asked you to remember? (1 point for each object remembered.)
- ____ 8) I am going to say a series of numbers and I would like you to give them to me backwards. For example, if I say 42, you would say 24.
- 87 (0 points)
 - 649 (1 point)
 - 8537 (1 point)
- ____ 9) (Draw circle.) This circle represents a clock face. Please put in the hour markers and the time at ten minutes to eleven o'clock.
- (2 points for hour markers labeled correctly)
 - (2 points for correct time)
- ____ 10) (Show a triangle, a square and a rectangle.) Please place an X in the triangle. (1 point)
- ____ 11) Which of those objects is the largest? (1 point)
- 12) I am going to tell you a story. Please listen carefully because afterward, I'm going to ask you some questions about it.
- Jill was a very successful stockbroker. She made a lot of money in the stock market. She then met Jack, a devastatingly handsome man. She married him and had three children. They lived in Chicago. She then stopped working and stayed at home to bring up her children. When they were teenagers, she went back to work. She and Jack lived happily ever after.
- ____ What was the female's name? (2 points)

_____ **Total Score**

Less than high school education: Normal: 25-30; Mild neurocognitive disorder: 20-24; Dementia: 1-19.

[illegible]





F. PSYCHOSOCIAL/FUNCTIONAL EVALUATION

- 1) Describe the individual's usual living arrangements, including the names and types of facilities involved:

- 2) Describe any factors pertaining to the patient's psycho-behavioral status that relate to the individual's potential site of placement, including medical and support systems:

- 3) Identify positive traits, developmental strengths and/or weaknesses, and developmental needs:

- 4) Based on the PRI or H/C PRI:

What is the Activities of Daily Living (ADL) score? _____

What is the RUG II score? _____

- 5) Does the individual have a diagnosis of Traumatic Brain Injury (TBI)?

YES____ **NO**____

If yes, has placement in a neurobehavioral facility been considered?

YES____ **NO**____

Please describe: _____

G. SERIOUS MENTAL ILLNESS

Based upon this Level II evaluation, is there sufficient evidence that the individual may have a serious mental illness as set forth in 42 CFR 483.102?

YES____ **NO**____

If no, explain below. The evaluation ends. Proceed to the PASRR Level II Evaluation Report.

H. EVALUATING THE NEED FOR NURSING FACILITY SERVICES AND NURSING FACILITY LEVEL OF CARE

1) Has the individual had prior attempts at community placement?

YES____ **NO**____

a. If yes, how many? _____

b. Describe this individual's history of community placement, including unsuccessful placement(s): _____

2) Based on the information available and your evaluation, do you agree or disagree with the SCREEN referral recommendation (item 21)?

AGREE _____ **DISAGREE** _____

Explain: _____

3) The individual's total needs are such that his or her needs can be met in the appropriate community setting;

YES____ **NO** ____

- 4) The individual's total needs are such that they can be met through placement in a home and community-based waiver program, and such a program is available to the individual. A waiver program provides support and services to assist individuals with disabilities and seniors towards successful inclusion in the community, when otherwise inpatient care would be required.

YES____ **NO** ____

- 5) The individual's total needs are such that placement in a home and community based waiver program was considered, but determined not to be appropriate or feasible at this time. Inpatient care is appropriate and desired, and the nursing facility is an appropriate setting for meeting the individual's needs in accordance with 42 CFR 483.126;

YES____ **NO** ____

- 6) If the answer to item 5 is yes, are any services of lesser intensity (SLI) recommended?

YES____ **NO** ____

If yes, check the level of SLI recommended, and in the space provided document the findings supporting your recommendation:

SLI Level 1_____

SLI Level 2_____

SLI Level 3_____

- 7) If inpatient care is appropriate and desired, but the nursing facility is not the appropriate setting for meeting the individual's needs in accordance with 42 CFR 483.126, another setting such as an Institution For Mental Diseases (IMD) providing services to individuals aged 65 and older, or a psychiatric hospital may be an appropriate institutional setting for meeting those needs.

