
NEW YORK STATE DEPARTMENT OF HEALTH
Office of Health Insurance Programs
Division of Financial Planning and Policy

Funding Availability Solicitation (FAS)
New York State Medicaid Transportation Management Initiative –
Finger Lakes and Northern New York Regions

RFP No: 1208060100

Schedule of Key Events

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Written Questions Due November 29, 2012

Response to Written Questions..... On or About December 13, 2012

Proposal Due Date..... January 7, 2013

Contract Start Date (Anticipated) March 4, 2013

Contacts 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:

Mr. Joseph Zeccolo
New York State Department of Health
Fiscal Management Group
Empire State Plaza
Corning Tower, Room 2266
Albany, NY 12237

Telephone: 518-486-7894
Email Address: jxz02@health.state.ny.us

Permissible Subject Matter Contact for this FAS:

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 Proposals

Mr. Mark Bertozzi
New York State Department of Health
Office of Health Insurance Programs, Division of Program Development and Management
One Commerce Plaza, Room 720
c/o Empire State Plaza
Corning Tower
Albany, NY 12237

Submission of Written Questions

Negotiation of Contract Terms after Award

M/WBE Liaison

Ms. Stephanie Sheehan
New York State Department of Health
Office of Health Insurance Programs, Division of Program Development and Management
One Commerce Plaza, Room 720
c/o Empire State Plaza
Corning Tower
Albany, NY 12237
Fax: 518-486-2495
Email Address: sms13@health.state.ny.us

For further information regarding these statutory provisions, see the Lobbying Statute summary in Section E.11 of this solicitation.

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SECTION A: INTRODUCTION

As the federally recognized state Medicaid agency, the Department of Health (Department) is responsible for ensuring the availability of non-emergency medical transportation for Medicaid enrollees in New York State. At present, the Department delegates administrative responsibility for managing Medicaid transportation to local departments of social services in many counties, including those in the Finger Lakes and Northern New York regions. The Department provides the counties with governing regulations, as well as regularly published policy guidance on a variety of Medicaid transportation- related issues.

The 2010-11 State budget amended the Social Services Law to give the Commissioner of Health the new authority to assume the management of Medicaid transportation in any county, and to select a contractor at his discretion for this purpose. The intent of the law is to improve the quality of transportation services, reduce the local burden of administering transportation services and local management contracts, and achieve projected budgeted Medicaid savings. In addition, the state's Medicaid Redesign Team has included the Department's procurement of regional transportation management contracts as part of their specific transportation cost reduction proposal.

Accordingly, the Department has procured a transportation management contract for twenty-four counties in the Hudson Valley Region, the five boroughs of New York City, and is offering this procurement for twenty-four additional counties.

The Department's transportation management contracts will enhance the agency's ability to work with participating counties to improve the delivery of Medicaid transportation, and better align the State's fiscal and program accountability for this important service. The Commissioner will exercise his discretionary authority in close collaboration and consultation with local social services and county officials in a manner that ensures compliance with both State and local regulations, and consumer satisfaction standards.

New York's Medicaid program covers non-emergency medical transportation provided via non-emergency ambulance, ambulette, taxi, public transit, personal vehicle, airplane, bus, train, and other modes as applicable to the individual. Transportation provider rates are established by the counties and New York City, and then approved by the Department. At present, reimbursement to transportation providers is provided on a fee-for-service basis; or included in a managed care plan, day program, or facility rate, with that entity being responsible for arranging the necessary transportation and reimbursing vendors.

Access to health care for Medicaid enrollees requires both ensuring access to an appropriate number and type of medical professionals, and the necessary mode of transportation to the services they provide. Medicaid enrollees require transportation to gain access to nearly all Medicaid-funded services, including local primary care practitioners. In rural regions, enrollees may use transportation for long-distance trips to inpatient and outpatient care facilities. Transportation also serves enrollees needing routine, scheduled transit, such as regular appointments at day habilitation, drug and alcohol treatment, and/or renal dialysis centers. New York, like other states, has struggled to continue to provide safe, reliable, and cost efficient non-emergency medical transportation for their Medicaid enrollees in an era of growing enrollment and severe fiscal constraint. In Calendar Year 2010-11, New York's fee-for-service spending for Medicaid transportation was \$461 million; significant additional transportation spending was incurred through payments made to adult day health care and developmental disabilities programs, managed care plans, and other entities.

While New York’s counties are geographically and demographically diverse, there are sufficient similarities among groups of counties to support the development of regional Medicaid transportation management contracts. Regional transportation management allows the State to consolidate administrative functions, such as screening and prior authorization operations, thereby increasing economies of scale and helping to ensure the availability of appropriate modes of transportation in rural areas. Regional transportation management also centralizes expertise, allowing for more consistent application of transportation regulations and guidance, and serves to attract nationally recognized transportation managers with proven performance records. Additionally, regional transportation management eliminates the often time-consuming, costly local Request for Proposal procurement process and the burden of administering transportation management contracts on the local level.

Section 365-h of the Social Services Law (SSL) that gives the Commissioner of the Department of Health the authority to contract for the management of Medicaid transportation services, requires the selected transportation manager to have “proven experience in coordinating transportation services in a geographic and demographic area similar to the area in New York State” within which the contractor will manage such services.

The NYS Medicaid Transportation Management Initiative Funding Availability Solicitation (FAS) is seeking to select one or two contractors to provide management and coordination of non-emergency medical transportation for Medicaid fee-for-service enrollees in Central, Western, and Northern New York. This initiative includes, but is not limited to, the following twenty-four (24) participating counties, divided into the following two (2) regions:

Northern New York	Finger Lakes
Jefferson	Monroe
Lewis	Livingston
St. Lawrence	Orleans
Franklin	Tompkins
Clinton	Schuyler
Hamilton	Seneca
	Yates
	Wayne
	Steuben
	Ontario
	Chemung
	Tioga
	Cortland
	Otsego
	Chenango
	Madison
	Herkimer
	Oswego

The regions have been developed based on the common medical marketing areas that exist around major medical centers and Medicaid health care providers, and the resulting commonly travelled transportation routes that connect certain counties.

Bidders may submit proposals for either of the two regions, or for both regions. Contracts may be awarded to one or two contractors, based upon evaluation of submitted proposals. The Department reserves the right to award a bidder only one region even if the proposal is submitted for both regions.

SSL Section 365-h requires the successful contractor procured through this FAS to:

- (1) Make appropriate and economical use of transportation resources available in the applicable region when meeting the anticipated demand for transportation within the region, including but not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, use of county vehicles, coordinated transportation, and direct purchase of services; and
- (2) Maintain quality assurance mechanisms in order to ensure that:
 - a. only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies is provided;
 - b. no payment for taxi or livery transportation is authorized when lower cost transportation is reasonably available to eligible persons;
 - c. transportation services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulatory requirements and meet consumer satisfaction criteria approved by the Commissioner of Health;
 - d. a mechanism is in place by which the selected contractor will provide regular, direct communication with representatives of the Commissioner of Health as well as affected customers;
 - e. payment is authorized appropriately, adhering to Department regulations and local guidelines.

Payment for non-emergency medical transportation will be made only when such transportation has been approved by the transportation management contractor. Under the New York State Medicaid program, payment is made for medical transportation when such transportation is essential for the Medicaid enrollee to obtain covered medically necessary care and services. Transportation services may be denied for a number of reasons, including when the individual has access to transportation such as a private vehicle or public transit, which the individual uses for ordinary activities of daily living. Emergency ambulance service, as defined in 18 NYCRR Part 505.10 and in 92 ADM –21 (see Attachments B and F), is not covered in this FAS.

Reimbursement of transportation approved by the transportation manager and provided by NYS Medicaid enrolled transportation vendors will be made to the transportation vendor by the Department, not the transportation manager. Similarly, allegations of fraud, waste and abuse referred to the Department by the selected transportation manager will be investigated by the appropriate audit authorities, not the transportation manager.

Payment for management services in the counties will be made on Per Member Per Month flat fee basis that is dependent on the number of Medicaid enrollees in the county being managed.

See Section E.6 for more details on voucher payment.

Additionally, as part of a comprehensive effort to reform Medicaid transportation, the Medicaid Redesign Team (MRT) has adopted an initiative to carve out non-emergency medical transportation from the managed care benefit package, and have this service managed by State procured transportation managers. Currently, in several of the counties covered under this FAS, the transportation of Medicaid enrollees covered by managed care is the responsibility of the managed care organization and reimbursed under their capitated rate. The implementation of this initiative will require the contractor selected pursuant to this FAS to also be responsible for the transportation management of Medicaid enrollees currently covered under managed care plans. Payment for managed care enrollees will be made in the same manner as described above for Fee-for Service enrollees, not in a capitated rate brokerage manner.

In addition to the Per Member Per Month flat fee described above, the contractor(s) will bill the Department directly for offline Medicaid transportation expenses, which will be reimbursed to the contractor(s) on a dollar-for-dollar basis.

Note: Certain Medicaid programs, including adult day health care and developmental disabilities facilities and programs include, in their rates, payment for transportation of their registrants. Therefore, fee-for-service transportation to and/or from these programs is unavailable. When applicable, the transportation manager must refer these registrants to their program for services.

Generally, a Medicaid enrollee should use the least expensive mode of transportation that is appropriate and available based upon their medical condition, the medical provider's location, and the treating medical practitioner's instructions. Enrollees with no physical or cognitive limitations with medical appointments within walking distance of their provider will not be provided transportation services. For Medicaid-eligible enrollees requiring transportation via Medicaid-enrolled non-emergency transportation vendors, payment will be authorized by the transportation manager for services through the State's eMedNY system (via prior authorization) at the least costly and most appropriate level of service.

Medicaid payments will be made only to lawfully authorized vendors of transportation services. In order to be eligible to receive payment, the vendor must be lawfully authorized under Section 365-h of Social Services Law on the date which services are rendered.

It is the Department's intent that this solicitation result in a transportation management system that reflects an understanding of the unique aspects of each county and is flexible enough to meet the needs of the local medical providers, transportation vendors, and Medicaid enrollees. The contractor(s) is expected to meet with and educate appropriate staff and link existing processes in an efficient manner. The expected outcome of the authorization process is the development of user-friendly, efficient methods of both arranging and assigning trips. The contractor(s) must have staff able to meet with practitioners and vendors as needed at their place of business to guide them through all the available communication processes.

SECTION B: BACKGROUND

Chapter 109 of the Laws of 2010, amending Section 365-h of the Social Services Law (Attachment A), gives the Commissioner of Health the authority to contract for the management of Medicaid transportation services. The amended law is intended to improve Medicaid transportation quality, while reducing costs and alleviating local administrative burdens.

The amended law has the following major provisions:

- The Commissioner is authorized to enter into contracts with transportation managers and select contractors at his discretion. However, the Department of Health must post on its website for at least thirty (30) days a description of the proposed contracted services, criteria for the selection of a contractor, the period of time during which a contractor may seek selection, and the manner by which a contractor may seek selection which may include electronic submission;
- If the Commissioner elects to “assume responsibility” from a local social services district for transportation, he must notify local social services officials in writing regarding the effective date of the responsibility;
- The Commissioner is authorized to contract with transportation managers that have proven experience in coordinating transportation services in a geographic and demographic area similar to which they will be operating in New York State;
- The transportation management contracts may include responsibility for review, approval, and processing of transportation orders, managing the appropriate level of transportation based on patient’s individual need, and the development of new technologies for transportation services;
- The Commissioner must, if appropriate, adopt quality assurance measures, reporting requirements and service verification mechanisms. The Commissioner must further ensure that transportation services are provided in a safe, timely, and reliable manner by vendors that comply with state and local regulations and meet Commissioner approved consumer satisfaction criteria;
- Any reimbursement fees developed by transportation managers must be reviewed and approved by the Commissioner; and
- The law’s provisions sunset four (4) years after the execution date of a transportation management contract.

The Commissioner’s transportation manager procurement authority will be used to develop multi-county (including city), regional, or statewide contractual arrangements; eliminate the often time-consuming and costly local request for proposal procurement process; and serve to attract managers with successful performance records. This authority is intended to help reduce the local burden of administering transportation services and management contracts.

The law increases the Department of Health’s ability both to work with counties to improve the quality and cost-efficiency of Medicaid transportation, and to better align the State’s fiscal and program accountability for this crucial benefit. The Commissioner will exercise discretionary authority in close collaboration and consultation with local social services and county officials in

a manner that ensures both compliance with local regulations and satisfaction standards.

Regionalized transportation management models have been employed successfully throughout the nation to control cost, improve quality and provide accurate data and reporting. These results are usually obtained through the use of call centers that reduce hold times and enhance the scheduling experience, best practice transportation techniques, fraud detection and prevention, data analysis, development and application of lower cost modes of transportation including the development of shuttle routes to major medical destinations.

All counties in these Finger Lakes and Northern New York regions, with the exception of Monroe, are considered predominantly rural. While medical care is available in every county, a significant amount of specialty medical care is provided by medical practitioners in the major medical centers of Rochester (Monroe County), Syracuse (Onondaga County) and Burlington, Vermont. Therefore, much transportation in these rural counties is to and from Rochester, Syracuse and Burlington. The selected contractor(s) must be ready not only to respond to local travel requests within each county, but to develop and maintain functional and efficient travel patterns to transport enrollees to these major medical center destinations when the need for medical care is not available locally.

Public transit is available in every county, although in some counties it is limited only to major routes within a county. Additionally, public transit is limited to within-county trips only; therefore, when the need for travel is to a destination outside a county's border, another mode of transportation may be required. Under these considerations, the contractor will gather data necessary for enhancing the use of public transit routing among the participating counties, and entertain viable methods to further public transit across county borders.

Currently, in the counties of Oswego, Monroe, Ontario, Lewis, Cortland, Tioga, Otsego, Chemung, Chenango, and Madison, the Medicaid program has significant interaction with either the public transit agency or another not-for-profit group in coordinating the travel of enrollees to medical care and services. For example, the Cortland County Public Transit receives requests for transports from enrollees and medical practitioners, and will either assign those trips to the public transit routes, or to other transportation providers in Cortland County. The contractor must integrate its approach to managing transports with those processes which have proven to be efficient in these counties. The nature of this interaction is not important in the approach taken in your proposal. Upon selection, the Department will give contractor specific information on the processes currently in place, and will meet with the contractor, the local social services agency, and the public transit or not-for-profit group to discuss details on integrating existing efficiencies.

The contractor is expected to consider existing transportation networks and arrangements that currently exist between health care providers and transportation vendors, when these arrangements complement the Medicaid program goals of assuring access to necessary medical care. For example, through the leadership of non-profit entities with an interest in improving local health care systems, many communities have proactively attempted to improve transportation for the elderly and disabled throughout several Finger Lake Region counties by promoting the development of mobility managers. Improving access to medical care is one aspect of mobility management. These and similar efforts can augment the work of the contractor. A well developed transportation management plan will include strategies to collaborate with existing resources to enhance and improve transportation opportunities.

The contractor must take advantage of existing software technology by developing a system that determines accurate point-to-point mileage routing resulting in exact mileage. Additionally,

the contractor is expected to use cull data to analyze potential rides viable for efficient routing and reimbursement. For example, trips that are scheduled within similar time frames, with similar pick-up and drop-off locations, can be queried and then grouped to maximize efficiency. In instances where such efficiencies are found and approved by the Department of Health, the transportation manager will be required to work directly with the transportation vendor/s in scheduling and providing transportation that maximizes these efficiencies.

Transportation management firms that specialize in managing non-emergency medical transportation have made significant improvements in the technology available for managing the transportation needs of Medicaid enrollees. These innovations include web-based scheduling for medical providers and enrollees, data reporting and analysis, and accurate mileage reimbursement. Any proposed use of new technologies must be weighed against the probability of success and furthering the goals of the Medicaid program. Plans for application of such technology must be submitted to the Department for approval prior to implementation.

When transportation is requested for an eligible Medicaid enrollee, the technology used will bring potential appropriate transit options, suitable for the enrollee's medical condition, to the top of the list and when public transit is deemed appropriate, compare transit schedules across numerous jurisdictions at once. This allows the operator managing the transportation request to automatically make transit decisions beginning with the lowest cost, most medically appropriate level.

SECTION C: PROJECT SPECIFICATIONS

The transportation manager procured through this FAS will be responsible for performing transportation management activities according to the standards and directives of the Department of Health and in compliance with the provisions of Section 365-h of the Social Services Law (see Attachment A). Bidders can propose to manage either the Finger Lakes Region or the Northern New York Region, or **both** regions and must indicate this on the Transmittal Form. Bidders will submit one Technical Proposal to describe the performance criteria outlined in Section D. Some of the performance requirements require a separate response for each region being proposed and these are indicated in Section D. Bidders will submit one Cost Proposal which delineates each region's pricing and a combined price if submitting a proposal to manage both regions.

