

Request for Applications

RFA Number 1111091042

Restructuring Initiatives In Medicaid Redesign

Issued by the
New York State Department of Health
and the
Dormitory Authority of the State of New York

Applications Due: January 17, 2012

Questions Due: December 7, 2011

Contact Persons

Medicaid and APG Rates:

John M. Gahan, Jr.
Director, Bureau of Primary &
Acute Care Reimbursement
NYS Department of Health
Corning Tower, Rm. 1043
Albany, NY 12237
MRT67@health.state.ny.us

HEAL Grants:

Barry Gray
Director, Bureau of HEAL,
Workforce & Capital Investment
NYS Department of Health
Corning Tower, Rm. 1084
Albany, NY 12237
MRT67@health.state.ny.us

New York State Department of Health
*Restructuring Initiatives
in Medicaid Redesign*

1. Introduction

It is of compelling public importance that the State conduct a fundamental restructuring of its Medicaid program to achieve measurable improvement in health outcomes, sustainable cost control and a more efficient administrative structure.

*--Governor Andrew M. Cuomo
State of the State Message
January 5, 2011*

Among the largest obstacles to sustainable cost control, improved health care outcomes and more efficient administration in the Medicaid program is excess capacity in the health care system. Excess capacity is most manifest, and most costly, in the over-reliance of the acute care and long-term care systems on inpatient services. Excess bed capacity in hospitals and nursing homes promotes unnecessary inpatient admissions and longer lengths of stay. It also results in low occupancy rates, which adversely affect revenues. This may force hospitals and nursing homes to cut back on services, thus reducing access to care, especially in underserved areas and rural communities. The allocation of excessive capital and staff to inpatient care also robs ambulatory and community-based services of needed financial and human resources that could be deployed to deliver care more appropriate to better health care outcomes and to the maintenance of individuals in the least restrictive setting appropriate to their needs. As stated in the report of the Commission on Health Care Facilities in the 21st Century (the Berger Commission): "A surplus of beds threatens quality of care, promotes inefficiencies, increases costs, threatens the provision of public goods, and contributes to the fragile finances of health care providers."¹

The Medicaid Redesign Team (MRT) recognized the need to reduce excess inpatient capacity as a vital element in the restructuring of the Medicaid program. However, in putting forth its recommendations, the MRT acknowledged that the effects of changes in Medicaid reimbursement and the transition of Medicaid clients to full enrollment in managed care to effect reduced reliance on inpatient care and strengthen ambulatory and community-based services could fall unevenly on "safety net" institutions that serve large numbers of high-risk and uninsured populations or which are located in areas with few other health care facilities. Accordingly, the MRT recommended that DOH provide assistance to safety net hospitals, nursing homes and diagnostic and treatment centers (D & TC's) to implement necessary actions to close, merge, downsize or restructure in

¹ Commission on Health Care Facilities in the 21st Century. *A Plan to Stabilize and Strengthen New York's Health Care System*. New York, NY. December, 2006. P. 54.

favor of a reconfigured health care system delivering more efficient, higher-quality health care appropriate to the identified health care needs of the community. The MRT recommended that this assistance take the form of short-term adjustments to Medicaid reimbursement rates, temporary enhancement of APG rates, and capital grants awarded under the Healthcare Efficiency and Affordability Law for New Yorkers (HEAL).² This announcement describes these sources of assistance, the categories of applicants eligible for them, and the process and forms needed for the submission of applications for each.

2. Eligible Applicants

2a. General Eligibility Requirements

Facilities eligible for assistance under this announcement are those undergoing one or more of the following:

- facilities undergoing closure;
- facilities impacted by the closure of other health care facilities;
- facilities subject to mergers, acquisitions, consolidations or restructuring; or
- facilities impacted by the merger, acquisition, consolidation or restructuring of other health care facilities.