YES____ **NO** ____ **If yes, refer to IPRO physician for specialized services review.**

Summary of Findings: _____

Signature of Evaluator (Reviewer): _____ **Date:** _____

I. SPECIALIZED SERVICES REVIEW

A functional behavioral impairment has been identified which requires review for **SPECIALIZED SERVICES** (Active Treatment) by the Office of Mental Health. The current psychiatric diagnosis and DSM code is: _____

Psychiatrist Signature: _____ **Date:** _____

OR

A review for **SPECIALIZED SERVICES** (Active Treatment) by the Office of Mental Health is not required.

Psychiatrist Signature: _____ **Date:** _____

Individual's Name: _____

PASRR Case #: _____

**PREADMISSION SCREEN RESIDENT REVIEW (PASRR)
NYS LEVEL II ADULT MENTAL HEALTH EVALUATION REPORT**

The evaluator must send a copy of this Evaluation Report to the individual and his/her legal representative, the New York State Office of Mental Health, the admitting or retaining Residential Health Care Facility (RHCF), the individual's attending physician and the discharging hospital if the individual is seeking RHCF admission from a hospital. The state may convey its determination verbally to the RHCF and the individual, and confirm the determination in writing.

Individual's Name: _____**Medicaid Number:** _____ **PASRR Case Number** _____**Current Location:** _____**Telephone Number:** _____**Name of Evaluator (Please Print):** _____**Evaluator Signature:** _____**Professional Title of Evaluator:** _____**Date of Evaluation:** _____

_____ It has been determined that this individual does not require a PASRR Level II Evaluation at this time.

Summary Findings: _____

This evaluation report is based on a comprehensive history of the individual; a physical examination, functional assessment, psychosocial evaluation and psychiatric evaluation of the individual; the individual's H/C PRI and SCREEN; social service and discharge planning documentation for the individual; interviews and other information as needed.

Summary of the Medical History: _____

Summary of the Social History, including positive traits, or developmental strengths and weaknesses, or developmental needs of the evaluated individual:

**RECOMMENDATION FOR COMMUNITY SETTING, NURSING FACILITY LEVEL
OF CARE, OR NURSING FACILITY SERVICES**

After assessing the individual's total needs, mark the recommended placement option below with an X.

1. ____ The individual's total needs are such that his or her needs can be met in the appropriate community setting.
2. ____ The individual's total needs are such that they can be met through placement in a home and community-based waiver program, and such a program is available to the individual. A waiver program provides support and services to assist individuals with disabilities and seniors toward successful inclusion in the community, when otherwise inpatient care would be required.
3. ____ The individual's total needs are such that placement in a home and community-based waiver program was considered, but determined not to be appropriate or feasible at this time. Inpatient care is appropriate and desired, and the nursing facility is an appropriate setting for meeting the individual's needs.

If placement option #3 is marked with an "X", explain the rationale for that recommendation, and describe the specific services required below:

RECOMMENDATION FOR MENTAL HEALTH SERVICES OF LESSER INTENSITY

If placement option #3 is marked with an "X", and mental health services of lesser intensity (SLI) are recommended, mark the level below:

____ Level 1

- Psychiatric and medication evaluation by a psychiatrist or MD, with psychiatric consultation within 1 week after admission
- Development of a written, person-centered, psychiatric plan of care.
- Ongoing psychiatric consultation and medication management by a psychiatrist or licensed prescriber every 2 weeks to monitor side effects of medication and to attain the highest efficacy with the lowest toxicity.
- Weekly recovery oriented clinical counseling focused on goal achievement by overcoming barriers due to the individual's mental illness.
- Therapeutic group interventions at least twice weekly that will assist in addressing the emotional, cognitive and behavioral symptoms of a mental health disorder.

____ Level 2

- Psychiatric and medication evaluation by a psychiatrist or MD, with psychiatric consultation within 1 week after admission
- Development of a written, person-centered, psychiatric plan of care.
- Ongoing psychiatric consultation and medication management by a psychiatrist or licensed prescriber every 4 weeks to monitor side effects of medication and to attain the highest efficacy with the lowest toxicity.
- Bi-monthly recovery oriented clinical counseling focused on goal achievement by overcoming barriers due to the individual's mental illness.
- Therapeutic group interventions at least weekly that will assist in addressing the emotional, cognitive and behavioral symptoms of a mental health disorder.