In addition to the requirements outlined in this FAS regarding the performance of the transportation management contractor, the successful bidder must agree to meet the following Medicaid Transportation Management Initiative project specifications:

C.1. Location of Core Management Team

The transportation manager(s) resulting from this FAS must maintain a core management team directly responsible for overseeing the day-to-day operations of the Medicaid Transportation Management Initiative. The success of the transportation manager will rely in part on the character of the team and accessibility of the team to the Finger Lakes and Northern New York regions. **The bidder shall identify the proposed general location of this team, and explain how this location will allow the management team access to the Finger Lakes Region and/or the Northern New York Region to fulfill the requirements of the FAS.** The call center may be located at the bidder's discretion within the continental United States.

The core management team must include the individual with principal responsibility of overseeing the day-to-day operations of the contract awarded by this FAS who will be available to consult with the Department. Other core management team members must be knowledgeable, in the aggregate, of all functions required under this initiative.

C.2. Operate a Call Center for Medicaid Eligible Individuals or Their Representatives

- a. Maintain a toll-free telephone number and other toll-free voice and telecommunications devices, including devices appropriate for deaf persons. Oral interpreter services must also be made available, free of charge to Medicaid enrollees, for all regional predominant languages. The toll-free telephone number shall be operational at least fifteen (15) calendar days prior to service begin date and must be transferable to the Department, or other entity designated by the Department, upon expiration of the contract. Toll-free telephone access for transportation approval requests is required as follows:
 1. The contractor shall maintain sufficient personnel to perform the functions required herein for at least eleven (11) consecutive hours during the hours of 7:00 a.m. through 6:00 p.m. Eastern Standard Time, Monday through Friday.

2. During regular business hours the contractor shall maintain voice mail routing and response procedures, with enrollee option of staying in queue to reach a staff person, returning to voicemail, or key-punching a telephone number to be returned to the enrollee within one hour.
3. The contractor may observe designated Federal holidays. If the contractor observes additional/different holidays, the contractor must obtain the prior written approval of the Department. The contractor shall give the Department thirty (30) days' written notice of any other intended days, or partial days, of closure.
4. The contractor shall provide twenty-four (24) hour toll-free access in order to provide information on how to access transportation for an urgent medical condition, on holidays, weekends, and outside business hours.
5. The contractor shall maintain a call tracking system recording the following details for each call related to transportation and, upon request from the Department, shall provide electronic recordings of specified calls. The call tracking system must be able to retrieve calls based on telephone number or date of call. Callers shall be advised that calls are monitored and recorded for quality assurance purposes. Administrative lines need not be recorded. The call tracking system shall be able to record and aggregate the following information and shall be able to produce the reports specified in this proposal as well as ad hoc reports that the Department may request on a daily, weekly, or monthly basis:
 - I. The number of incoming calls;
 - II. The number of calls receiving busy signals;
 - III. The number of calls that reach the automated voice response system;
 - IV. The number of calls that reach call center staff;
 - V. The average and maximum talk time;
 - VI. The average and maximum time calls are placed on hold;
 - VII. The number and percentage of calls that are abandoned while on hold;
 - VIII. The number of available call center staff operators by the time of day and the day of the week, in half-hour increments.
- b. The contractor must effectively manage transportation requests from a multi-county region for a large volume of Medicaid enrollees who qualify for fee-for-service Medicaid transportation in a timely and professional manner.

Call center operations must meet the following standards on a monthly basis:

 1. When a customer service representative is unavailable, the automated voice response system must answer all calls within three rings;

2. The average queue time after the initial automatic voice response is three (3) minutes or less with 95 percent compliance each month;
 3. Incoming calls are answered within three (3) minutes, with 95 percent compliance each month; and,
 4. The average queue time for a system to assist hearing impaired enrollees shall not exceed three (3) minutes, with 95 percent compliance each month.
- c. The contractor must maintain a transportation request system that can receive a large number of requests via different methods such as telephone calls, web-based and fax requests from eligible recipients, their representatives, or an ordering medical practitioner for medical transportation in an established call center.
 - d. The contractor must implement a system that will require all Medicaid eligible individuals in need of transportation for non-emergency or non-urgent medical care to request such services a minimum of 72 hours in advance of the service date. The system should include a process for communicating this requirement to enrollees and medical providers.
 - e. The contractor must accommodate requests for same day transportation services when urgent care is required. "Urgent care" means that level of care ordered and verified by the individual's physician, by phone or fax, to be necessary on the day the request is made or within 24 hours.
 - f. The contractor must establish a system for receiving requests from medical providers that includes periods of time outside of normal business hours and on weekends (i.e., 24 hours a day, 7 days a week).
 - g. The contractor must establish a system to allow for post-transportation approval of transportation services. Post-transportation approval is allowed in instances when a prior approval was not obtainable, such as services requested to a verified urgent care service. The post-transportation approval policy shall ensure that all applicable requirements of prior approval are considered for the post-transportation authorization, and shall establish a timeliness requirement for the submission of post-transportation approval requests in accordance with Department regulations and policies.

C.3. Process Requests for Medical Transportation

- a. The contractor must confirm the individual's eligibility status as a Medicaid enrollee utilizing the ePACES System, or such other system designated by the Department. The successful bidder must become a registered user of the system operated through the Department.
- b. The contractor must maintain enrollee confidentiality and comply with all HIPAA regulations.
- c. The contractor must be able to explain the Department's published rules and regulations of the Medicaid medical transportation program to transportation and medical providers and Medicaid enrollees.

- d. When requests are made for transportation by a Medicaid enrollee, the contractor must interview the individual to confirm all relevant information including their normal means of transportation, caller's address, location of required medical service, transportation needs, and whether the required medical service to which transportation is requested is a Medicaid covered service.
- e. The contractor must obtain the medical practitioner's documentation to support and justify the request for prior authorization for non-emergency ambulance and ambulette. The utilization of such modes of transport is a medical decision and requires the recommendation of a medical practitioner. The process of obtaining the practitioner's justification must include the use of a standardized form approved by the Department. Once the contractor receives the completed form from the medical provider, the information shall be reviewed and the request for prior authorization for non-emergency transportation will be approved or denied based upon Medicaid program criteria.
- f. After determining the appropriate mode of transportation according to the enrollee's needs, the contractor must arrange the most appropriate transportation provider capable of meeting those needs at the lowest cost. An appropriate provider may be a common carrier (bus), taxi, ambulette, stretcher van, or non-emergency ambulance. Transportation will be assigned to transportation providers with appropriate and reasonable consideration given to the needs of the enrollee.
- g. The contractor must establish a system for assigning rides that is fair and equitable to the transportation providers and efficient for the enrollees. Such a system must be based on the initial supposition that enrollees are free to use the transportation provider of their choice that provides the approved mode of transport. Where no preference is expressed by the enrollee, rides must be assigned in a manner that is equitable to transportation providers and provides a quality service for the enrollee.
- h. The contractor must implement a quality review management system which allows for a review of medical justification provided when a mode of transportation request exceeds taxi service, i.e. ambulette / stretcher / ambulance.
- i. The contractor must implement a system by which access to ongoing use of advanced modes of transportation are reviewed every 90 days to ensure the continued need of a higher standard of transportation.
- j. The contractor must implement an automated system to manage the reservations, scheduling, and efficient routing of requests for non-emergency medical transportation.
- k. The contractor must ensure the enrollee uses the least expensive mode of transportation available that is appropriate based on their medical condition and the individual's provider of medical service location. If the lowest cost, most appropriate level of transportation is not available, the requested trip will be scheduled at the next higher level of transportation service.

C.4. Maintain a Public Website

The contractor must maintain a public website with information for enrollees, transportation providers, and medical providers about available transportation services, Medicaid

transportation eligibility requirements and how to access transportation. The website must have the ability to receive input from medical practitioners and transportation providers, and accept complaints and acknowledgements from enrollees and/or their agents, transportation providers, and medical practitioners.

At a minimum, the following information (or links to sites containing the information) must be included on the website:

- List of definitions and program standards;
- A list of essential contractor and State government contacts;
- Available Medicaid transportation services;
- Information on the types of disabilities that qualify for certain modes of transportation;
- Information on general Medicaid transportation service determination criteria;
- A list of transportation providers, including the current address and telephone number of each transportation provider, the geographic area covered by each transportation provider, and the mode of transportation provided. Updates to this list within the previous thirty (30) days shall be indicated as a change to previous information;
- State-approved fee schedule by mode of service;
- Links to transportation resources such as subway/bus maps and the paratransit system.

C.5. Collaborate with Local Transportation Stakeholders

The contractor will be knowledgeable about county level transportation resources and existing provider networks, current processes in place for arranging Medicaid transportation, and the challenges faced within each community to arrange for and provide non-emergency medical transportation. The contractor will collaborate closely with medical practitioners and transportation providers to ensure an efficient and user-friendly system for approving and arranging for transportation is implemented and that all stakeholders understand application of this system.

C.6. Special Transportation Requests

Specific rules must be applied to special requirements. The contractor will work directly with the Department in the development and implementation of guidelines for authorizing multiple trips for enrollees attending regularly scheduled medical care, day treatment programs, transportation outside the common medical marketing area, air ambulance transportation (non-emergency), nursing home transportation, and hospital admissions and discharges. Requests for transportation out-of-area will be reviewed, and payment made to the transportation provider, only when sufficient medical documentation is received, reviewed, and approved by the contractor.

Prior authorization is not required for emergency medical transportation. Callers requesting emergency ambulance transportation to a hospital emergency department will be directed to call emergency services (911).

C.7. Resolution of Enrollee and Transportation/Medical Provider Complaints

The contractor must develop and implement a complaint resolution process for enrollee and provider complaints. Complaints must be investigated thoroughly, resolved and responded to within thirty (30) days from date when the complaint was received. Records of all complaints, investigation and resolution must be maintained in the enrollee's records and a copy to the

Department.

The contractor may not arbitrarily take an action on a transportation service solely because of the diagnosis, type of illness, or condition of the enrollee. The Department may mandate that certain language be used in the posted policies and written notifications. The contractor must provide written notification to the enrollee at the time an adverse action is taken to deny or reduce a transportation service. The notice must be issued within 24 hours and indicate:

- The action taken and reasons for the action;
- The enrollee's right to file a grievance and request a State Fair Hearing;
- Basic instructions regarding the grievance filing and State Fair Hearing request processes; and
- Carbon copy to the Department within one business day of determination.

Should an enrollee request a Fair Hearing to review a decision made concerning non-emergency medical transportation, the contractor staff must be readily available to provide to the Department all pertinent information in verbal and/or written format. If required, a representative from the contractor's staff must be available to attend a Fair Hearing.

C.8. Correspondence

As required by the Department, the contractor shall generate and disseminate correspondence to individual practitioners, enrollees and transportation providers regarding program requirements, corrective action plans, eligibility issues, etc. The Department will be responsible for notifying practitioners, providers, and enrollees of any changes impacting the entire cohort of providers or enrollees.

C.9. Quality Standards

The contractor shall detail its plan to develop and implement procedures to measure transportation provider quality performance. The purpose of such procedures is to develop and apply standards to assure that enrollees receive quality transportation services at the lowest cost, utilizing the most efficient routes. Transportation provider quality standards address such issues as failure to meet appointments, timeliness of vehicle pickup and delivery, refusals to take longer trips, total travel time, cleanliness of vehicles, driver behavior towards enrollee, and Medicaid enrollee and medical practitioner complaints. For example, the contractor shall develop and implement policies and procedures regarding pick up and wait times. The policies and procedures must ensure that participants arrive promptly for appointments and do not wait excessively for transportation.

The contractor will monitor the overall system to assure timely provision of quality, uniform services, and to ensure system integrity.

The contractor must perform and document a pre-trip verification review by verifying the medical appointment for a covered service with the medical provider for no less than of 10 percent (10%) of scheduled trips prior to transportation services being provided.

The contractor must perform and document a post-trip verification review on a minimum of ten percent (10%) of trips and include problem areas such as after-hours transportation, and verify that "routine trips" are for legitimate medical services. The Department reserves the right to change the percentage of trip verifications during the term of the contract.

Additionally, the contractor will implement an internal quality improvement process that will measure consumer satisfaction of its transportation management services. This process should incorporate the performance standards listed in Section C.15 as well as standards and measures aimed at improving all aspects of the organization's service delivery and reducing complaints. The quality improvement process should include proactive strategies aimed at obtaining consumer feedback and recommendations and not rely solely on complaint resolution as a measure of improvement.

C.10. Record Keeping and Reporting

- a. The contractor must maintain and retain all financial and programmatic records, supporting documents, statistical records, and other records of participants for a minimum of six (6) years. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six (6) year period, the contractor must retain the records until completion of the action and resolution of all issues which arise from it or until the end of the regular six (6) year period, whichever is later. The contractor must retain the source records for data reports for a minimum of six (6) years and must have written policies and procedures for storing this information in compliance with all current to applicable HIPAA and security requirements.
- b. The contractor will be required to submit management and utilization reports to the Department with content and schedule determined by the Department. The contractor must submit all report templates to the Department for approval within 60 calendar days of receipt of the notice of award. Any changes to the report templates shall be submitted to the Department for approval 30 days prior to implementation. At minimum, the contractor must submit the following quality assessment and activity reports to the Department in a software format determined by the Department:
 - Telephone report;
 - Enrollee grievance report;
 - Medical provider grievance report ;
 - Transportation provider quality assessment report;
 - Transportation denial evaluation report;
 - Trip report by mode and transportation provider (trips are reported as one-way);
 - Transportation provider accident report (only when enrollee is on the vehicle) (three days after notification of accident);
 - Prior authorization activity report.

C.11. Processing of Payments to be made to Enrollees for Incurred Transportation Expenses

The contractor will be expected to authorize the personal transportation expenses incurred by enrollees traveling to and from medical care. These expenses typically are for personal vehicle and public transit use, and can also include episodic reimbursement of lodging and incidental travel-related expenses. The contractor will authorize and make payment directly to enrollees, or their representatives, such as volunteer drivers. The contractor must maintain detailed accounting of trip information, including enrollee information, service date, origination and destination addresses, mode of travel, mileage units (where applicable), and total trip cost. The contractor will create a report detailing these expenses and summarizing per county of fiscal

responsibility. The report will account for costs **incurred by the contractor** within the month being reported on. Monthly, this report shall be submitted to the Department who will process a lump sum payment to the contractor, reimbursing all the costs that were accrued within that month.

C.12. Enrollee and Transportation Provider Fraud

The contractor must develop policies and procedures to identify potential fraud and abuse by both transportation providers and enrollees. Suspected fraudulent or abusive activity must be reported to the Department in writing within twenty four (24) hours of identification, or by the close of the next business day. While the investigation of Medicaid fraud and abuse cases is the principal responsibility of the Office of the Medicaid Inspector General, the contract manager must develop policies and procedures to refer suspected transportation fraud or abuse.

C.13. Written Procedures

The contractor must develop formal written procedures and guidelines for all aspects of the Medicaid medical transportation program and submit them for approval by the Department prior to their distribution to and implementation by contractor staff. The policies and procedures must be distributed to all staff and updated in a timely manner to reflect changes in program requirements.

C.14. Staff Training

The contractor must ensure all personnel have sufficient knowledge of the requirements of the Medicaid medical transportation program and HIPAA regulations.

C.15. Assessment of Financial Penalty Regarding Contractor Performance of Call Center and Prior Approval Requirements

A deduction from the contractor's monthly voucher reimbursement will be assessed when the performance standards described below are not met. The penalty ranges from five to ten percent of the voucher for the month the poor performance is assessed in as described below. The Department will monitor two areas of contractor activities, and will assess a financial penalty each month when aberrant outcomes are discovered.

Call Center:

In Section C.2.a., a number of call center activity measures are listed as requirements for a monthly report. These measures will assist the Department in evaluating that certain call center standards are being met. These standards are listed below.

The contractor shall maintain sufficient equipment and call center staff to ensure that, on a monthly basis:

1. The automated voice response system answers all calls within three (3) rings;
2. The average queue time after the initial automatic voice response is three (3) minutes or less per call;

3. Incoming calls are answered by a call taker within three (3) minutes, including peak call volume times, with 95 percent compliance in each month; and
4. The average queue time for a system to assist hearing impaired enrollees shall not exceed three (3) minutes per call, with 95 percent compliance in each month.

A monetary penalty will be assessed when any one of these four standards is not met during any given month as follows: When one of the standards is not met, the contractual reimbursement voucher for that month will be reduced by 5%. When two or more standards are not met during a given month, the voucher for that month will be reduced by 10%. The assessed monthly penalty will not exceed 10%.

Prior Authorization:

Each prior authorization submitted to eMedNY via the 278 process is automatically assigned a date (the beginning submission date will be the first of the month, and the last submission date will be the last day of the month). The Department will use a complete file of monthly transactions, based upon the Submission Date on the eMedNY prior authorization transaction, to determine if any of the following performance standards have been violated. Penalties will be assessed after review and analysis of a sample of prior authorization activity.