2b. Eligibility for Medicaid Rate Adjustment and/or APG Enhancement

In addition to meeting the General Eligibility Requirements in 2a, applicants for Medicaid rate adjustment or APG enhancement must also be a legally existing organization that is any one of the following:

- a general hospital as defined in Public Health Law (PHL) Section 2801(10);
- a diagnostic and treatment center as defined in 10 NYCRR section 700.2(9);³
- a hospital eligible to be classified as a Sole Community Hospital under the Medicare Acute Care Hospital Inpatient Prospective Payment System (IPPS);
- a residential health care facility (nursing home) as defined in PHL Section 2801(3);
- a certified home health agency (CHHA) as defined in PHL Section 3602(3);

² The MRT also recommended that funds from the Health Workforce Retraining Initiative (HWRI) be made available for the retraining of personnel displaced by facility mergers, closures, consolidations and restructuring activities undertaken in response to Medicaid redesign. An HWRI Request for Applications (RFA) was issued on July 1, 2011, with applications due by September 23, 2011.

³ This includes Federally Qualified Health Centers (FQHC's), which meet this definition.

- an established Article 28 network as defined in 10 NYCRR Part 401 and which includes a general hospital or residential health care facility
- an entity established under the Public Health Law as an active parent or co-operator of a general hospital, residential health care facility, or diagnostic and treatment center.

2c. Eligibility for HEAL Grant Awards

Only general hospitals and residential health care facilities are eligible for HEAL grant awards under this RGA. Therefore, applicants for HEAL funds must be one of the following:

- a general hospital as defined in Public Health Law (PHL) Section 2801(10);⁴
- a residential health care facility (nursing home) as defined in PHL Section 2801(3);
- an established Article 28 network as defined in 10 NYCRR Part 401 and which includes a general hospital or residential health care facility;
- an entity established under the Public Health Law as an active parent or co-operator of a general hospital, or residential health care facility.

2d. Preferences

Preference for rate adjustments, APG enhancements and HEAL grant awards available under this announcement will be given to applications supported by any committee or workgroup convened or appointed by the Commissioner of Health to assist in, evaluate, recommend or oversee restructuring efforts in a particular region or area.

Favorable consideration will also be given to applicants that meet the following criteria **or** that submit a joint application with one or more other eligible applicants that meet these criteria:

- (i) have a loss of operations for each of the three consecutive preceding years as evidence by audited financial statements; and
- (ii) have a negative fund balance or negative equity position in each of the three preceding years as evidence by audited financial statements; and
- (iii) have a current ratio of less than 1:1 for each of three consecutive preceding years.

Applicants that may not meet these criteria but which may be deemed to the satisfaction of the Commissioner to be a provider that fulfills an unmet

⁴ This includes Sole Community Hospitals, which do meet this definition.

health care need for the community may also be given favorable consideration. The applicant's contribution in fulfilling unmet need will be based on consideration of the volume of Medicaid and medically indigent patients served by the applicant; the service volume and mix, including but not limited to maternity, pediatrics, trauma, behavior and neurobehavioral, residential health care, ventilator, and emergency room volume; and, the significance of the institution in ensuring access to health care services as measured by market share within the region.

Additional considerations for preference in funding will include demonstration by the applicant of significant care for vulnerable populations, as indicated by one or more of the following:

- Medicaid discharges of 20 percent or more of total discharges;
- Uninsured discharges of 20 percent or more of total discharges;
- Medicaid emergency department (ED) visits of 20 percent or more of ED volume;
- Uninsured ED visits of 20 percent or more of ED volume;
- Location in a Federally-designated Medically Underserved Area (MUA) or Health Professional Shortage Area (HPSA);
- A nursing home whose percentage of Medicaid and/or uninsured residents is 10 percent or more in excess of the average of Medicaid and/or uninsured residents for all nursing homes in the county;
- A nursing home located in a county with fewer than six nursing homes.

In addition to these factors, the Department may also weigh the qualifications and demonstrated competence of the applicant's board of directors and management.

3. Eligible Activities

Activities eligible for funding under this announcement fall into four principal categories: 1) mergers, consolidation, and shared governance; 2) closures and conversions; and 3) bed reduction and service reconfiguration; and 4) operational activities that would help ensure a smooth transition to the reconfigured arrangement of providers, services and patterns of care that would result from the implementation of the restructuring actions in 1), 2) or 3).