____ Level 3

- Psychiatric and medication evaluation by a psychiatrist or MD, with psychiatric consultation within 1 week after admission
- Development of a written, person-centered, psychiatric plan of care.
- Ongoing psychiatric consultation and medication management by a psychiatrist or licensed prescriber every 8 weeks to monitor side effects of medication and to attain the highest efficacy with the lowest toxicity.
- Bi-monthly recovery oriented clinical counseling focused on goal achievement by overcoming barriers due to the individual's mental illness.
- Therapeutic group interventions at least bi-monthly that will assist in addressing the emotional, cognitive and behavioral symptoms of a mental health disorder.

RECOMMENDATION FOR SPECIALIZED SERVICES

____ Inpatient care is appropriate and desired but the nursing facility is not the appropriate setting for meeting the individual's needs. Another setting, such as an Institution For Mental Diseases (IMD), providing services to individuals aged 65 and older, or a psychiatric hospital, is an appropriate institutional setting for meeting those needs. Specialized Services (Active Treatment) are recommended and described below. For mental illness, specialized services means the services specified by the State Mental Health Authority which result in an individualized plan of care that demands hospitalization.

The referring entity interpreted and explained this PASRR Level II Evaluation Report to the individual and where applicable, the individual's legal representative on:

Date: _____

Signature of the Referring Entity Representative: _____

A copy of this Evaluation Report was sent to:

The individual: _____ Date: _____

Legal representative: _____ Date: _____

NYSOMH: _____ Date: _____

RHCF: _____ Date: _____

Attending physician: _____ Date: _____

Discharging hospital: _____ Date: _____

Please read the next page concerning your right to appeal this determination

You have a right to appeal your PASRR determination.

Right to a Fair Hearing: If you believe that this determination is wrong, you may request a State fair hearing by contacting the New York State Office of Temporary and Disability Assistance (OTDA).

1. **Telephone:** You may call the statewide toll-free number: **800-342-3334** (please have this Report with you when you call); OR
2. **Fax:** First, fill in the information below and then send a copy of this page to fax no. **(518) 473-6735**; OR
3. **On-line:** Complete and send the online request form at <http://www.otda.ny.gov/oah/forms/asp> OR
4. **Write:** First, complete the information below and then send copy of this page to the Fair Hearing Section, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York, 12201. Please keep a copy for yourself.

You have 60 days from the date of this Report to request a fair hearing.

_____ I want a fair hearing. This determination is wrong because:

Print Name _____

Case Number _____

Address _____

Telephone _____

If you request a fair hearing, the OTDA will send you a Notice of Fair Hearing that tells you when and where the hearing will be held and provides additional information about your rights.

You have the right to be represented by an attorney, a relative, a friend or other person. If your representative is not a lawyer, you must bring to the hearing a written letter, signed by you, saying that you want that person to represent you.

If you need free legal help, you may be able to obtain that help by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or other legal advocate group by checking your yellow pages under "Lawyers."

At the hearing, you, your attorney or your representative will have a chance to explain why you think this determination is wrong, and to present written and oral evidence to demonstrate why it is wrong, as well as an opportunity to question any people who appear at the hearing. Also, you have a right to bring witnesses to the hearing to speak in your favor. You should bring to the hearing any documents that might be helpful in presenting your case, such as medical records.

You have a right to look at documents from your case file to the extent consistent with state or federal law or regulation. If you call or write, we will provide you with free copies of the documents from your file that are provided to the hearing officer at the fair hearing. Also, if you call or write, we will provide you with free copies of other documents from your file that you think you may need to prepare for your fair hearing. You or your representative may be asked to submit an Authorization for Release of Information Form. To ask for documents or find out how to look at your file, call **1-800-633-9441** or write to: IPRO, PASRR Department, 1979 Marcus Avenue, Lake Success, NY 11042-1002, Attn: Doreen Walz RN, Assistant Director. Documents will not be sent to you unless you make a specific request for them.