Performance Standards:

- a. Incorrect transportation procedure code was assigned;
- b. Incorrect fee (established by the Department) for the assigned procedure code was assigned;
- c. Incorrect number of procedure code units was assigned for the transport;
- d. The calculation of miles assigned for a trip was incorrect, as determined by a generally accepted standard of mileage determination, as agreed upon by the Department and the contractor;
- e. More than one prior authorization, containing the same information, is assigned;
- f. Duplicate prior authorizations for one transport are assigned for two different transportation providers; and
- g. Prior authorization is made over 30 calendar days after the date of service.

Additionally, when the total number of prior authorization transaction errors exceeds 0.5% of the total number of prior authorization transactions submitted to eMedNY during any given month, the amount to be reimbursed to the contractor will be reduced by 5%. This penalty will double to 10% when the error rate equals or is greater than 1.0% of the total number of transactions. The assessed penalty for this review will not exceed 10% in any given month.

C.16. Project Implementation Work Plan

The contractor must submit a Transportation Management Implementation Plan for approval by the Department of Health prior to the start of their transportation management work that provides a schedule for assuming transportation management activities from the participating counties and their achieving compliance with the requirements of SSL Section 365-h. This Plan is subject to the review and approval of the Department and may be amended as required by the Department.

SECTION D: PROPOSAL REQUIREMENTS

D.1. Overview

This section provides directions for preparing proposals in response to this FAS. Bidders are responsible for carefully reading the FAS and responding to all requests for information. Proposals that fail to conform to the specified format, as well as those that do not include all required information, may be considered non-responsive, at the Department's sole discretion. As a result, the Department may reject such proposals.

In order to be considered for evaluation, each proposal must meet the following requirements:

- Separate technical and cost proposals are submitted prior to required deadline;
- A signed Transmittal Form (Attachment G) is submitted in the technical proposal;

D.2 General Submission Requirements

To be considered for an award, bidders must meet all requirements specified in Section E.3. Proposals which do not meet these criteria may be considered a non-response. The page limits should be adhered to. If a proposal section exceeds the maximum page length, reviewers will be instructed to cease reading at the end of the maximum number of pages. Proposals should be submitted with a single cover page as outlined in Section D.4.

D.3. Conflict of Interest

- a) As part of the proposal submission, the bidder (and/or any subcontractor) must disclose any and all relationships that may be construed as an actual or potential conflicts of interest. In cases where such relationship(s) and/or interests exist, the bidder must describe how an actual or potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided. The bidder's disclosure must include any relationship or interest, financial, beneficial or otherwise, which is in conflict with the proper discharge of their responsibilities under this FAS, including but not limited to any business relationship or financial interest with entities which provide transportation services under this FAS. If no conflicts exist, indicate that as well.

The Department reserves the right to reject bids, at its sole discretion, based on any actual or perceived conflict of interest.

- b) All bidders and the resulting contractor shall ensure that its officers, employees, agents, consultants and/or sub-contractors comply with the requirements of the New York State Public Officers Law ("POL"), as amended, including but not limited to Sections 73 and 74, as amended, with regard to ethical standards applicable to State employees.

- c) By signing the proposal, the bidder guarantees knowledge and full compliance with the provisions of the POL for purposes of this FAS. Failure to comply with these provisions may result in disqualification from the procurement process, or withdrawal of a proposed contract award, and criminal proceedings as required by law.
- d) If, during the term of a resulting contract, the Contractor becomes aware of a relationship, actual or potential, which may be considered a violation of the POL, or which may otherwise be considered a conflict of interest, the Contractor shall notify the Department in writing immediately. Failure to comply with these provisions may result in termination or cancellation of the resulting contract and criminal proceedings as required by law.

D.4. Technical Proposal

Do not include any cost information in this section of the proposal. See Section D.5.

The technical proposal should address all Project Specifications. Additionally, it should demonstrate the bidder's understanding of the scope and purpose of the various review activities and tasks required under the contract.

To promote uniformity of preparation and to facilitate review, the Technical Proposal should include the following information in the order prescribed below and comply with the following general format requirements.

The Technical Proposal must be submitted separate from the Cost Proposal. The outside of the Technical Proposal package should be clearly labeled in bold **"New York State Medicaid Transportation Management Initiative Finger Lakes and Northern New York Regions Funding Availability Solicitation Technical Proposal."**

The Technical Proposal should meet the following general format requirements:

- Submit two originals and six bound copies.
- Use letter size paper (8.5 x 11 inch);
- Font type for narrative information should be a minimum of 11 point;
- Submit each copy in a three ring binder with no staples or clasps;
- Use tab dividers for each section of the proposal; and,
- Clearly number pages of the proposal, with each section of the proposal separately numbered and identified in a Table of Contents.

D.4.1. Transmittal Form (Attachment G)

Do not include any cost information in this section of the proposal. See section D.5.

The Transmittal Form should be signed in ink by an official of the bidding organization. The signatory should be authorized to bind the organization to the provisions of the FAS and Proposal.

The Transmittal Form includes the following information:

1. The Bidder's complete name and address, including the name, mailing address, email address, fax number and telephone number for both the authorized signatory and the contact name and number for representatives authorized to answer questions regarding this proposal, and
2. The FEIN, DUNS Number and Type of Legal Business Entity of the bidder;

The Transmittal Form includes the following attestations:

1. That the bidder accepts the contract terms and conditions contained in this FAS, including any exhibits and attachments, that the bidder has received and acknowledged all Department amendments to the FAS;
2. That the bidder is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department.
3. That the bidder has disclosed any and all potential conflicts of interest according to the requirements described in Section D.3. of this FAS and the bidder has knowledge of, and full compliance with, the New York State Public Officers' Law, as amended, including, but not limited to, sections 73 and 74 with regard to ethical standards applicable to State employees. If no conflict of interest exists, the bidder has confirmed that; and
4. The bidder has disclosed the expectation that subcontractor(s) services will be utilized. The Appendix to the Transmittal Form should include a subcontractor summary document for each listed subcontractor.

The summary document should contain the following information:

- a. Complete name of the subcontractor, including DBA and the names of controlling interests for each entity;
- b. Complete address of the subcontractor;
- c. A general description of the scope of work to be performed by the subcontractor;
- d. Percentage of work the subcontractor will be providing;
- e. Evidence that the subcontractor is authorized to do business in the State of New York, and is authorized to provide the applicable goods or services in the State of New York; and
- f. The subcontractor's assertion that they do not discriminate in its employment practices with regards to race, color, religion, age, sex, marital status, political affiliation, national origin, or handicap.

D.4.2. Table of Contents (No page limit)

The Table of Contents should contain beginning page numbers for each section and subsection of the proposal.

D.4.3. Executive Summary (3 page limit)

Do not include any cost information in this section of the proposal. See Section D.5.

The Executive Summary should include a clear, concise summary of the proposed approach to the project specifications as well as the bidder's past experience conducting relevant projects. Additionally, a general description of the capabilities and planned roles of any proposed subcontractor(s), a summary of the bidder's understanding of the various review components and required processes should be included.

Provide a narrative overview of your proposed service as transportation manager for the New York State Medicaid Transportation Management Initiative – Finger Lakes/Northern New York Regions. The narrative must include a “roll-out” plan that describes each phase and include a timeline showing how the transportation management functions will be implemented in each region. The location of the Core Management Team must be identified and how this location will allow the management team access to the Finger Lakes Region and/or Northern New York Region counties to fulfill the requirements of the FAS must be explained.

D.4.4 Performance Criteria (see page limits as indicated below)

In all sections below, the bidder's responses should address the corresponding project specifications included in Section C. For example, the response to Section D.4.4.1 Call Center Activities should incorporate specifications of a call center as described in Section C.2. Operate a Call Center for Medicaid Eligible Individuals or Their Representatives.

Responses are to be enumerated in direct correlation to each request below. For example, a response to Section D.4.4.1 Call Center Activities below should begin with “D.4.4.1.”

NOTE: For bidders proposing both regions, most criteria encompass information that will be used to evaluate both regions. However, where a separate response is required for each region, additional pages, as noted, are allowed and responses should be provided separately for each region.

Detailed, specific information is expected. The bidder is expected to include activities that show an ongoing continuous improvement structure that is flexible and responsive, adaptable and creative. For example, the Department is requiring the contractor to develop websites which will streamline processes and educate users. We expect the contractor to have a conceptual design of the website; however, the processes to be used to create, develop and update a website are more critical than an actual website design.

While the Department seeks “solutions” to the current challenges listed in this document, the Department is aware that some solutions will be generated only by involving key stakeholders. The processes proposed to solicit the input and feedback of those stakeholders will be an important component of the proposal.

In completing the Technical Proposal, responses must be provided to the items listed below. For some responses, the Contractor may wish to include an attachment that adds great detail to the response, such as a flowchart of operations. Attachments are allowed, in a section following the Technical Proposal requirements, and each attachment should be identified with a tab divider. The number of pages in these attachments will not be considered part of the actual count of

pages listed below.

D.4.4.1. Call Center Activities (6 page limit)

- a. Describe the availability of a toll-free telephone number and other toll-free voice and telecommunications devices, including devices appropriate for deaf clients and oral interpretation services. Describe the process for providing twenty-four hour toll-free access in order to provide information on accessing transportation for an urgent medical condition; and on holidays, weekends and outside business hours. Include the hours of operation and proposed level of staffing for the call center.
- b. Describe how the call center will encourage enrollees' use of public transportation and how their success rate will be determined and documented.
- c. Provide statistics for call performance standards, including average wait time, average call volume, peak call volume, and after hours call wait time for similar service provided by your organization for the calendar year 2011. Include the average number of staff available each day and the hours of operation relative to the statistics provided.
- d. Describe (1) the automated phone system capabilities that will be employed, (2) how your call center staff will establish eligibility and determine if the enrollee has managed care coverage that prohibits fee for service non-emergency medical transportation, and (3) where your call center will be located.
- e. Describe how the transportation management system and call center technology will be structured to handle the large volume of trip requests anticipated by this FAS in a timely, user-friendly and efficient manner. Include any web based, fax based or other technology that may be used to maximize the efficiency of scheduling required trips.
- f. Describe the call center's process for ensuring requests are made at least 72 hours in advance of the service date and how the process will be effectively communicated to Medicaid enrollees and ordering providers.
- g. Describe the call center's process for ordering transportation to be followed by ordering practitioners. Include system efficiencies developed to expedite the process for practitioners and special accommodations made by the call center to handle urgent care requests.
- h. Describe the call center's process to allow for post-transportation approval of services as described in Section C.2.g.

D.4.4.2. Processing Requests for Transportation (18 page limit)

- a. Describe: (1) how an individual's Medicaid eligibility will be identified (2) what HIPAA regulation compliant safeguards will be in place to protect enrollee confidentiality as information is acquired and used during the prior authorization process.

- b. Describe what strategies will be used to ensure the availability of the most appropriate Medicaid transportation in all areas of the participating counties.
- c. Describe the process for ensuring use of the most cost effective mode of transportation to be used for each encounter, including:
 - Only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available is provided;
 - No expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available, and
 - Documentation for employing a mode of transportation different from the ordered mode (either higher or lower) will be maintained and made available upon request.
- d. Describe the process for arranging transportation once the mode has been determined. Include the process for determining the mileage for each trip scheduled and calculating the total costs for the prior authorization.
- e. Describe the process for ensuring that rides are assigned to available transportation providers fairly and equitably.
- f. Describe the process by which advanced modes of transportation (ambulette, non-emergency ambulance) will be reviewed and authorized. Include the role of any medical/health care staff in the prior authorization review process and a description of how and when a medical justification form will be used.
- g. Describe the process by which trips for advanced modes of transportation (ambulette, non-emergency ambulance) will be reviewed on an on-going basis for continued need.
- h. Describe the automated system that will be used to manage the reservations, scheduling, and efficient routing of requests for non-emergency medical transportation.
- i. Describe the process for making appropriate and economical use of transportation resources available in each county in order to meet the anticipated demand for transportation services within the respective county. These resources include but are not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services.

D.4.4.3. Maintain a Public Web Site (3 page limit)

Describe how you will create a public website to educate enrollees, transportation providers and medical practitioners about available transportation services, eligibility requirements, the prior authorization process, and how to access transportation. The objectives of the website, the general contents, how it will be designed and updated

should be included. Describe how you will receive complaints and acknowledgements from enrollees, transportation providers, and medical practitioners as well as how you will minimize costs while maintaining functionality.

D.4.4.4. Collaborate with Local Transportation Stakeholders (2 page limit if proposing one region, 3 page limit if proposing both regions)

- a. Describe current experience coordinating with local transportation provider networks and optimizing existing local resources to enhance Medicaid transportation.
- b. Describe current Medicaid transportation challenges that exist in the region being applied for and include strategies for collaborating locally that will improve efficiency and result in a user-friendly system for approving and arranging transportation. **A separate response is required for this criterion for each region being proposed. Clearly label the response for each region accordingly.**
- c. Provide details on how staff will be assigned to coordinate and handle transportation problems for medical providers throughout the region.
- d. Provide details on how staff will be assigned to provide ongoing education and support to providers and enrollees at the county level.

D.4.4.5. Process Special Transportation Requests (1 page limit)

- a. Describe the process for developing and implementing guidelines for authorizing multiple trips for enrollees attending regularly scheduled medical care, transportation outside the common medical marketing area, and nursing home transportation.
- b. Describe the process for approving transportation for hospital discharges and admissions, include any differences from routine transportation approvals that will ensure expediency with the arrangements.
- c. Describe the process for responding to requests from enrollees or medical practitioners for travel to and from major medical facilities in cities located across the United States and its territories, including arranging for fixed wing air ambulance or commercial air.

For Performance Criteria D.4.4.6 through D.4.4.12 the TOTAL page limit is 5.

D.4.4.6. Resolution of Enrollee and Transportation/Medical Provider Complaints

- a. Describe the complaint resolution process for enrollee and provider complaints and the general process and timeline from investigation to resolution.
- b. Describe the written notification process, upon denying a request for transportation services for an individual that informs the enrollee of the denial and the enrollee's right to question the decision by requesting a State Fair Hearing.

D.4.4.7. Quality Standards

- a. Provide details regarding strategies for enhancing customer satisfaction and safety. Include copies of customer satisfaction standards used in any of your organization's current contracts (copies excluded from page limits). Customer satisfaction measures should address both the transportation quality standards and the internal quality improvement standards as described in the Section C.9. This section should include proactive strategies aimed at obtaining consumer feedback and recommendations for improvement and not rely solely on complaint resolution as a measure of improvement.
- b. Describe the approach to implementing program integrity including quality assurance systems related to transportation that ensure services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulatory requirements. Quality standards must address such issues as proper New York State registration of vehicles and certification of drivers, reliability in meeting appointments, timeliness of vehicle pickup and delivery, transportation provider acceptance of longer trips, cleanliness of vehicles, and driver politeness.
- c. Describe a corrective action protocol for providers and drivers that fail to provide satisfactory services in a timely manner or fail to comply with regulations
- d. Describe your approach to program evaluation including trip and expenditure data collection and analysis as well as evaluating consumer satisfaction.

D.4.4.8. Record Keeping and Reporting

List the management and utilization reports you will make available to the Department including a description of the intent of each report. Include reports described in Section C.10.

D.4.4.9. Processing of Payments to be Made to Enrollees for Incurred Transportation Expenses

Describe the process for educating enrollees on other travel related expenses which can be reimbursed under the Medicaid program due to long distance/overnight travel, public transportation, etc. and the system that will be developed to recover receipts and reimburse the enrollee for these travel expenses. Include a process for accountability and reporting of these expenses to the Department and a sample monthly report as an attachment. The sample report is not included in the page limit.

D.4.4.10. Enrollee and Transportation Provider Fraud

Describe strategies to identify and address fraudulent or abusive activities, including monitoring and documentation of such behaviors by both transportation providers and enrollees.

D.4.4.11. Written Procedures

Describe a process for developing formal written procedures and guidelines for all aspects of the Medicaid transportation program; describe how the procedures and guidelines will be distributed to all staff and how the procedures will be kept up to date with Department requirements.

D.4.4.12. Staff Training

Describe aspects of the organization's personnel training program designed to ensure knowledge of Medicaid policy, Federal HIPAA regulations, NYS Medicaid transportation policy and guidelines. Give specific examples of the training program's curriculum.