The activities supported by the assistance available under this RFA should yield a favorable return on State dollars and have no adverse impact on Medicaid expenditures. Approved project activities should result in cost savings to the health care system and the Medicaid program through improved efficiency, and

reduced reliance on inpatient care in favor of ambulatory, outpatient and community-based services.

3a. Mergers, Consolidations and Shared Governance

To be eligible for funding under this announcement, any mergers, consolidations, shared governance arrangements or other collaborative activities should be substantive in nature; that is, they should constitute a significant change in the organization and operation of the services for which collaboration is proposed, or a fundamental alteration in the manner in which the collaborating facilities are governed and operated. Proposed changes should have a demonstrable impact on efficiency through the reduction of staffed inpatient-bed capacity and improved access to outpatient, ambulatory and community-based care responsive to identified community needs, including care aimed at reducing preventable conditions subject to inappropriate hospitalization or nursing home admission. Examples of what constitutes substantive collaboration for the purposes of this announcement **include but are not limited to:**

- **Full Asset Merger** – Under this arrangement, one facility purchases another, and the purchased facility ceases to exist as a separate corporate entity. Or the assets of two or more facilities are combined into a new corporation, which becomes the new operator of each facility. The former individual facility corporations are dissolved. Full asset mergers require establishment approval by the Public Health and Health Planning Council.

- **Shared Services**

Delegation - Two or more institutions form a new corporate entity to which they delegate the operation of a specific clinical service. For example, the provision of laboratory services or a specialized service such as cardiac surgery. These arrangements require establishment approval by the Public Health and Health Planning Council.

Consolidation – Two facilities enter into a legally binding agreement to combine one or more clinical services to eliminate duplicative capacity in that service and to gain efficiency in its operation.

- **Shared Governance**

Active Parent – Two or more hospitals or other providers enter into a legally binding agreement whereby one provider, or a separately established corporate entity, exercises authority for each hospital over one or more of the following functions listed in 10 NYCRR Section 405.1(c):

(1) appointment or dismissal of hospital management level employees and medical staff, except the election or removal of corporate officers by the members of a not-for-profit corporation;

(2) approval of hospital operating and capital budgets;

- (3) adoption or approval of hospital operating policies and procedures;
- (4) approval of certificate of need applications filed by or on behalf of the hospital;
- (5) approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- (6) approval of hospital contracts for management or for clinical services;
- (7) approval of settlements of administrative proceedings or litigation to which the hospital is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Active parent arrangements require establishment approval by the Public Health and Health Planning Council.

Article 28 Network – Any arrangement in which operating authority, including, but not necessarily limited to, any of the above functions listed under 10 NYCRR section 405.1(c), is legally delegated to a corporation or other entity by facilities participating in the arrangement and in which the corporation or other entity receives establishment approval by the Public Health and Health Planning Council under Article 28 of the Public Health Law as operator or co-operator of the participating facilities.

3b. Closures and Conversions

Facility Closures – Closures of hospitals and nursing homes are eligible for funding under this announcement, with preference for those that are part of a consolidation with another facility. However, DOH recognizes that the closure of an acute care or long-term care facility independent of collaboration with another provider may be an advisable step in some circumstances (for example, when occupancy and service volume are insufficient to maintain efficient operation). Accordingly, applications for these types of closures will be eligible for funding under this announcement.

Facility Conversions – Conversions of inpatient facilities to ambulatory or community-based services. An example is the cessation of a hospital's inpatient services and its conversion to a D & TC with a broad range of ambulatory services, including features of an urgent care facility. Another example is the closure of a nursing home's inpatient beds and conversion of the building to an assisted living facility.

3c. Bed Reduction and Service Reconfiguration

This refers to reductions in staffed inpatient beds and the expansion of ambulatory or community-based service capacity through conversion of the vacated inpatient space or through other reconfiguration of the facility's physical plant. These efforts may also include a redeployment of associated inpatient personnel to outpatient, ambulatory or community-based services.

4. Sources of Assistance

As recommended by the MRT, assistance available under this RGA takes the form of short-term adjustments to Medicaid reimbursement rates, temporary enhancement of APG rates, and capital grants awarded under the Healthcare Efficiency and Affordability Law for New Yorkers (HEAL). Funds from these sources will be approved for expenditures in two major categories: operations and capital projects. Applicants may apply for one or more forms of the available assistance; for example, HEAL funding for a capital project and a rate adjustment for operational activities. All such multiple-funding requests, however, must be for activities integral to each other, and not for separate, unrelated projects. All proposed activities should be tied to distinct indicators of health care quality, outcomes and community health status.