You have the right to have a language or sign interpreter provided to you at no cost at the hearing. To secure an interpreter, call OTDA at **800-342-3334** or write to OTDA at the address above.

If you are homebound and unable to travel to the hearing, you may appear at the hearing through a representative. If you have no representative or wish to participate directly in the hearing, a telephone hearing may be scheduled for you. At the time you request a fair hearing, you should tell the interviewer at OTDA or explain in your letter or fax that you are homebound. You will then be contacted by OTDA with more information. You will be asked to provide medical documentation that states that you cannot travel to the regular hearing location.

If you have questions about the fair hearing process, contact OTDA at **800-342-3334**, or go to www.otda.ny.gov/oah.

MISCELLANEOUS / CONSULTANT SERVICES

Attachment 15

STATE AGENCY (Name and Address):

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE:12000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:

TO:

CONTRACTOR HAS () HAS NOT () TIMELY
FILED WITH THE ATTORNEY GENERAL'S
CHARITIES BUREAU ALL REQUIRED
PERIODIC OR ANNUAL WRITTEN REPORTS

FUNDING AMOUNT FOR CONTRACT
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

MUNICIPALITY NO. (if applicable):

STATUS:

CONTRACTOR IS () IS NOT () A
SECTARIAN ENTITY

CONTRACTOR IS () IS NOT () A
NOT-FOR-PROFIT ORGANIZATION

() IF MARKED HERE, THIS CONTRACT'S
RENEWABLE FOR __ ADDITIONAL
ONE-YEAR PERIOD(S) AT THE SOLE
OPTION OF THE STATE AND SUBJECT
TO APPROVAL OF THE OFFICE OF THE
STATE COMPTROLLER.

CONTRACTOR IS () IS NOT () A
N Y STATE BUSINESS ENTERPRISE

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

Precedence shall be given to these documents in the order listed below.

- X APPENDIX A Standard Clauses as required by the Attorney General for all State Contracts.
- ___ APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
- ___ APPENDIX Q Modification of Standard Department of Health Contract Language
- X STATE OF NEW YORK AGREEMENT
- X APPENDIX D General Specifications
- X APPENDIX B Request For Proposal (RFP)
- X APPENDIX C Proposal
- X APPENDIX E-1 Proof of Workers' Compensation Coverage
- X APPENDIX E-2 Proof of Disability Insurance Coverage
- X APPENDIX H Federal Health Insurance Portability and Accountability Act Business Associate Agreement
- X APPENDIX G Notices
- ___ APPENDIX __:

Contract No.:

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

CONTRACTOR

STATE AGENCY

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

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 Department of Health (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this AGREEMENT; and

WHEREAS, the STATE has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment in connection therewith;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option 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. The modification agreement is subject to the approval of the Office of the State Comptroller.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "Request For Proposal" and "RFP" include all Appendix B documents as marked on the face page hereof.
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment:

.
.

- B. Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>.

Completed W-9 forms should be submitted to the following address:

NYS Office of the State Comptroller
Bureau of Accounting Operations
Warrant & Payment Control Unit
110 State Street, 9th Floor
Albany, NY 12236

III. Term of Contract

- A. Upon approval of the NYS Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

IV. Proof of Coverage

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

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

1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
2. 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
3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

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

1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
2. DB-120.1 – Certificate of Disability Benefits Insurance OR
3. DB-155 – Certificate of Disability Benefits Self-Insurance

V. 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.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7

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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually

agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(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, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts 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. 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 Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the

subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has

retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

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).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX D GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that all specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specifications, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.
- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, e-mail, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department, and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable, and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety shall be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowance or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. 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.
- I. Non-Collusive Bidding By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
 - a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
 - b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
 - c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any bid made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. A bidder may be disqualified from receiving awards if such bidder 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.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed for use in the application software provided to the Department as a part of this contract.

- M. Technology Purchases Notification --The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"
1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
 2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
 3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.
- N. Date/Time Warranty
1. Definitions: For the purposes of this warranty, the following definitions apply:

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.