D.4.5. Project Implementation Work Plan (3 page limit per region)

Provide a brief work plan for the three year contract term that includes a date specific timeline for implementation of the solicited activities that supports the start date listed on the cover page of the FAS. Include with each goal/objective the expected completion date, and person(s) responsible for implementation. **A separate response is required for this criterion for each region being proposed. Clearly label the response for each region accordingly.**

D.4.6. Organizational Support and Experience (10 page limit if proposing one region, 12 page limit if proposing both regions)

Provide the following information for the bidder's organization:

- a. A brief history and description of your organization. Include an organizational chart along with a copy of your organization's most recent annual financial report.
- b. Identify your organization's professional staff members who would be directly involved in the county engagement, the experience each possesses, and the location of the office from which each will work. Describe your anticipated staffing pattern relative to this transportation management FAS and related job descriptions for each position responsible for both administration/management and direct service delivery. **Specify the staffing level, job descriptions and qualifications for each member of the core management team. A separate response is required for this criterion for each region being proposed. Clearly label the response for each region accordingly.**
- c. Give the name and title of person(s) authorized to bind the bidder, the main office address, telephone number (including area code) and email address.
- d. Describe the essential features of a successful regional model, what support the organization will contribute to develop these features, and what experience the organization has with participating in a regional transportation management structure.
- e. Describe the organization's experience with the administration, provision, and coordination of non-emergency medical transportation services including:
 1. Experience in professional transportation coordination and delivery activities, scheduling, dispatching and provision of Medicaid-funded transportation;
 2. Capability to receive and respond to a high volume of telephonic and electronic requests for non-emergency medical transportation;

3. Experience and knowledge of the rules and regulations for New York State Medicaid eligible individuals;
 4. Proven ability to utilize automated systems to support coordination and administration of transportation services;
 5. Demonstrated ability to establish partnerships with county departments of social services to promote planning and implementation of coordination services;
 6. Demonstrated ability to establish partnerships with various transportation providers and local transportation networks to manage and coordinate transportation services.
- f. Describe the organization's proven experience coordinating transportation services in a geographic and demographic area similar to the area in New York State within which you would be managing as outlined in this FAS. **A separate response is required for this criterion for each region being applied for. Clearly label the response for each region accordingly.**
 - g. Describe the organization's experience providing functional assessments to determine level-of-need and the appropriate mode of transportation.
 - h. Provide information on the organization's technology support relative to back-up and redundancy capabilities.
 - i. Identify all subcontractors that the organization intends to use in fulfilling the requirements of this FAS, including the relevant experience of each and submit a letter from each planned subcontractor affirming their commitment to participate in the project described in this FAS and their responsibilities.
 - j. Provide a minimum of three (3) professional references from organization leaders for whom your organization have provided services. Include the name, title, address, telephone number and email address of contact person. The projects should be similar in size and scope.
 - k. List all current and past government contracts awarded to the organization including the name, title, and telephone number of the principle contact person for those contracts within the organization. List all current and past government contracts which the organization participated as a subcontractor, including the name, title, and phone number of the principal contact person.

D.5. Cost Proposal

The bidder should submit a Cost Proposal separate from the Technical Proposal. The Cost Proposal should be submitted in a sealed package and should be clearly labeled in bold "New York State Medicaid Transportation Management Initiative –Finger Lakes and Northern New York Regions Funding Availability Solicitation – Cost Proposal".

The Cost Proposal consists of the following completed forms:

- Bid Form (Attachment H)
- Lobbying Form (Attachment I)
- M/WBE Forms (See Attachment K)

Cost Proposals should be accurate, clear and concise. The Department may reject any bid containing Cost Proposal inaccuracies.

The chart below outlines the Medicaid enrollees eligible for transportation services as of April 2012 in the counties expected to be included in this contract. **Note: The figures in this chart do not guarantee current or future service levels and are for informational purposes in the development of the Cost Proposal.**

A	B	C	D
Region	Medicaid Enrollees: Fee for Service and Managed Care (April 2012)	Unduplicated Medicaid Enrollees Using Fee-for-Service Transportation (2011)	One Way Trips
Finger Lakes	351,497	30,998	608,332
Northern New York	74,431	8,519	64,156

D.5.1. Bid Form

Attachment H contains the Bid Form that should be submitted in response to this FAS. Compliance with provisions of this form will be evaluated as part of the Compliance Evaluation screening process explained in Section E.1 of this FAS. Failure to comply may result in disqualification of the bidder.

The bid form includes regional columns to indicate the per member per month price for the five work volume level categories (A - E) for each of the two regions available to be bid on, and a third column for the per member per month price if the bidder is bidding on both regions. **When submitting a bid and proposal for BOTH regions (Column 3), the bidder must also submit bids for each of the regions separately (Columns 1 AND 2).**

If submitting a proposal for both regions:

- Failure to provide bid prices in the regional columns will result in disqualification from the region not provided. For example, if proposing to cover both regions and the “Per Member Per Month Northern NY” column is not completed, the bidder will only be considered for the Finger Lakes region.
- Failure to complete the “Per Member Per Month Price BOTH Regions” column will disqualify the bidder from being awarded both regions. The bidder may still be considered for one or the other region, but not both.

The bidder must submit a separate bid price for each of the volume level categories (A, B, C, D, E) for the number of Medicaid enrollees eligible to receive fee-for-service (FFS) non-emergency

transportation, as indicated in the chart below. All volume level categories must be bid on, even if the region's total eligible number currently does not reach that level. Bidders are encouraged to reflect volume discounts in higher volume level categories and when bidding on both regions.

Volume Level Category	Medicaid Enrollees Eligible to Receive FFS Transportation	(1) Per Member, Per Month Cost Bid Finger Lakes Region ONLY	(2) Per Member Per Month Price Northern NY Region ONLY	(3) Per Member Per Month Price BOTH Regions
A	0 to 100,000			
B	100,001 to 200,000			
C	200,001 to 300,000			
D	300,001 to 400,000			
E	400,001 and above			

All bids are subject to change subsequent to Department of Health negotiation with the bidders.

The volume of Medicaid enrollees eligible to receive fee-for-service transportation, therefore contractor reimbursement, may change during the contract period if the number of participating counties is increased or reduced during this period.

D.5.2. Financial Capacity and Stability

Bidders should be prepared, at any point during the evaluation, to provide evidence of their organizations' financial stability in order to confirm their ability to perform the terms and conditions of this contract. Evidence includes independently audited financial statements (not annual reports) for the last three full years of operations. If these reports are considered proprietary in nature, indicate this with the submission. If a bidder is not required to have independent audits performed, other evidence of financial ability to perform this project should be provided for the same time period.

D.5.3. Vendor Responsibility Attestation

The Vendor Responsibility Attestation (Attachment J) should be completed and included in the Cost Proposal.

This document is explained in detail in Section E.9. Failure to comply may result in disqualification of the bidder from consideration for award.

D.6. Selection Method and Award

The Commissioner of Health will establish a FAS review team with expertise in the area of both the administration of the New York State Medicaid program and the delivery of Medicaid transportation services. Proposals deemed by the Department to have met the minimum requirements as outlined in Section D.1 will be evaluated by the review team. The review team will evaluate both the bidder's technical and cost proposals in the process of selecting a contractor.

In performing this evaluation, the review team may consider any other relevant information derived from the bidder's current or past employers as well as the Department's and the counties' previous experience with the bidder's transportation management performance.

The review team will recommend to the Commissioner the bidder(s) determined to best fit the FAS project specifications in the most cost effective manner. The review team will consider the bidder(s) with proven experience managing transportation services in geographic and demographic areas similar to the Finger Lakes and/or Northern New York regions as outlined in this FAS.

D.6.1. Notification of Award

After evaluation and selection of the successful bidder(s), all bidders will be notified in writing of the selection or non-selection of their proposals. The name of the successful bidder(s) will be disclosed.

Once an award has been made, bidders may request a debriefing with regard to 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 date of award or non-award announcement.

Press releases by any bidder pertaining to this project shall not be made without prior written approval of the State and then only in conjunction with the Department of Health.

SECTION E: ADMINISTRATIVE REQUIREMENTS

E.1 Issuing Agency

This FAS 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.

E.2. Inquiries

Any questions concerning this solicitation must be directed to:

Stephanie Sheehan
New York State Department of Health
Office of Health Insurance Programs
One Commerce Plaza, Room 720 c/o Empire State Plaza
Corning Tower
Albany, NY 12237
Email: sms13@health.state.ny.us

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

Prospective bidders should note that all clarification and exceptions, including those relating to the terms and conditions of the contract, are to be raised prior to the submission of a proposal.

Questions and answers, as well as any updates or modifications, will also be posted on the

Department's website at <http://www.health.ny.gov/funding>. All such updates will be posted on or about the date identified on the cover sheet of this FAS. Bidders wishing to receive these documents via mail must send a request, in writing, to the Department at the address above.

There will not be a bidder's conference in conjunction with this FAS.

E.3. Submission of Proposals

Interested bidders should submit two originals and six bound copies in hardcopy format (8 complete sets in all) of both the technical and cost proposal. The bidder should also submit an electronic copy in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only. The eight (8) hardcopy sets and CD of the technical proposal should be packaged, labeled and sealed separately from the 8 hardcopy sets and CD of the cost proposal. The separate technical and cost packages should be mailed as one parcel.

In case of any discrepancy between the electronic and the hard copy documents, the hard copy shall supersede.

The responses to this FAS should be clearly labeled **"New York State Medicaid Transportation Management Initiative – Finger Lakes/NNY Regions"** and submitted to:

Mr. Mark Bertozzi
New York State Department of Health
Office of Health Insurance Programs
Division of Program Development and Management
One Commerce Plaza, Room 720
c/o Empire State Plaza
Corning Tower
Albany, NY 12237

It is the responsibility of the bidder to see that complete copies of the proposal are delivered to Room 720 prior to the date and time of the bid due date. Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to Room 720 will not be considered.

E.4. Reserved Rights

The Department of Health reserves the right to:

1. Reject any or all proposals received in response to the FAS;
2. Withdraw the FAS at any time, at the agency's sole discretion;
3. Make an award under the FAS in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the FAS;
5. Seek clarifications and revisions of proposals;
6. 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 FAS;

7. Prior to the proposal due date, amend the FAS specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the proposal due date, direct bidders to submit proposal modifications addressing subsequent FAS amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Under the authority given to the Commissioner in Section 365-h of Social Services Law, select and negotiate with the successful bidder(s) best suited to serve the purposes set forth in the statute and the FAS;
13. Select and conduct contract negotiations with other bidders which, in the discretion of the Commissioner, are best suited to serve the purposes of Section 365-h of the Social Services Law and the FAS, should the agency be unsuccessful in negotiating with the selected bidder.
14. Utilize any and all ideas submitted in the proposals received;
15. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 365 calendar days from the bid opening; and,
16. 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 a bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation.

E.5. Public Information

Disclosure of information related to this procurement and the resulting contract shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Article 6 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are exempt from disclosure. Information constituting trade secrets or critical infrastructure information for purposes of FOIL shall be clearly marked and identified as such by the contractor upon submission. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State.

E.6. Voucher Submission, Payment and Supporting Documentation

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

New York State Department of Health
Office of Health Insurance Programs,
Transportation Policy Unit, OCP 720
Empire State Plaza
Corning Tower
Albany, New York 12237

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 epayments@osc.state.ny.us or by telephone at 855-233-8363. 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 are:

The successful contractor will receive a monthly payment per Medicaid enrollee eligible to receive fee-for-service transportation (see chart in section D.4. Cost Proposal) which is based on a fee determined in accordance with the fee schedule submitted in the Cost Proposal and as negotiated by DOH in accordance with Section 365-h of Social Services Law and the FAS, in the best interests of the State. Payment will be made per Medicaid enrollee for only those counties where the contractor is implementing the Medicaid transportation management services prescribed by this FAS. **This monthly payment is an all-inclusive reimbursement under the contract and will be the only compensation received by the contractor for performing the transportation management duties procured by the State through this FAS.**

The contractor cannot begin managing a county's transportation services prescribed by this FAS nor receive any payment until the Department determines that the following items have been satisfactorily completed:

- Call center operations are ready to commence;
- Medical practitioners in the county have been informed of and trained on new processes for ordering transportation;
- Transportation providers have been informed of and trained on new processes to receive trip and authorization information;
- The necessary system changes have been made in order to transmit authorization data to the Department's Medicaid payment system;
- County local department of social services staff have agreed on the readiness to transition Medicaid transportation management to the contractor; and
- The contractor's Transportation Management Implementation Plan required in Section C.16. has been approved by the Department.

For the purposes of contractor payment, the volume of Medicaid enrollees will be calculated on the 15th day of each month. If the 15th day of any month is not a business day, the calculation will be made on the next subsequent business day of that month.

The volume of Medicaid enrollees eligible to receive fee-for-service transportation, therefore contractor reimbursement, may change during the contract period if the number of participating counties is increased or reduced during this period.

Reimbursement will be made for offline Medicaid transportation costs paid directly by the contractor to Medicaid enrollees for personal travel expenses and transportation providers not enrolled in NYS Medicaid as a vendor, such as commercial transportation providers. Offline expenses can also include reimbursement for costs associated with medically necessary long distance travel. Payment will be made on a dollar-for-dollar basis based on reporting submitted by the contractor. Complete reporting requirements will be detailed in the resulting contract.

A financial penalty (a deduction from the amount reimbursed to the contractor) will be assessed on the contractor when the performance standards described below are not met. The Department will monitor two areas of contractor activities, and will assess a financial penalty when unacceptable outcomes are discovered:

- **Call Center Intake Activity; and**
- **Prior Authorization Activity**

Call Center Intake Activity Penalty

In Section C.2.b of the FAS, the following call center standards are listed:

The contractor shall maintain sufficient equipment and call center staff to ensure that, on a monthly basis:

- a. The automated voice response system is programmed to answer all calls within three rings;
- b. The queue time after the initial automatic voice response is three minutes or less with 95% compliance each month;
- c. All incoming calls received are answered within three (3) minutes with 95% compliance each month: and
- d. The average time to assist hearing impaired enrollees shall not exceed three (3) minutes with a 95% compliance each month.

A penalty will be assessed when any one of these four standards is not met during a given month. When any one of the standards is not met, the contractual amount to be reimbursed to the contractor will be reduced by 5%. When two or more standards are not met during a given month, the contractual amount to be reimbursed to the contractor will be reduced by 10%.

Prior Authorization Activity Penalty

Penalties will be assessed after review and analysis of all prior authorization activity submitted to the State's fiscal agent via the 278 process. The Department will use a complete file of one month's transactions based upon the Submission Date (the beginning submission date will be the first of the month, and the last submission date will be the last day of the month) on the Medicaid Management Information System (MMIS)-generated prior authorization transaction, a date that is automatically assigned to every MMIS transaction. This file will then be reviewed by

Department staff to determine if any of the following performance standards have been violated:

- a. The wrong transportation procedure code was assigned;
- b. The wrong dollar amount for the applicable procedure code was assigned;
- c. The wrong number of procedure code units was assigned for the transport;
- d. The calculation of miles assigned for a trip was wrong, as determined by a generally accepted standard of mileage determination, as agreed upon by the Department and the contractor;
- e. More than one prior authorization containing the same information is requested;
- f. A prior authorization for the same transport was requested for at least two different transportation providers; and,
- g. The submission for a prior authorization was made over thirty days from the date of service.

When the total number of prior authorization transaction errors at or above 0.5% and below 1.0% of the total number of prior authorization transactions submitted to the State during any given month, the contractual amount to be reimbursed to the contractor will be reduced by 5%. This penalty will double to 10% when the error rate is equal to or greater than 1.0% of the total number of transactions.

Every error contained in a prior authorization will be counted, e.g., if one prior authorization has the incorrect number of units issued and also the wrong dollar amount to be reimbursed for that procedure code, this prior authorization will count twice.

Prior authorization error activity will be discussed with the contractor prior to each assessed penalty. The decision whether or not to assess the penalty will lie solely with the Department.

E.7. Term of Contract

This agreement shall be effective upon execution by the Commissioner of the Department as set forth in Section 365-h of the Social Services Law. Work cannot begin until execution.

It is anticipated that the Department will award a contract for a three (3)-year period beginning March 4, 2013.

DOH has the option to extend the contract for two consecutive one-year periods.

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

E.8. Early Termination Transition Plan

If the contract is terminated before the end of the contract period, the bidder will work with the State to transition any documents, reports, files, activities, and responsibilities to the Department, or its designee, to maintain and continue these state and federally mandated requirements.

E.9. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors should 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 21).

E.10. 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, 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" 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.

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at:

<http://www.osc.state.ny.us/procurement/>.

E.11. 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:

1. 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;
2. 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;
 3. 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;
 4. 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;
 5. 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;
 6. Requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
 7. Expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
 8. Modifies the governance of the New York State Commission on Public Integrity;
 9. Provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
 10. Increases the monetary threshold which triggers a lobbyists obligations under the Lobbying Act from \$2,000 to \$5,000; and
 11. 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.

E.12. 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.

E.13. 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.dhSES.ny.gov/ocs/breach-notification/>.

E.14. 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 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.

Forms ST-220-TD and ST-220-CA may be accessed electronically at:

ST-220-TD:

http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf and

ST-220-CA:

http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

E.15. 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.

E.16. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A, the New York State Department of Health recognizes its obligation to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of New York State Department of Health contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were

ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that New York State Department of Health establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>. For guidance on how New York State Department of Health will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and New York State Department of Health may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.
- B. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health

Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- D. New York State Department of Health may disqualify a Bidder as being non-responsive under the following circumstances:
- a) If a Bidder fails to submit a MWBE Utilization Plan;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If New York State Department of Health determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to New York State Department of Health, but must be made prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly MWBE Contractor Compliance & Payment Report on Form #3 to the New York State Department of Health address, phone and fax information, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form #4) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the New York State Department of Health, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-

discrimination on the basis of prior criminal conviction and prior arrest.