4a. Operations

Support for operations expenditures will be awarded through temporary increases in Medicaid reimbursement rates for hospitals, nursing homes and D & TC's (including FQHC's), and in temporary enhancements to APG rates for hospitals and D & TC's.

These increases and enhancements will be for support of activities that transition the provider to a greater efficiency of operation that increases non-Medicaid revenues and enables the facility to expand services without an increase in its reimbursement rate.

Reimbursement Rate Adjustments

Applicants undergoing or impacted by closures, mergers, acquisitions, consolidations or restructurings may request temporary rate adjustments, not to exceed three years, as provided for under the amended 10 NYCRR Section 86-1.31 (hospitals), the new Section 86-2.39 (nursing homes), or the new Section 86-8.15 (D & TC's); provided that the additional resources provided by the rate adjustment will achieve one or more of the following:

- (i) protect or enhance access to care; or

- (ii) protect or enhance quality of care;
- (iii) improve the cost effectiveness of service delivery of health care services;
- (iv) otherwise protect or enhance the health care delivery system, as determined by the Department.

APG Rate Adjustments

General hospitals as defined in PHL 2801(10) may request temporary adjustments in their APG rates, not to exceed three years, for general hospital outpatient facilities, other than for emergency services, if they have entered into an agreement with the Department to permanently decertify a specified number of staffed hospital inpatient beds, as reported to the Department. Diagnosis and treatment centers (including FQHC's) may request temporary adjustments in their APG rates to enhance or improve services.

Hospitals seeking rate adjustments under this announcement must demonstrate to the Department that the proposed decertification of the specified number of the facility's inpatient beds will more appropriately reflect the need for such inpatient resources and that the additional resources provided to the hospital's outpatient facilities by a temporary rate adjustment will:

- (i) protect or enhance access to care; or
- (ii) protect or enhance quality of care;
- (iii) improve the cost effectiveness of service delivery of health care services;
- (iv) otherwise protect or enhance the health care delivery system, as determined by the Department.

Diagnosis and treatment centers seeking APG rate adjustments under this announcement must demonstrate that the additional resources provided to the D & TC by a temporary adjustment will meet one or more of the criteria in (i), (ii), (iii) and (iv) listed above.

4b. Capital Projects

HEAL Grant Awards

HEAL funds may be requested under this announcement for capital projects that enable eligible applicants to enter into mergers, shared governance arrangements and other collaborative agreements with other eligible applicants to improve efficiency and to eliminate excess bed and inpatient capacity in favor of outpatient, ambulatory and community-based services that are responsive to identified community needs. Supported by bonds issued by the Dormitory

Authority of the State of New York (DASNY) and by capital appropriations, HEAL funds may be awarded only for projects involving “capital work or purpose” as defined in the State Finance Law.

A total of up to \$450 million in HEAL funds combined with Federal-State Healthcare Reform Partnership (F-SHRP) funds is available under this RFA. Applicants should demonstrate their organization’s commitment to the project in the form of funds from equity, commercial credit, DASNY, the Primary Care Development Corporation (PCDC) or other sources.

5. Outcomes and Quality

Like other efforts in Medicaid redesign to streamline services and enhance access to appropriate care, the restructuring activities to be supported through this RFA should be supportive of ongoing provider efforts to maintain and improve service quality and patient safety. Applicants should therefore describe their individual facility’s current efforts to protect and enhance quality and safety of care, as well as relate how the merger, consolidation or other restructuring that is the subject of their requested reimbursement rate increase, APG rate adjustment, or HEAL capital project would enhance these efforts and help lead to improved health care outcomes. For hospitals, this should include a description of how the project will help improve the facility’s quality of service as measured by the proposed FFY 2013 CMS Clinical Process of Care Measures; including but not limited to those for acute myocardial infarction (AMI), pneumococcal and influenza vaccination, prophylactic antibiotic treatment related to surgery, and surgery-related venous thromboembolism prophylaxis (VTE). For nursing homes, this description should address how the project will help improve the facility’s quality of care as measured by the National Quality Forum’s (NQF) proposed 2011 quality measures for care of chronic care and post-acute care residents; including but not limited to pressure ulcers, falls with major injury, influenza vaccination, and self-report of moderate to severe pain.