"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is : (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.
 2. Date/Time Warranty Statement

Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.
- O. No Subcontracting Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- P. Superintendence by Contractor The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.
- Q. Sufficiency of Personnel and Equipment If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.
- R. Experience Requirements The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.
- S. Contract Amendments This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.
- The contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.
- T. Provisions Upon Default

1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor
 2. If, in the judgment of the Department of Health, the Contractor 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 this agreement by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.
- U. Upon termination of this agreement, the following shall occur:
1. Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
 2. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.
- V. Conflicts If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.
- W. MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT The New York State Department of Health recognizes the need to take affirmative action to ensure that Minority and Women Owned Business Enterprises are given the opportunity to participate in the performance of the Department of Health's contracting program. This opportunity for full participation in our free enterprise system by traditionally, socially and economically disadvantaged persons is essential to obtain social and economic equality and improve the functioning of the State economy.
- It is the intention of the New York State Department of Health to fully execute the mandate of Executive Law, Article 15-A and provide Minority and Women Owned Business Enterprises with equal opportunity to bid on contracts awarded by this agency in accordance with the State Finance Law.
- To implement this affirmative action policy statement, the contractor agrees to file with the Department of Health within 10 days of notice of award, a staffing plan of the anticipated work force to be utilized on this contract or, where required, information on the contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Department. The form of the staffing plan shall be supplied by the Department.
- After an award of this contract, the contractor agrees to submit to the Department a work force utilization report, in a form and manner required by the Department, of the work force actually utilized on this contract, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Department.
- X. Contract Insurance Requirements
1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:
 - a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
 - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
 - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
 - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
 - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

- Y. 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 PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS**

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to whom 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 5 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 or 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.

Z. Confidentiality Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer

that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.

2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

AA. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the STATE's designated payment office address included in this AGREEMENT; and
 - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting -or via fax at (518) 474-8030 or (518) 473-8808; and
 - c. The NYS Department of Civil Service, Alfred E. Smith Office Building, Albany NY 12239, ATTN: Consultant Reporting.

BB. Provisions Related to New York State Procurement Lobbying Law The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

CC. Provisions Related to New York State Information Security Breach and Notification Act 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.

DD. Lead Guidelines 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.

December, 2011

Appendix G

NOTICES

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

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

Such notices shall be addressed as follows or to such different addresses as the parties may from time to time designate:

State of New York Department of Health

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Insert Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

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

The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this AGREEMENT by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this AGREEMENT. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

Appendix H

for CONTRACTOR that uses or discloses individually identifiable health information on behalf of a New York State Department of Health HIPAA-Covered Program

- I. Definitions. For purposes of this Appendix H of this AGREEMENT:
 - A. “Business Associate” shall mean CONTRACTOR.
 - B. “Covered Program” shall mean the STATE.
 - C. Other terms used, but not otherwise defined, in this AGREEMENT shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate:
 - A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
 - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT.
 - C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this AGREEMENT.
 - D. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
 - 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - 4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
 - 5. Contact procedures for Covered Program to ask questions or learn additional information.
 - E. 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 Business Associate on behalf of Covered Program agrees to the same restrictions and conditions that apply through this AGREEMENT to Business Associate with respect to such information.

- F. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
 - G. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
 - H. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
 - I. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
 - J. Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
 - K. Business Associate agrees to comply with the security standards for the protection of electronic protected health information in 45 CFR § 164.308, 45 CFR § 164.310, 45 CFR § 164.312 and 45 CFR § 164.316.
- III. Permitted Uses and Disclosures by Business Associate
- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
 - B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
 - C. Business Associate may disclose Protected Health Information as Required By Law.
- IV. Term and Termination
- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by

Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix H of this AGREEMENT.

- B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if 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, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, 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.

V. Violations

- A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided,

however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

- A. Regulatory References. A reference in this AGREEMENT to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
- B. Amendment. Business Associate and Covered Program 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 HIPAA, HITECH and 45 CFR Parts 160 and 164.
- C. Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix H 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 Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- E. HIV/AIDS. If HIV/AIDS information is to be disclosed under this AGREEMENT, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.