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

SECTION F: DEFINITIONS

For the purposes of the Medicaid Program and as used in this request, the following terms are defined as follows:

F.1. Ambulance

An ambulance is a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.

An ambulance service is any entity, as defined in Section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat, or other form of transportation to or from facilities providing hospital services and which is certified or registered by the Department as an ambulance service.

F.2. Ambulette

Ambulette or invalid coach is a special-purpose vehicle designed and equipped to provide non-emergency care that has either wheelchair-carrying capacity or the ability to carry disabled individuals.

An ambulette service is an individual, partnership, association, corporation, or any other legal entity which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care.

An ambulette service provides the invalid, infirm or disabled with personal assistance.

F.3. Common Medical Marketing Area

The common medical marketing area is the geographic area from which a community customarily obtains its medical care and services.

F.4. Conditional Liability

Conditional liability is the responsibility of the prior authorization official for making payment only for transportation services which are provided to Medicaid eligible individuals in accordance with the requirements of Title 18 (the regulations of the New York State Department of Social Services).

F.5. Day Treatment Program

A day treatment program or continuing treatment program is a planned combination of diagnostic, treatment and rehabilitative services certified by the Office for Persons with Developmental Disabilities or the Office of Mental Health.

F.6. Department Staff

Employees of the New York State Department of Health, or designees of the Department of Health, for the purposes of this contract.

F.7. Emergency

A medical or mental health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention could reasonably be expected to result in placing the enrollee's physical or mental health (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, serious dysfunction of any bodily organ or part, serious harm to self or others due to an alcohol or drug abuse emergency, injury to self or bodily harm to others, or with respect to a pregnant woman having contractions: (1) that there is inadequate time to effect a safe transfer to a hospital before delivery, or (2) that transfer may pose a threat to the health or safety of the woman or the unborn child.

F.8. Enrollee/Enrollee

An enrollee/enrollee is an individual who is enrolled in the Medicaid Program and is eligible to receive Medicaid services, including transportation.

F.9. Fee-for-Service

The payment of a fee by the Department directly to a service provider for a specified direct service.

F.10. Medical Escort

A paid or unpaid individual or caregiver accompanying a program eligible enrollee who is physically, mentally, or developmentally disabled and unable to travel or wait without assistance or supervision to receive a Medicaid coverable service. The escort may drive or utilize transportation services with the program eligible enrollee.

F.11. Medical Necessity

Health care services are considered medically necessary when those services are:

- medically appropriate;
- Necessary to meet the basic health needs of the enrollee;
- Rendered in the most cost-efficient manner and type of setting appropriate for the delivery of the covered service;
- Consistent in type, frequency, duration of treatment with scientifically based guidelines of national medical, research, or health care coverage organizations or governmental agencies;
- Consistent with the diagnosis of the condition;
- Required for means other than convenience of the enrollee or his or her physician;
- No more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;
- Of demonstrated value; and,
- No more intense level of service than can be safely provided.

F.12. Medical Service Provider

An individual, firm, corporation, hospital, nursing facility, or association that is enrolled as a Medicaid provider, or provides a Medicaid coverable service free of charge (for example, a Veterans Administration Hospital, or local county Department of Health.)

F.13. Mode

The method used to provide transportation services to enrollees.

F.14. Non-Emergency Ambulance Transportation

Non-emergency ambulance transportation is the provision of ambulance transportation for the purpose of obtaining necessary medical care or services by a Medicaid enrollee whose medical condition requires transportation in a recumbent position.

Non-emergency ambulance transportation is transportation of a pre-planned nature where the patient must be transported on a stretcher or requires the administration of life support equipment, such as oxygen, by trained medical personnel.

F.15. No-Show

The result of a Department enrollee or transportation service provider not keeping an appointment and failing to cancel the appointment.

F.16. Prior Authorization

A determination that payment for transportation is essential in order for a Medicaid enrollee to obtain necessary medical care and services and that the Medicaid Program accepts conditional liability for payment of the Medicaid enrollee's transportation costs.

F.17. Medical practitioner

An ordering practitioner is the Medicaid enrollee's attending physician or other medical practitioner who has not been excluded from or denied enrollment in the Medicaid Program and who is requesting transportation on behalf of the Medicaid enrollee in order for the Medicaid enrollee to receive medical care or services covered under Medicaid.

F.18. Stretcher Van

A vehicle that transports a prone or supine person who does not require medical attention while traveling to services.

F.19. Transportation Provider

A transportation provider is a lawfully authorized provider of transportation services who is actively enrolled in the Medicaid Program.

F.20. Transportation Services

Transportation services are services by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the Medicaid enrollee's medical condition; and transportation attendant to accompany the Medicaid enrollee, if necessary.

Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the Medicaid enrollee's family.

F.21. Urgent Care Transportation

"Urgent care" means that level of care ordered and verified by the individual's physician (online, by phone or fax) to be necessary on the day the request is made. Examples include, but are not limited to, high temperature, persistent rash, vomiting or diarrhea, symptoms which are of sudden or severe onset but which do not require emergency room services. Urgent care is generally determined by the enrollee's medical care provider, but not necessary.

An appointment shall be considered urgent if the medical service provider grants an appointment within forty-eight (48) hours of the enrollee's request.

A hospital discharge shall be considered an Urgent Trip.

SECTION G. APPENDICES

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposal, excluding Attachment L “Sample Standard NYS Contract Language and Appendices” will, itself, be included 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 M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures
- ❑ Appendix X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

SECTION H. LIST OF ATTACHMENTS

Attachment A	Transportation Manager Law (June 7, 2010)
Attachment B	Department of Health regulation on Medicaid Transportation, Title 18 of the New York Code of Rules and Regulation (NYCRR) 505.10
Attachment C	Medicaid Transportation Ordering Guidelines
Attachment D	Medicaid Enrollee Fair Hearing Rights
Attachment E	Medicaid Enrollees, Users and Trips Data
Attachment F	Directive to county departments of social services, 92 ADM-21, "Transportation for Medical Care and Services: 18 NYCRR 505.10"
Attachment G	Transmittal Form
Attachment H	Bid Form
Attachment I	Lobbying Form
Attachment J	Vendor Responsibility Attestation
Attachment K	NYS Department of Health M/WBE Procurement Forms
Attachment L	Sample Standard NYS Contract Language and Appendices

Attachment A

Transportation Manager Law (June 7, 2010)

Section 365-h of the social services law, as added by chapter 8 of the laws of 1995 and subdivision 3 as amended by section 26 of part B of chapter 1 of the laws of 2002, is amended to read as follows:

S 365-h. Provision and reimbursement of transportation costs.

1. The local social services official and, subject to the provisions of subdivision four of this section, the commissioner of health shall have responsibility for prior authorizing transportation of eligible persons and for limiting the provision of such transportation to those recipients and circumstances where such transportation is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title.

2. In exercising this responsibility, the local social services official and, as appropriate, the commissioner of health shall:

(a) make appropriate and economical use of transportation resources available in the district in meeting the anticipated demand for transportation within the district, including, but not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services; and

(b) maintain quality assurance mechanisms in order to ensure that

(i) only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title is provided [and];

(ii) no expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available to eligible persons; and

(iii) transportation services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulatory requirements and meet consumer satisfaction criteria approved by the commissioner of health.

3. In the event that coordination or other such cost savings measures are implemented, the commissioner shall assure compliance with applicable standards governing the safety and quality of transportation of the population served.

4. The commissioner of health is authorized to assume responsibility from a local social services official for the provision and reimbursement of transportation costs under this section. If the commissioner elects to assume such responsibility, the commissioner shall notify the local social services official in writing as to the election, the date upon which the election shall be effective and such information as to transition of responsibilities as the commissioner deems prudent. The commissioner is authorized to contract with a transportation manager or managers to manage transportation services in any local social services district. Any transportation manager or managers selected by the commissioner to manage transportation services shall have proven experience in coordinating transportation services in a geographic and demographic area similar to the area in New York State within which the contractor would manage the provision of services under this section. Such a contract or contracts may include responsibility for: review, approval and processing of transportation orders; management of the appropriate level of transportation based on documented patient medical need; and development of new technologies leading to efficient transportation services. If the commissioner elects to assume such responsibility from a local social services district, the commissioner shall examine and, if appropriate, adopt quality assurance measures that may include, but are not limited to, global positioning tracking system reporting requirements and service verification mechanisms. Any and all reimbursement rates developed by transportation managers under this subdivision shall be subject to the review and approval of the commissioner. Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law, the commissioner is authorized to enter into a contract or contracts under this subdivision without a competitive bid or request for proposal process, provided, however, that:

(a) the department shall post on its website, for a period of no less than thirty days:

(i) a description of the proposed services to be provided pursuant to the contract or contracts;

(ii) the criteria for selection of a contractor or contractors;

(iii) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(b) all reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner; and

(c) the commissioner shall select such contractor or contractors that, in his or her discretion, are best suited to serve the purposes of this section.

Attachment B

Title 18 of the New York Code of Rules and Regulation (NYCRR) §505.10

Transportation for Medical Care and Services

Effective Date: 04/29/98

(a) Scope and purpose.

This section describes the department's policy concerning payment for transportation services provided to Medical Assistance (MA) recipients, the standards to be used in determining when the MA program will pay for transportation, and the prior authorization process required for obtaining such payment.

Generally, payment will be made only upon prior authorization for transportation services provided to an eligible MA recipient. Prior authorization will be granted by the prior authorization official only when payment for transportation expenses is essential in order for an eligible MA recipient to obtain necessary medical care and services which may be paid for under the MA program.

(b) Definitions.

(1) Ambulance means a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.

(2) Ambulance service means any entity, as defined in section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat or other form of transportation to or from facilities providing hospital services and which is currently certified or registered by the Department of Health as an ambulance service.

(3) Ambulette or invalid coach means a special-purpose vehicle, designed and equipped to provide non-emergency transport that has wheelchair-carrying capacity, stretcher-carrying capacity, or the ability to carry disabled individuals.

(4) Ambulette service means an individual, partnership, association, corporation, or any other legal entity, which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care. An ambulette service provides the invalid, infirm or disabled with personal assistance as defined in this subdivision.

(5) Common medical marketing area means the geographic area from which a community customarily obtains its medical care and services.

(6) Community means either the State, a portion of the State, a city or a particular classification of the population, such as all persons 65 years of age and older.

(7) Conditional liability means that the prior authorization official is responsible for making payment only for transportation services which are provided to MA-eligible individuals in accordance with the requirements of this Title.

(8) Day treatment program or continuing treatment program means a planned combination of

diagnostic, treatment, and rehabilitative services certified by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.

(9) Department established rate means the rate for any given mode of transportation which the department has determined will ensure the efficient provision of appropriate transportation to MA recipients in order for the recipients to obtain necessary medical care or services.

(10) Emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining hospital services for an MA recipient who suffers from severe, life-threatening or potentially disabling conditions which require the provision of emergency medical services while the recipient is being transported.

(11) Emergency medical services means the provision of initial urgent medical care including, but not limited to, the treatment of trauma, burns, and respiratory, circulatory and obstetrical emergencies.

(12) Locally prevailing rate means a rate for a given mode of transportation which is established by a transit or transportation authority or commission empowered to establish rates for public transportation, a municipality, or a third-party payor, and which is charged to all persons using that mode of transportation in a given community.

(13) Locally established rate means the rate for any given mode of transportation which the social services official has determined will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services.

(14) Non-emergency ambulance transportation means the provision of ambulance transportation for obtaining necessary medical care or services to an MA recipient whose medical condition requires transportation by an ambulance service.

(15) Ordering practitioner means the MA recipient's attending physician or other medical practitioner who has not been excluded from enrollment in the MA program and who is requesting transportation on behalf of the MA recipient in order that the MA recipient may obtain medical care or services which are covered under the MA program. The ordering practitioner is responsible for initially determining when a specific mode of transportation to a particular medical care or service is medically necessary.

(16) Personal assistance means the provision of physical assistance by a provider of ambulette services or the provider's employee to an MA recipient for the purpose of assuring safe access to and from the recipient's place of residence, ambulette vehicle and MA covered health service provider's place of business.

Personal assistance is the rendering of physical assistance to the recipient in:

- walking, climbing or descending stairs, ramps, curbs or other obstacles;
- opening or closing doors;
- accessing an ambulette vehicle; and
- the moving of wheelchairs or other items of medical equipment and the removal of

obstacles as necessary to assure the safe movement of the recipient.

In providing personal assistance, the provider or the provider's employee will physically assist the recipient which shall include touching, or, if the recipient prefers not to be touched, guiding the recipient in such close proximity that the provider of services will be able to prevent any potential injury due to a sudden loss of steadiness or balance.

A recipient who can walk to and from a vehicle, his or her home, and a place of medical services without such assistance is deemed not to require personal assistance.

(17) Prior authorization means a prior authorization official's determination that payment for a specific mode of transportation is essential in order for an MA recipient to obtain necessary medical care and services and that the prior authorization official accepts conditional liability for payment of the recipient's transportation costs.

(18) Prior authorization official means the department, a social services district, or their designated agents.

(19) Transportation attendant means any individual authorized by the prior authorization official to assist the MA recipient in receiving safe transportation.

(20) Transportation expenses means:

(i) the costs of transportation services; and

(ii) the costs of outside meals and lodging incurred when going to and returning from a provider of medical care and services when distance and travel time require these costs.

(21) Transportation services means:

(i) transportation by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the recipient's medical condition; and

(ii) a transportation attendant to accompany the MA recipient, if necessary.

Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family.

(22) Undue financial hardship means transportation expenses which the MA recipient cannot be expected to meet from monthly income or from available resources. Such transportation expenses may include those of a recurring nature or major one-time costs.

(23) Vendor means a lawfully authorized provider of transportation services who is either enrolled in the MA program pursuant to Part 504 of this Title or authorized to receive payment for transportation services directly from a social services district or other agent designated by the department. The term vendor does not mean an MA recipient or other individual who transports an MA recipient by means of a private vehicle.

(c) Ambulette and nonemergency ambulance transportation.

(1) Who may order:

Only those practitioners, facilities, or programs listed in paragraph (4) of subdivision (d) of this section may order or submit an order on behalf of a practitioner for ambulette or nonemergency ambulance transportation services.

(2) Criteria for ordering ambulette transportation.

Ambulette transportation may be ordered if any one of the following conditions exist:

- (i) The recipient needs to be transported in a recumbent position and the ambulette service ordered has stretcher-carrying capacity; or
- (ii) The recipient is wheelchair bound and is unable to use a taxi, livery service, bus or private vehicle; or
- (iii) The recipient has a disabling physical condition which requires the use of a walker or crutches and is unable to use a taxi, livery service, bus or private vehicle; or
- (iv) The recipient has a disabling physical condition other than one described in subparagraph (iii) of this paragraph or a disabling mental condition, either of which requires the personal assistance provided by an ambulette service, and the ordering practitioner certifies, in a manner designated by the department, that the recipient cannot be transported by a taxi, livery service, bus or private vehicle and requires transportation by ambulette service; or
- (v) An otherwise ambulatory recipient requires radiation therapy, chemotherapy, or dialysis treatment which results in a disabling physical condition after treatment and renders the recipient unable to access transportation without the person assistance provided by an ambulette service.

(3) Criteria for ordering nonemergency ambulance transportation.

Nonemergency ambulance transportation may be ordered when the recipient is in need of services while being transported to a provider of medical services which can only be administered by an ambulance service.

(4) Recordkeeping.

The ordering practitioner must note in the recipient's patient record the condition which justifies the practitioner's ordering of ambulette or nonemergency ambulance services.

(5) Audit and claim review.

An ordering practitioner or a facility or program submitting an order on the practitioner's behalf, which does not comply with this subdivision may be subjected to monetary claims and/or program sanctions as provided in section 504.8(a) of this Title.

(d) Prior authorization.

(1) Generally, prior authorization must be obtained before transportation expenses are incurred. Prior authorization is not required for emergency ambulance transportation or Medicare

approved transportation by an ambulance service provided to an MA-eligible person who is also eligible for Medicare Part B payments. If transportation services are provided in accordance with section 505.10(e)(7) of this Part, the individualized education program or interim or final individualized family services plan of an MA eligible person will qualify as the prior authorization required by this subdivision.

(2) Requests for prior authorization may be made by the MA recipient, his or her representative, or an ordering practitioner.

(3) The recipient, his or her representative, or ordering practitioner must make the request in the manner required by the prior authorization official.

(4) A request for prior authorization for non-emergency ambulance transportation must be supported by the order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, or nurse practitioner. A request for prior authorization for transportation by ambulette or invalid coach must be supported by the order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner designated by the district and approved by the department. A diagnostic and treatment center, hospital, nursing home, intermediate care facility, long term home health care program, home and community-based services waiver program, or managed care program may submit an order for ambulette or nonemergency ambulance transportation services on behalf of the ordering practitioner.

(5) Each social services district must inform applicants for and recipients of MA of the need for prior authorization in order for transportation expenses to be paid under the MA program and of the procedures for obtaining such prior authorization.

(6) The prior authorization official may approve or deny a request for prior authorization, or require the ordering practitioner to submit additional information before the request is approved or denied.

(7) The prior authorization official must use the following criteria in determining whether to authorize payment of transportation expenses in accordance with subdivision (d) of this section:

(i) When the MA recipient can be transported to necessary medical care or services by use of private vehicle or by means of mass transportation which are used by the MA recipient for the usual activities of daily living, prior authorization for payment for such transportation expenses may be denied;

(ii) when the MA recipient needs multiple visits or treatments within a short period of time and the MA recipient would suffer undue financial hardship if required to make payment for the transportation to such visits or treatments, prior authorization for payment for such transportation expenses may be granted for a means of transportation ordinarily used by the MA recipient for the usual activities of daily living;

(iii) when the nature and severity of the MA recipient's illness necessitates a of transportation other than that ordinarily used by the MA recipient, prior authorization for such a mode of transportation may be granted;

(iv) when the geographic locations of the MA recipient and the provider of medical care and services are such that the usual mode of transportation is inappropriate, prior

authorization for another mode of transportation may be granted;

(v) when the distance to be traveled necessitates a large transportation expense and undue financial hardship to the MA recipient, prior authorization for payment for the MA recipient's usual mode of transportation may be granted;

(vi) when the medical care and services needed are available within the common medical marketing area of the MA recipient's community, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be denied;

(vii) when the need to continue a regimen of medical care or service with a specific provider necessitates travel which is outside the MA recipient's common medical marketing area, notwithstanding the fact that the medical care or service is available within the common medical marketing area, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be granted; and

(viii) when there are any other circumstances which are unique to the MA recipient and which the prior authorization official determines have an effect on the need for payment of transportation expenses, prior authorization for payment for such transportation expenses may be granted.

(e) Payment.

(1) Payment for transportation expenses will be made only when transportation expenses have been prior authorized except for emergency ambulance transportation or Medicare approved transportation by an ambulance service provided to an MA-eligible person who is also eligible for Medicare Part B payments.

(2) Payment for transportation expenses will be made only to the vendor of transportation services, to the MA recipient or to an individual providing transportation services on behalf of the MA recipient.

(3) Payment will be made only for the least expensive available mode of transportation suitable to the MA recipient's needs, as determined by the prior authorization official.

(4) Payment to vendors for transportation services must not exceed the lower of the department established rate, the local established rate, the locally prevailing rate, or the rate charged to the public, by the most direct route for the mode of transportation used. However, payment may be made in excess of the locally prevailing rate or the rate charged to the public when federal financial participation in the MA payment for transportation services is available and such payment is necessary to assure the transportation service.

(5) Payment to vendors will be made only where an MA recipient is actually being transported in the vehicle.

(6) In order to receive payment for services provided to an MA recipient, a vendor must be lawfully authorized to provide transportation services on the date the services are rendered. A vendor of transportation services is lawfully authorized to provide such services if it meets the following standards:

(i) ambulance services must be certified or registered by the Department of Health and comply with all requirements of that department.

(ii) ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission.

(iii) taxicab or livery services must comply with all requirements of the local municipality concerning the operation of taxicab or livery service in that municipality and with all requirements of the Department of Motor Vehicles; and

(iv) Vendors which provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such vendors must be qualified under Article 19-A of the Vehicle and Traffic Law. Such vendors and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the vendors or their drivers are exempt from such requirements.

(7) Payment is available for transportation services provided in order for the recipient to receive an MA covered service if the recipient receives such service (other than transportation services) at school or off of the school premises and both the covered service and transportation service are included in the recipient's individualized education plan. Payment is available for transportation services provided in order for the recipient, or the recipient's family member or significant other to receive an MA covered service if both the covered service and transportation service are included in the recipient's interim or final individualized family services plan. For purposes of this section, a significant other is a person who substitutes for the recipient's family, interacts regularly with the recipient, and affects directly the recipient's developmental status. Reimbursement for such services must be made in accordance with the provider agreement.

(8) Payment to a provider of ambulette services will only be made for services documented in contemporaneous records in accordance with section 504.3 of this Title. Documentation must include:

(i) the recipient's name and MA identification number;

(ii) the origination of the trip;

(iii) the destination of the trip;

(iv) the date and time of service; and,

(v) the name of the driver transporting the recipient.

(9) Payment will not be made for transportation services when:

(i) the transportation services are ordinarily made available to other persons in the community without charge; however, payment may be made under such circumstances when federal financial participation in the MA payment for transportation services is available;

(ii) the transportation services are provided by a medical facility and the costs are included in the facility's MA rate;

(iii) a vendor is not actually transporting an MA recipient;

(iv) the MA recipient has access to and can make use of transportation, such as a private vehicle or mass transportation, which the recipient ordinarily uses for the usual activities of daily living unless prior authorization has been granted by the prior authorization official.

(f) Medical transportation plans and rate schedules.

(1) The department may either establish rate schedules at which transportation services can be assured or delegate such authority to the social services districts.

(2) As directed by the department, each social services district must prepare and submit for department approval a medical transportation plan which provides for essential transportation of MA recipients to and from medical care and services which may be paid for under the MA program and the rate schedules to be used by the district. The department will approve a transportation plan if it finds that the plan satisfactorily demonstrates that appropriate modes of transportation are available to MA recipients in the social services district and that the rates of payment for transportation are adequate to ensure the availability of transportation to and from medically necessary care and services which can be paid for under the MA program.

(i) Amendments to transportation plans or changes to rate schedules must be submitted at least 60 days prior to the effective date of the amendment. The department may permit a shorter notification period in circumstances where the department has adequate time to review the proposed amendment prior to its effective date. Factors which will be considered in determining whether to shorten the notification period include, but are not limited to, the complexity of the proposed amendment and the number and complexity of any other proposed amendments which the department is reviewing when the request is made. The department may also waive the notification period at the request of the social services district where a waiver would permit more efficient and effective administration of the MA program.

(ii) Plans, rate schedules or amendments may not be implemented without departmental approval.

(iii) The transportation rate schedules submitted for approval must be complete and contain the current department established rates, the locally established rates, or the locally prevailing rates for each transportation service for which the district is required to pay.

(3) Failure to obtain the approval required by this subdivision may result in the social services district being denied federal and state reimbursement for the expenses related to transporting MA recipients to providers of medical care or services.

(4) On request, a vendor of transportation services must submit pertinent cost data, which is available to the vendor, to the department or the social services district. The department or the social services district may not require a certified cost document if providing such certification will result in additional expense to the vendor. Failure to comply with the requirements of this paragraph may result in the vendor's termination from participation in the MA program.

(5) The department or each social services district for which payment of transportation services is made through the Medicaid Management Information System (MMIS) must adhere to the following requirements in establishing payment rates with vendors of transportation services:

(i) The department or the social services district must select at least one of the following:

- (a) a flat rate for all transportation services provided;
- (b) a base rate for all transportation services provided, plus a mileage charge;
- (c) a flat rate for transportation services within specified areas; or
- (d) a mileage rate based on distance.

(ii) The department or the social services district may establish with vendors a reduced rate for any of the following:

- (a) transportation of additional persons;
- (b) transportation of persons traveling to and from day treatment or continuing treatment programs; and
- (c) transportation of persons for purposes of obtaining regularly recurring medical care and services.

(iii) The department or the social services district may establish an additional rate for any of the following:

- (a) other transportation costs, limited to the costs of meals, lodging and transportation attendants. Such costs must be approved by the department before the social services district may establish the additional rate; and
- (b) bridge and road tolls.

(6) Rates established by the department will be deemed part of all applicable social services district medical transportation plans.

**NEW YORK STATE
MEDICAID TRANSPORTATION
ORDERING GUIDELINES MANUAL
EFFECTIVE JULY 15, 2010**

Introduction

When the Medicaid Program was established in the 1960s, the federal government recognized that unless needy individuals could actually get to and from providers of services, the entire goal of the Medicaid Program is inhibited at the start. As a result, States are required under federal regulations to ensure necessary transportation for Medicaid enrollees to and from medical services. The federal government also provided authority for States to ensure the provision of this transportation to Medicaid enrollees with federal financial participation in the cost of these services under the Medicaid Program. For the Medicaid population, getting to and from services can be a struggle. If the enrollee cannot get to services, then the Program fails from the start; so New York State made the decision to cover a series of optional services under the Medicaid Program, including medical transportation.

In order to maintain enough flexibility to sufficiently meet the transportation needs of Medicaid enrollees in a significantly culturally and geographically diverse State, the responsibility of managing the New York State Medicaid Transportation Program was delegated to each county's local departments of social services. The New York City Medicaid Transportation Program is administered by the City of New York Human Resources Administration, which encompasses the five boroughs of the City of New York, with oversight by the New York State Department of Health.

Medicaid covers the transportation of eligible, enrolled persons who need transportation to and from Medicaid-covered services. All transportation must be prior authorized for payment.

For questions, comments and more information, please contact the [Medicaid Program's Transportation Unit](#):

Telephone: (518) 473-2160

Fax: (518) 486-2495

Email: MedTrans@health.state.ny.us.

Section I – Covered Transportation Services

Medicaid covers the transportation of eligible, enrolled persons who need transportation to and from Medicaid-covered services. When traveling to medical appointments, a Medicaid enrollee is to use the same mode of transportation as used to carry out the activities of daily life. Medicaid will pay for the **least costly, most medically appropriate** level of transportation to and from services covered by the Medicaid Program.

Covered non-emergency transportation services include:

- Personal vehicle;
- Public transportation (bus/subway);
- Livery;
- Ambulette; and
- Ambulance.

Section II – Rules for Ordering

As an ordering practitioner, you are responsible for ordering medically necessary transportation within the [common medical marketing area](#) (CMMA).

The CMMA is the geographic area from which a community customarily obtains its medical care and services

Enrollees who have reasonable access to a mode of transportation used for the normal activities of daily living; such as shopping and recreational events; are expected to use this same mode to travel to and from medical appointments when that mode is available to them.

Medicaid may restrict payment for transportation if it is determined that:

- the enrollee chose to go to a medical provider outside the CMMA when services were available within the CMMA;
- the enrollee could have taken a less expensive form of transportation but opted to take the more costly transportation.

In either case above, if the enrollee or his/her medical practitioner can demonstrate circumstances justifying payment, then reimbursement can be **considered**.

Responsibility of the Ordering Practitioner

As the medical practitioner requesting taxi, ambulette, or non-emergency ambulance services, you are responsible for ordering the **medically appropriate** mode of transportation for the Medicaid enrollee. A basic consideration for this should be the enrollee's current level of mobility and functional independence.

The transportation ordered should be the least specialized mode required based upon the enrollee's **current** medical condition. For example, if you feel the enrollee does not require personal assistance, but cannot walk to public transportation, you should authorize taxi service, not ambulette service.

Any ordering practitioner or entity ordering transportation on the practitioner's behalf that orders transportation which is deemed not to meet the above rules may be sanctioned according to [18 NYCRR Section 515.3](#), available online at:

<http://www.health.ny.gov/nysdoh/phforum/nycrr18.htm>.

Acceptable Orderers of Transportation

If you are enrolled as a Medicaid provider and the category of service in which you have enrolled reflected in the table below, then you may request prior authorization of transportation services on behalf of Medicaid enrollees.

Provider Type	Provider Type
Shared Health Facility	Long Term Care Health Related Facility
Dental Group	Long Term Care Day Care
Physician Group	ICF for Developmentally Disabled
Midwife Group	Mental Retardation: Outpatient Services
Clinical Psychologist Group	Nursing Home Sponsored HHA Professional Svcs
Free-Standing Diagnostic & Treatment Ctr	Long Term Home Health Care
Ordered Ambulatory (Other than Labs)	Salaried Optometrist
Hospice	LTC: Ordered Ambulatory (Other than Labs)
Dental School	Self-Employed Optometrist
Dental Service	Salaried Optician
Prepaid Capitation Plan	Physician
Free-Standing Home Health Ag Professional Svc	Self-Employed Optician
Assisted Living Program	Physician: CHAP Practitioner
OMH-Certified Rehabilitation Facility	Registered Physician's Assistant
HHAS: OMR/DD Waiver Services	Physician
Hos Svc: Ordered Ambulatory (Other than Labs)	Nurse Practitioner
Hos Svc: Home Care Program	Podiatrist
Inpatient Facility	Midwife
Skilled Nursing Facility	Clinical Psychologist
Hos Svc: Hospital Base Outpatient Services	Occupational Therapist
Hos Svc: Health Related Facility	Physical Therapist
Audiologist	Speech Therapist
Long Term Care Skilled Nursing Facility	Respiratory Therapist
	Respiratory Therapist Technician

If you have any questions regarding the category of service in which you are enrolled, please contact Computer Sciences Corporation at (800) 343-9000.

Non-Emergency Ambulance

Generally, ambulance service is requested when a Medicaid enrollee needs to be transported in a recumbent position (lying down) or is in need of medical attention while en route to their medical appointments.

A request for prior authorization **must** be supported by the order of a practitioner who is the Medicaid enrollee's:

- Attending physician;
- Physician's assistant; or
- Nurse practitioner.

Ambulette

Ambulette service is door-to-door; from the enrollee's home through the door of the medical appointment. [Personal assistance](#) by the staff of the ambulette company is required by the Medicaid Program in order to bill the Program for the provision of ambulette service. Personal assistance by the staff of the transportation company is

required by the Medicaid Program and consists of the rendering of physical assistance to the ambulatory and non-ambulatory (wheelchair-bound) Medicaid enrollees in:

- Walking, climbing or descending stairs, ramps, curbs, or other obstacles;
- Opening and closing doors;
- Accessing an ambulette vehicle; and
- The moving of obstacles as necessary to assure the safe movement of the Medicaid enrollee.

If personal assistance is not necessary and/or not provided, then taxi service should be ordered.

There is no separate reimbursement for the escort of a Medicaid enrollee. Necessary escorts are to be provided by the ambulette service at no additional or enhanced charge.

The Medicaid Program does not limit the number of stairs or floors in a building that a provider must climb in order to deliver personal assistance to a Medicaid enrollee.

The ambulette provider is required to provide personal assistance and door-to-door service at no additional or enhanced charge. This means the staff must transport the enrollee from his/her front door (including apartment door, nursing home room, etc.) no matter where it is located; to the door of the medical practitioner from whom the enrollee is to receive Medicaid-covered medical services.

Ambulettes may also provide taxi (curb-to-curb) service and will transport taxi-eligible enrollees in the same vehicle as ambulette-eligible enrollees. The Medicaid Program does not require the ambulette service to be licensed as a taxi service; the only requirement that ambulettes need to meet for this service is the proper authority and license to operate as an ambulette.

A request for prior authorization of ambulette transportation must be supported by the order of a practitioner who is the Medicaid enrollee's:

- Attending physician;
- Physician's assistant;
- Nurse practitioner;
- Dentist;
- Optometrist;
- Podiatrist; or
- Other type of medical practitioner designated by the district and approved by the Department.

A diagnostic and treatment clinic, hospital, nursing home, intermediate care facility, long term home health care program, home and community based services waiver program, or managed care program may order non-emergency ambulance transportation services on behalf of the ordering practitioner.

Ambulette transportation may be ordered if any of the following conditions is present:

Note: The ordering practitioner must note in the patient's medical record the Medicaid enrollee's condition which qualifies use of an ambulette transport.

- The Medicaid enrollee needs to be transported in a recumbent position and the ambulette service is able to accommodate a stretcher;
- The Medicaid enrollee is wheelchair-bound and is unable to use a taxi, taxi service, bus or private vehicle;
- The Medicaid enrollee has a disabling physical condition which requires the use of a walker or crutches and is unable to use a taxi, bus or private vehicle;
- An otherwise ambulatory Medicaid enrollee requires radiation therapy, chemotherapy, or dialysis treatments which result in a disabling physical condition after treatment, making the enrollee unable to access transportation without [personal assistance](#) provided by an ambulette service;
- The Medicaid enrollee has a disabling physical condition other than one described above or a disabling mental condition requiring personal assistance provided by an ambulette services; and,
- The ordering practitioner certifies in a manner designated by and submitted to the Department that the Medicaid enrollee cannot be transported by taxi, bus or private vehicle and there is a need for ambulette service.

Taxi Transportation

A request for prior authorization for transportation by New York City livery services must be supported by the order of a practitioner who is the Medicaid enrollee's:

- Attending physician;
- Physician's assistant;
- Nurse practitioner;
- Dentist;
- Optometrist;
- Podiatrist; or
- Other type of medical practitioner designated by the district and approved by the Department.

A diagnostic and treatment clinic, hospital, nursing home, intermediate care facility, long term home health care program, home and community based services waiver program, or managed care program may order non-emergency ambulance transportation services on behalf of the ordering practitioner.

Note: The ordering practitioner must note in the patient's medical record the Medicaid enrollee's condition which qualifies use of an ambulette transport.

Day Program Transportation

Day program transportation is unique in that this transportation can be provided by an ambulance, ambulette or taxi provider. The difference is that a typical transport involves a group of individuals traveling to and from the same site, at the same

time, on a daily or regular basis.

The economies of this group ride transport are reflected in a different reimbursement amount than that reimbursed for an episodic medical appointment.

Providers of transportation to day treatment/day program must adhere to the same requirements for their specific provider category.

Attachment D

Medicaid Enrollee Fair Hearing Rights

What is a Fair Hearing?

A Fair Hearing is a chance for you to tell an Administrative Law Judge from the New York State Office of Temporary and Disability Assistance, Office of Administrative Hearings, why you think a decision about your case made by a local social services agency is wrong. The Office of Temporary and Disability Assistance will then issue a written decision which will state whether the local agency's decision was right or wrong. The written decision may order the local agency to correct your case.

Request a Fair Hearing

There are several ways to request a fair hearing. You may submit your request online, by U.S. Mail, by telephone or by fax.

Request an Adjournment or Reopening

If you cannot appear at a hearing that has been scheduled but hasn't been held yet, you may request that it be adjourned (postponed) to another date. You may submit your request for an adjournment online, by U.S. Mail, by telephone or by fax.

If the hearing date has already passed and you didn't attend the hearing, under some limited circumstances, you may be able to have the hearing rescheduled.

Get more information about adjourning or reopening a fair hearing.

If you no longer need a hearing that you have requested, you may let us know online, by U.S. Mail, by telephone or by fax.

Get more information about cancelling (withdrawing) a fair hearing.

If you have received a fair hearing decision that says that your local agency should do something and you believe that they haven't done it, you may submit a Compliance Complaint to us. You may do this online, by U.S. Mail, by telephone or by fax.

Get more information about submitting a Compliance Complaint.

The Office of Administrative Hearings publishes all of its Fair Hearing decisions on the Internet. These decisions have all personal and confidential information removed. If you want to look at old decisions or find other decisions whose facts are similar to yours, you may search this archive.

Search the Fair Hearing Decision Archive.

For all other issues, including inquiries or complaints regarding a specific fair hearing decision, obtaining an additional copy of a decision, or requests to amend a decision and/or reopen a hearing, you may contact the Office of Administrative Hearings at:

Office of Temporary and Disability Assistance
Office of Administrative Hearings
PO BOX 1930
Albany, N.Y. 12201-1930

Fax: 1 (518) 473-6735
Phone: 1 (518) 474-8781
Toll Free in NYS 1 (800) 342-3334

For Hearing Impaired, TTY phone number: 1 (877) 502-6155

Source: <http://otda.ny.gov/oah/default.asp>
(Retrieved 8/18/2010)

**Attachment E:
Medicaid Transportation Data**

Table 1: Medicaid Enrollee and User Data

Region	Medicaid Enrollees: Fee for Service and Managed Care (April 2012)	Unduplicated Medicaid Enrollees Using Fee-for-Service Transportation (Calendar Year 2011)
FINGER LAKES	351,497	30,998
NORTHERN NY	74,431	8,519

Source: eMedNY data. Does not include “offline” reimbursed trips, for example, in certain instances where Medicaid enrollees are reimbursed for the use of personal vehicles or public transit.

Table 2: Medicaid Trip and Expenditures by Transportation Service Data

	Calendar Year 2011 Total One Way Trips		Calendar Year 2011 Total Paid		Regions Combined	
	FINGER LAKES	NORTHERN NY	FINGER LAKES	NORTHERN NY	TOTAL UNITS	TOTAL PAID
AMBULANCE	49,579	15,136	\$7,584,659	\$2,421,029	64,715	\$10,005,688
AMBULETTE	228,346	26,012	\$9,563,900	\$2,510,996	254,358	\$12,074,897
TAXI/LIVERY/VAN	330,407	23,008	\$8,937,505	\$311,889	353,415	\$9,249,394
GRAND TOTAL	608,332	64,156	\$26,086,064	\$5,243,914	672,488	\$31,329,978

Source: eMedNY data. Does not include “offline” reimbursed trips, for example, in certain instances where Medicaid enrollees are reimbursed for the use of personal vehicles or public transit.

Attachment F
92 ADM-21, “Transportation for Medical Care and Services: 18 NYCRR 505.10”

+-----+
 | ADMINISTRATIVE DIRECTIVE |
 +-----+

TRANSMITTAL: 92 ADM-21

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: June 2, 1992

SUBJECT: Transportation for Medical Care
 and Services: 18 NYCRR 505.10

SUGGESTED

DISTRIBUTION: Medical Assistance Staff
 Child/Teen Health Plan Staff
 Transportation Unit Staff
 Staff Development Coordinators

CONTACT

PERSON: For additional information contact Loretta Grose
 at 1-800-342-3715, extension 35873 (OA USERID
 AW0680).

ATTACHMENTS:

There are no attachments to this Administrative
 Directive.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
81 INF-27		505.10	20.3(d)		89 LCM-193
82 ADM-40		360-7.7	34.3(f)		89 LCM-42
82 INF-28			365-a.2(j)		89 LCM-43
86 INF-16			365-b, 368-a		90 LCM-51
87 ADM-39			14 NYCRR		90 LCM-88
87 INF-50, 67			579.5(a)(1);		
90 ADM-1			585.10, .13a		

I. **Purpose**

This Directive informs social services district staff of revisions to Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR) 505.10, "Transportation for Medical Care and Services".

This ADM outlines the programmatic implications of the revisions as follows:

- A. Definition of Terminology;
- B. Clarification of Existing Medical Assistance Transportation Policy;
- C. Conformity of State Regulation with Federal Policy;
- D. Licensure Requirements of Transportation Providers;
- E. Prior Authorization of Ambulance Transportation Involving Persons Covered Under Medicare Part B;
- F. Qualified Orderers of Ambulance and Ambulette Transportation;
- G. Changes Requested by Social Services Districts and Other Sources; and,
- H. Medical Transportation Expenditure Claiming Procedures

II. **Background**

The previous version of 18 NYCRR 505.10 was last amended in 1981. Since that time, changes in the Medical Assistance (MA) program, as well as new licensure requirements for transportation vendors, resulted in various departmental policy statements which clarified the scope and intent of this regulation. Additionally, several court cases have broadened the effect of this regulation beyond its original intent. The revised regulation clearly defines the purpose and range of transportation under the MA program.

III. **Program Implications**

A. **Definition of Terminology**

Certain terms which are commonly used in the MA transportation program are now defined in 18 NYCRR 505.10, as follows:

1. Ambulance. An ambulance means a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.
2. Ambulance Service. A certified ambulance service means any entity, as defined in section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat or other form of transportation to or from facilities providing hospital services and which is currently certified or registered by the Department of Health as an ambulance service.
3. Emergency Ambulance Transportation. Emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining hospital services for an MA recipient who suffers from severe, life-threatening, or potentially disabling conditions which require the provision of emergency medical services while the recipient is being transported.
4. Non-Emergency Ambulance Transportation. Non-emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining necessary medical care or services to an MA recipient whose medical condition requires transportation in a recumbent position.
5. Emergency Medical Services. Emergency medical services means the provision of initial urgent medical care including, but not limited to, the treatment of trauma, burns, and respiratory, circulatory and obstetrical emergencies.
6. Ambulette. An ambulette, or invalid coach, means a special-purpose vehicle, designed and equipped to provide non-emergency care, that has either wheelchair-carrying capacity or the ability to carry disabled individuals.
7. Ambulette Service. An ambulette service means an individual, partnership, association, corporation, or any other legal entity which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care. An ambulette service provides the invalid, infirm or disabled with personal assistance entering and exiting their residences, the ambulette, and a facility which provides medical care.

8. Prior Authorization. Prior authorization means a prior authorization official's determination that payment for a specific mode of transportation is essential in order for an MA recipient to obtain necessary medical care and services and that the prior authorization official accepts conditional liability for payment of the recipient's transportation costs.
9. Prior Authorization Official. Prior authorization official means the department, a social services district, or their designated agents.
10. Conditional Liability. Conditional liability means that the prior authorization official is responsible for making payment only for transportation services which are provided to MA-eligible individuals in accordance with the requirements of this Title.
11. Common Medical Marketing Area. Common medical marketing area means the geographic area from which a community customarily obtains its medical care and services.
12. Community. Community means either the State, a portion of the State, a city or a particular classification of the population, such as all persons 65 years of age and older.
13. Locally Established Rate. Locally established rate means the rate for any given mode of transportation which the social services official has determined will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services.
14. Locally Prevailing Rate. Locally prevailing rate means a rate for a given mode of transportation which is established by a transit or transportation authority or commission empowered to establish rates for public transportation, a municipality, or a third-party payor, and which is charged to all persons using that mode of transportation in a given community.
15. Ordering Practitioner. Ordering practitioner means the MA recipient's attending physician or other medical practitioner who has not been excluded from enrollment in the MA program and who is requesting transportation on behalf of the MA recipient in order that the MA recipient may obtain medical care or services which are covered under the MA program. The ordering practitioner is responsible for initially determining when a specific mode of transportation to a particular medical care or service is medically necessary.

16. Day Treatment Program or Continuing Treatment Program. Day treatment program or continuing treatment program means a planned combination of diagnostic, treatment and rehabilitative services certified by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.
17. Transportation Attendant. Transportation attendant means any individual authorized by the prior authorization official to assist the MA recipient in receiving safe transportation.
18. Transportation Expenses. Transportation expenses means:
 - i. the costs of transportation services; and
 - ii. the costs of outside meals and lodging incurred when going to and returning from a provider of medical care and services when distance and travel time require these costs.
19. Transportation Services. Transportation services means:
 - i. transportation by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the recipient's medical condition; and
 - ii. a transportation attendant to accompany the MA recipient, if necessary. Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family.
20. Vendor. Vendor means a lawfully authorized provider of transportation services who is either enrolled in the MA program pursuant to Part 504 of this Title or authorized to receive payment for transportation services directly from a social services district or other agent designated by the department. The term vendor does not mean an MA recipient or other individual who transports an MA recipient by means of a private vehicle.
21. Undue Financial Hardship. Undue financial hardship means transportation expenses which the MA recipient cannot be expected to meet from monthly income or from available resources. Such transportation expenses may include those of a recurring nature or major one-time costs.

B. Clarification of Existing Medical Assistance Transportation Policy

Section 505.10 provides clarification of current policy for the authorization and payment of MA transportation as follows:

1. The transportation must be provided to an MA recipient.

Example 1: The parent of a hospitalized child, who is receiving MA, is required to go to the hospital for periodic consultations regarding the scope of the child's on-going medical care. The parent's transportation expenses for these medical consultations may be reimbursable under the MA program (based on medical necessity) only if the parent is an MA recipient. If the parent is not a recipient of MA, the transportation expenses are not covered. (However, when a child travels to medical care and services, an attendant is required. It is expected that the parent or guardian of the child will act as attendant. In these situations, the costs of transportation, lodging and meals of the parent or guardian may be reimbursable regardless of the parent or guardian's MA eligibility.)

2. The transportation must be made to or from a necessary care or service which may be paid for under the MA program.

Example 1: An MA recipient requests reimbursement for transportation expenses to an Alcoholics Anonymous meeting or some other self-help group. Reimbursement for transportation expenses should not be authorized as these programs are not paid for under the MA program.

Example 2: A physician has ordered that it is medically necessary for a 55 year old developmentally disabled MA recipient to attend a sheltered workshop program in order for the recipient to maintain physical and mental health. The physician has further ordered that it is medically necessary for the MA recipient to travel by ambulette. Even though a physician has ordered this program and specified the mode of transportation, transportation should not be authorized since a sheltered workshop program is not a service covered under the MA program.

Example 3: children is residing in a long-term-care facility. This MA recipient's attending physician has approved a home visit for the recipient and included this order in the recipient's therapeutic plan of care. This transportation home should not be authorized since the recipient is not being transported to an MA covered service.

Example 4: A 25 year old developmentally disabled Intermediate Care Facility (ICF) resident is ordered by the ICF's attending physician to participate in a summer camp program. This transportation should not be authorized since a summer camp program is not a service covered under Medicaid.

Example 5: An MA recipient has an appointment with a physician who has not been excluded from enrollment in the MA program, but who has voluntarily chosen not to enroll as an MA provider. Transportation to this appointment can be authorized since physician services are covered under the MA program.

3. Payment will be made only for the least expensive available mode of transportation. The least expensive available mode of transportation must be suitable to the MA recipient's needs as determined by the prior authorization official.

Example 1: An MA recipient has access to a bus line and is physically able to use a bus to travel to necessary medical care and services. The prior authorization official has determined that a bus token(s) is less expensive than private vehicle mileage reimbursement. However, the MA recipient wishes to use a private vehicle. Even though the recipient prefers to use a private car the local social services district can limit reimbursement to a bus token(s). No reimbursement should be made if the bus is not used.

4. Payment will be made to a vendor only for services provided where an MA recipient is actually being transported in the vehicle. Payment will not be available for non-passenger occupied time.

Example 1: An ambulette arrives at a recipient's home for a scheduled appointment. The recipient is not at home; therefore, no trip is made. The vendor should not be reimbursed for this service since the MA recipient was not transported in the vehicle.

Example 2: An ambulette arrives at a physician's office to pick up a recipient and return the recipient to the recipient's home. The pick-up is scheduled for 1:00 P.M. The recipient does not leave the physician's office until 1:20 P.M. The ambulette company should not be reimbursed an extra amount for this additional 20 minutes waiting time since the MA recipient was not in the vehicle.

During some long-distance trips, it may be appropriate for the vendor to wait for the recipient rather than return to the vendor's base of operation. Social services districts may choose to establish an enhanced base rate for this type of trip, but no specific fee should be designated for waiting time.

5. Transportation should take place within the common medical marketing area, which means the geographic area from which a community customarily obtains its medical care and services. While recipients may exercise freedom of choice in the selection of medical care and service providers, this does not mean that the local social services district must pay for transportation to medical care and service outside the common medical marketing area when the same care and service is available locally.

When authorizing long-distance transportation social services districts must ensure that the medical care and services required by the recipient are not readily available within the recipient's common medical marketing area. The appropriateness of reimbursement for long-distance transportation should be decided by the prior authorization official after a careful consideration of relevant factors such as location of service and recipient, medical need, recipient's personal circumstances and continuity of medical care.

Example 1: An MA recipient residing in Albany wishes to consult a medical provider located in Syracuse, which is outside the recipient's common medical marketing area. If this same type of provider is available within the Albany area, the prior authorization official may, after consideration of all criteria set forth in section 505.10(d)(7), deny reimbursement for transportation to the medical provider located in Syracuse. In this instance, medical care and services are available within the recipient's common medical marketing area; therefore, payment for transportation outside the area is not essential in order for the recipient to obtain needed medical care. If the recipient chooses to go to the out of area medical provider, no transportation reimbursement should be provided as appropriate medical care within the common medical marketing area has been assured.

Example 2:

one social services district to another, may need to consult with her original physician in her former district of residence for a period of time before an

adequate transfer of care to a new local provider can be accomplished. Reimbursement for transportation to the out of area physician could be provided for as long a period as consultation with this physician is medically necessary.

C. Conformity of State Regulation with Federal Policy

The Code of Federal Regulations (42 CFR 431.53) requires states participating in the Medicaid program to assure necessary transportation to and from providers of medical care and services which are covered under the states' Medicaid programs. Assuring transportation does not necessarily mean payment for transportation. This federal requirement to assure necessary transportation can be met in a variety of ways, including:

1. The use of transportation services which are ordinarily made available to other persons in the community without charge;
2. The use of volunteer services;
3. Payment to a vendor of transportation services; or,
4. Reimbursement to MA recipients for the use of a private vehicle or mass transportation.

Social services districts can reasonably assume that recipients have some form of transportation available to them for their usual activities of daily living. If a recipient has access to and can make use of the mode of transportation generally used for the usual activities of daily living (such as shopping, recreation, worship services), the recipient should use this mode of transportation to travel to medical appointments. Reimbursement for this mode of transportation does not have to be made. The prior authorization official may authorize payment, however, where the failure to do so would cause the recipient undue financial hardship. If the recipient's normal mode of transportation is available, reimbursement is not necessary for transportation to occasional medical treatment.

Example 1: A rural county resident regularly travels 25 miles one way in her personal vehicle to the county seat in order to shop for food, clothes, and other household items. Reimbursement for occasional transportation to the same city for medical appointments can be denied.

Example 2: five blocks from a bus route which interconnects with other bus routes throughout the city. When the individual must travel to the site of a medical practitioner which is in the catchment area of the bus routes, the district can reasonably expect the individual to use the bus and can deny reimbursement for the cost of the token.

Example 3: A department in a rural county provides van transportation of recipients to a major medical center in a neighboring county on Tuesdays and Fridays of each week. For non-urgent medical appointments to the center, the department can expect recipients to schedule appointments for and use the van on Tuesdays or Fridays. Reimbursement for personal vehicle mileage to the van pickup site can be denied.

An MA recipient may use a private vehicle or mass transit for the usual activities of daily living. Reimbursement may be made for these modes of transportation when the use of these modes without reimbursement would constitute an undue financial hardship for the MA recipient. The prior authorization official must decide whether or not to reimburse for these situations on a case by case basis. Reimbursement for mileage in a private vehicle, when authorized, is assumed to be round-trip even if the MA recipient does not return with the driver to the origin point but remains in a medical facility.

Example 4: An MA recipient, diagnosed with a short-term illness requires multiple medical visits within a short period of time. The frequency of these visits may provide a reason for the social services district to reimburse the MA recipient for transportation expenses.

Example 5: A child with an unusual heart problem, residing in the city of Buffalo, may need to access medical services at a New York City hospital specializing in children's diseases. Although located outside the recipient's common medical marketing area, the social services district should reimburse for this long-distance transportation if it is necessary to assure appropriate medical care. In this type of circumstance it may be necessary for the MA recipient to access medical care and services located outside the common medical marketing area. When long distance travel is required, the social services district should provide reimbursement as the cost of transportation is excessive.

While a recipient may, in general circumstances, access medical care and services through use of a private vehicle or mass transit, a severe illness may necessitate the use of a higher mode of transport. If a higher mode of transport is required, the recipient would not be expected to assume this cost.

Example 6: transit system for medical appointments and other daily activities. Reimbursement for this MA recipient's transportation is not being paid by the social services district. This recipient suffers a sprained ankle and cannot use the mass transit system. A higher mode of

transport, in this case a taxi, is required. The social services district may wish to reimburse for transportation expenses in this situation as the cost of this higher mode of transport, without reimbursement, may be an undue financial hardship to the recipient.

An elderly recipient, generally driven to medical appointments by a family member, breaks a leg and is now unable to utilize a private vehicle for transportation to necessary medical appointments. An ambulette is necessary and is ordered by the attending physician. The recipient would not be expected to assume the cost of this higher mode of transport. In these cases, social services districts should provide payment for transportation expenses.

Example 7:

take a bus to medical appointments cannot use mass transit due to icy or snowy weather. Reimbursement to this recipient for a safer and more accessible method of transportation (private vehicle or taxi) may be appropriate.

Procedures for denial of transportation reimbursement should be included as part of the social services district's transportation plan.

Recipients who request reimbursement and are denied reimbursement for transportation expenses must be informed of their right to a fair hearing.

The prior authorization official should consider a number of factors when deciding whether or not to authorize reimbursement for a recipient's private transportation expenses. These factors include but are not limited to :

1. Frequency of medical appointments;
2. Distance to be traveled;
3. Continuity of medical care;
4. Medical condition of the recipient;
5. Weather conditions;
6. Availability of the recipient's usual mode of transportation;
7. Undue financial hardship to the recipient if reimbursement is not authorized; and,
8. Any other circumstance which may affect the recipient's ability to access needed medical care and services.

D. Licensure Requirements of Transportation Providers

Section 505.10(d)(6) establishes licensure requirements for transportation providers, as follows:

1. Ambulance services must be certified or registered by the Department of Health and comply with all requirements of that department.

2. Ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission.
3. Taxicab or livery services must comply with all requirements of the local municipality concerning the operation of taxicab or livery service in that municipality.
4. Vendors which provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such vendors must be qualified under Article 19-A of the Vehicle and Traffic Law. Such vendors and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the vendors or their drivers are exempt from such requirements.

Payment to vendors will be made only when they meet the above requirements on the date the services are rendered.

E. Prior Authorization of Ambulance Transportation Involving Persons Covered Under Medicare Part B

Chapter 763 of the Laws of 1989 mandated that ambulance providers be paid the full deductible and coinsurance amounts of an approved Medicare Part B claim for the transportation of MA eligible persons who are covered under Medicare Part B. Section 505.10(c)(1) now reflects this legislation. Prior authorization of non-emergency ambulance transportation is not required for ambulance claims in which there is a Medicare Part B approved amount. Approval by Medicare of an ambulance transport will be deemed appropriate approval for MA purposes.

Prior authorization will still be required for non-emergency ambulance transportation for which there is no Medicare Part B coverage.

F. Qualified Orderers of Ambulance and Ambulette Transportation

Section 505.10(c)(4) allows an ordering practitioner who is the MA recipient's attending physician, physician's assistant or nurse practitioner to order non-emergency ambulance transportation. Ambulette transportation may be ordered by an ordering practitioner who is the MA recipient's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner designated by the social services district and approved by the Department. If a social services district wishes to include additional ordering provider groups the district must submit such request to the Division of Medical Assistance for approval as part of their social services district's Title XIX Medical Transportation Plan.

G. Changes Requested by Social Services Districts and Other Sources

1. Vendors of transportation services must provide pertinent cost data to a social services district upon request. The request should be for any pertinent cost data which would aid the social services district in containing expenditures or establishing rates. Social services districts may request this data as long as the request does not place an additional financial cost on the vendor. An example of an additional financial cost would be a request for a certified cost document when such a certified cost document does not exist. Additional financial cost does not mean the cost of photocopying financial documents or computer generated printouts of financial documents. These procedures should be readily and inexpensively available to the vendor. Failure to comply with the social services district request may result in the vendor's termination from the MA program.

This provision is not intended to encourage the development of cost-based rates. A variety of factors should be included in the rate setting process.

2. Social services districts must notify applicants for and recipients of MA of the procedures for obtaining prior authorization of transportation services. Several recent court decisions granted recipients retroactive reimbursement for private vehicle transportation costs because these recipients were never notified by the social services district that the potential for MA transportation reimbursement existed. Information regarding the availability of reimbursement for prior authorized private medical transportation expenses is included in the revised client information booklets DSS-4148A and DSS-4148B.

3. A court found that the previous version of Section 505.10 required social services districts to negotiate with vendors in the rate setting process. The use of the term "negotiate" has been eliminated from the language of the regulation. Section 505.10 now permits rates to be established by the local social services official at a level which assures transportation for MA recipients to necessary medical care and services. Negotiation may be included as part of the rate-setting process if the social services district so desires, but negotiation is not required.

H. Medical Transportation Expenditures Claiming Procedures

1. All medical transportation services furnished by an entity to which a direct vendor payment can be made are claimable for reimbursement as program assistance costs.
2. All non-vendor medical transportation payments should be claimed for reimbursement as administrative costs. These non-vendor payments include, but are not limited to, the following:
 - a. reimbursement to recipients for approved medical transportation;
 - b. costs of meals or lodging enroute to and from medical care;
 - c. cost of a transportation attendant to accompany the the recipient, if necessary, and the costs of the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family;
 - d. cost of bus and subway tokens purchased by the social services district for distribution to recipients;
 - e. payments to a party which is not the provider of the transportation services.

IV. Required Action

Social services district staff must follow the provisions of this release in authorizing and making payment for transportation services for MA eligible persons.

If any changes in social services district's procedures occur, the social services district must submit these changes in writing to the department for approval and amendment of the social services district's transportation plan.

V. **System Implications**

None.

VI. **Effective Date**

The Directive is effective July 1, 1992 retroactive to April 1, 1992.

Jo-Ann A. Costantino
Deputy Commissioner
Division of Medical Assistance

Attachment G - Transmittal Form - FAS #1208060100
NYS Medicaid Transportation Management Initiative – Finger Lakes and Northern New York

Bidder Full Corporate Name: _____

Corporate Address: _____

NYS Vendor ID Number: _____ DUNS Number: _____

Type of Legal Business Entity: _____

Contact Person Information:

Name: _____
Title: _____
Address: _____
Phone: _____ Fax: _____
Email: _____

Region(s) Bidder is applying for (check all that apply and for which a Cost Proposal has been submitted):

- ☐ Northern NY Region: Jefferson, Lewis, St. Lawrence, Franklin, Clinton, and Hamilton counties.
☐ Finger Lakes Region: Monroe, Livingston, Orleans, Tompkins, Schuyler, Seneca, Yates, Wayne, Steuben, Ontario, Chemung, Tioga, Cortland, Otsego, Chenango, Madison, Herkimer, and Oswego counties.

Attestations (check ALL boxes signifying agreement):

- ☐ I certify that the above named bidder accepts the contract terms and conditions contained in this Funding Availability Solicitation (FAS), including any exhibits and attachments, and has received and acknowledges all Department amendments to the FAS; **AND**
☐ I certify that the above named bidder is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department.

Use of Subcontractors Attestation (check only one):

- ☐ I certify that the proposal submitted by the above named bidder proposes to utilize the services of a subcontractor(s). Attached to this Transmittal Form is a list of subcontractors and a subcontractor summary for each. The summary document for each includes the information detailed in Section D.4.1. Subsection 7; **OR**
☐ I certify that the proposal submitted by the above named bidder does not propose to utilize the services of any subcontractor.

Conflict of Interest Attestation (check only one):

- ☐ I certify that there are business relationships and/or ownership interests for the above name bidder that may represent a conflict of interest for the organization as bidder, as described in Section D.3. of the FAS. Attached to this letter is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided and the bidder's knowledge and full compliance with the NYS Public Officer's Law, as amended, including but not limited to, Sections 73 and 74; **OR**
☐ I certify that no conflict of interest relationship exists for the above named bidder.

Signature of Individual Authorized to Bind the Above Named Organization In a Contract with NYS:

_____ Date: _____

Print Name: _____

Title: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

Attachment H

**NEW YORK STATE
DEPARTMENT OF HEALTH**

BID FORM

PROCUREMENT TITLE: NYS Medicaid Transportation Management Initiative-Finger Lakes and Northern New York Regions

RFP #1208060100

Bidder Name: _____

Bidder Address: _____

Bidder NYS Vendor ID No: _____

Bidder must submit a separate bid price for each of the volume level categories (A, B, C, D, E,) for the number of Medicaid enrollees eligible to receive fee-for-service (FFS) non-emergency transportation, as indicated in the chart below. All volume level categories must be bid on, even if the region's total eligible number currently does not reach that level. Bidders are encouraged to reflect volume discounts in higher volume level categories and when bidding on both regions.

If submitting a proposal for both regions:

- Failure to provide bid prices in the regional columns will result in disqualification from the region not provided. For example, if proposing to cover both regions and the "Per Member Per Month Northern NY" column is not completed, the bidder will only be considered for the Finger Lakes region.
- Failure to complete the "Per Member Per Month Price BOTH Regions" column will disqualify the bidder from being awarded both regions. The bidder may still be considered for one or the other region, but not both.

Volume Level Category	Medicaid Enrollees Eligible to Receive FFS Transportation	(1) Per Member, Per Month Price Finger Lakes Region ONLY	(2) Per Member, Per Month Price Northern NY Region ONLY	(3) Per Member, Per Month Price BOTH Regions
A	0 to 100,000			
B	100,001 to 200,000			
C	200,001 to 300,000			
D	300,001 to 400,000			
E	400,001 and above			

While the fee schedule included in the Bid Form is expected to be used as the basis for the resultant contract, in the best interest of the State all bids are subject to subsequent Department of Health negotiation with the successful respondent.

Attachment I

NYS Department of Health

LOBBYING FORM

A. 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.ny.gov/ACPL/>

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. If no, please proceed to question 2a:

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.

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

Attachment J

Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in Section E.9., Vendor Responsibility Questionnaire, I hereby certify:

Choose one:

- ☐ An on-line Vender Responsibility Questionnaire has been updated or created at NYS OSC's website: <https://portal.osc.state.ny.us> 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: _____

Attachment J

NYS Department of Health M/WBE Procurement Forms

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

Submitted with Bid:

M/WBE Form#1: Bidder's M/WBE Utilization Plan

M/WBE Form#2: M/WBE Waiver Request

M/WBE Form#4: M/WBE Staffing Plan

M/WBE Form#5: Equal Employment Policy Statement - Sample

Submitted by Successful Bidder Only:

M/WBE Form#3: QUARTERLY UPDATE - M/WBE CONTRACTOR
COMPLIANCE & PAYMENT Report

M/WBE Form#6: M/WBE Workforce Employment Utilization Report

- M/WBE Form #1 -
New York State Department of Health

BIDDER/CONTRACTOR M/WBE UTILIZATION PLAN

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title: Family Initiative Coordination Services Project	RFP/Contract No. 1112160327

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
BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN
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
BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN
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 () -		\$ _____

- M/WBE Form #2 -
New York State Department of Health

M/WBE UTILIZATION WAIVER REQUEST

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title: Family Initiative Coordination Services Project	RFP/Contract No. 1112160327

Explanation why Bidder/Contractor is unable to meet M/WBE goals for this project.:

Include attachments below to evidence good faith efforts:

- ☐ Attachment A. List of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.
- ☐ Attachment B. List of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- ☐ Attachment C. Descriptions of the contract documents/plans/specifications made available to certified MWBEs by the contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- ☐ Attachment D. Description of the negotiations between the contractor and certified MWBEs for the purposes of complying with the MWBE goals of this contract.
- ☐ Attachment E. Identify dates of any pre-bid, pre-award or other meetings attended by contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the contract.
- ☐ Attachment F. Other information deemed relevant to the request.

Section 4: Signature and Contact Information

By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.

Submitted by : _____ Title: _____

Signature

- M/WBE Form #3 -
New York State Department of Health
QUARTERLY UPDATE
M/WBE CONTRACTOR COMPLIANCE & PAYMENT REPORT

Contractor Name:	
Contract Title:	Contract No.

TOTAL PROJECTED M/WBE USAGE (from original M/WBE Utilization Plan)

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

ACTUAL M/WBE USAGE* AS OF _____ (insert date)

	%	Amount
1. Total Dollar Value Completed to date	100	\$
2. MBE Utilization to date		\$
3. WBE Utilization to date		\$
4. M/WBE Combined Utilization to date		\$

* Report usage from contract start date to quarterly end-date inserted above.

Explain any deficiencies in attaining M/WBE goals in the space below:

Submitted by : _____ Title: _____

Signature

- M/WBE Form #4 -
New York State Department of Health
M/WBE STAFFING PLAN

Check applicable categories: ☐ Project Staff ☐ Consultants
 ☐ Subcontractors

Contractor Name _____

Address _____

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

 (Name and Title)

 (Signature)

 Date

- M/WBE Form #5 -
**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and 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.

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Name & Title

Signature & Date

- M/WBE Form #6 -
New York State Department of Health
WORKFORCE EMPLOYMENT UTILIZATION REPORT

Check applicable categories: ☐ Project Staff ☐ Consultants
☐ Subcontractors

Contractor Name _____ Contract # _____

Staff Used on Contract for the quarter / / to / /

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

Explain variances from original staffing plan submitted in the space below:

(Name and Title)

(Signature)

Date

SAMPLE STANDARD NYS CONTRACT LANGUAGE AND APPENDICES

MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):	NYS COMPTROLLER'S NUMBER:
	ORIGINATING AGENCY CODE: 3450000
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:	NYS Vendor ID 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.

- | | | |
|-----|-----------------------------|--|
| ___ | 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 |
| ___ | STATE OF NEW YORK AGREEMENT | |
| ___ | APPENDIX D | General Specifications |
| ___ | APPENDIX B-1 | Questions and Answers |
| ___ | APPENDIX B | Funding Availability Solicitation |
| ___ | APPENDIX C | Proposal |
| ___ | APPENDIX E-1 | Proof of Workers' Compensation Coverage |
| ___ | APPENDIX E-2 | Proof of Disability Insurance Coverage |
| ___ | APPENDIX H | Federal Health Insurance Portability and Accountability Act Business Associate Agreement |
| ___ | APPENDIX G | Notices |
| ___ | APPENDIX M | Participation by Minority Group Members and Women with respect to State Contracts: Requirements and Procedures |

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)

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 Commissioner of Health.
- 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 epayments@osc.state.ny.us or by telephone at 855-233-8363. 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 Commissioner of Health, 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

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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.

Agency Code 12000

APPENDIX X

Contract Number: _____ Contractor: _____

Amendment Number X-_____

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

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

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

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

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

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

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.
(Value before amendment) (Initial start date) (Initial end date)

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

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.

This will result in new contract terms of:

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

Contract Number: _____ Contractor: _____

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

By: _____ Date: _____
(signature)

Title: _____

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.

STATE AGENCY SIGNATURE

By: _____ Date: _____
(signature)

Title:

By: _____ Date: _____

By: _____ Date: _____

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 and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to 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 exclude from participation in this transaction by any Federal department agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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.

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.

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 M

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of Health (the "New York State Department of Health"), to fully comply and cooperate with the New York State Department of Health in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
 - B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor
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should reference the directory of New York State Certified MBWEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 N YCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York State Department of Health for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The Contractor's EEO policy statement shall include the following language:
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- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
- c. 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.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form #4 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form #6 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
 2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
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3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

- A. For Waiver Requests Contractor should use Form #2 – Waiver Request.
 - B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
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- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.
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