Applicants should also describe their patient safety programs, focusing on adverse event and near-miss identification and reporting processes as well as actions they have taken to assess and improve their culture of safety. If applicants have not completed the AHRQ Facility Survey on Patient Safety Culture within the past three years, this tool should be utilized to assess safety culture within the facility and be the bases of their culture of safety improvement plan. Required reporting and internal follow-up of reportable events to the Department of Health and other regulatory agencies is expected.

Applicants should establish a benchmark evaluation process for their selected quality measures and a process for evaluation of improvement after the third year of project implementation.

6. Health Information Technology (HIT)

Applicants should describe their current use of health information technology (HIT), including electronic health records (EHR) certified under the meaningful use provisions of the HITECH Act, their facility's current or intended participation in a Regional Health Information Organization (RHIO), and the current status of their organization's efforts to comply with the statewide policy guidance governing common information policies, standards and technical approaches for health information exchange (http://www.health.ny.gov/technology/statewide_policy_guidance.htm).

Applicants should also document activities that support broad adoption of EHR's by clinicians within the organization.

7. Competition and Antitrust Concerns

Mergers, consolidations, clinical integration programs, and other collaborative activities between health care providers have the potential to hinder competition. However, both Federal and State antitrust laws permit collaborative arrangements in health care if such undertakings are implemented subject to State oversight and for a defined public purpose. Article 29-F of the Public Health Law expresses the policy of the state to promote improved quality, access, and efficiency by encouraging, "where appropriate, cooperative, collaborative, and integrative arrangements including but not limited to, mergers and acquisitions among health care providers . . . who might otherwise be competitors, under the active supervision of the commissioner."

Therefore, applicants proposing to undertake activities that may otherwise be unlawful under state and federal antitrust laws should apply for a certificate of public advantage pursuant to Subpart 83-1 of 10 NYCRR. Such applications must include the information required under the regulations and demonstrate that the potential benefits of the proposed arrangement will outweigh disadvantages likely to result from any reduction of competition due to the arrangement. The arrangement must provide benefits consistent with the policy objectives of the statute, including:

- (1) Preservation of needed health care services in the relevant geographic area that would be at risk of elimination in the absence of a cooperative agreement;
- (2) Improvement in the nature or distribution of health care services in the area, including expansion of needed health care services or elimination of unnecessary health care services;
- (3) Enhancement of the quality of health care provided by the parties to the cooperative agreement;
- (4) Expansion of access to care by medically-underserved populations.

- (5) Lower costs and improved efficiency of delivering health care services; including reductions in administrative and capital costs and improvements in the utilization of health care provider resources and equipment.

Potential disadvantages that should be addressed include:

- (1) The extent to which the agreement may increase the costs or prices of health care in the community or region affected by the cooperative agreement;
- (2) The extent to which the agreement may have an adverse impact on the quality, availability, and efficiency of health care services; and
- (3) The extent to which the agreement may have an adverse impact on the ability of health care payors to negotiate optimal payment and service arrangements with health care providers;
- (4) The extent to which the agreement may result in a reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, health care providers.

Applicants should propose a process by which the DOH would actively supervise the arrangement in order to assure that the balance of benefits over disadvantages will be maintained. If the certificate of public advantage is approved, the Department will impose conditions on the arrangement to assure that the balance of benefits over competitive disadvantages is maintained. Applications for a certificate of public advantage will be reviewed by the New York State office the Attorney General and the Public Health and Health Planning Council.

8. Eligible Expenditures

8a. Operational Activities

Operational expenditures eligible for funding under this announcement through temporary Medicaid rate adjustments and temporary APG rate enhancements **include but are not limited to:**

- a) Staffing and other costs to accommodate patients, both inpatient and ambulatory, displaced by mergers, closures, acquisitions, consolidations or restructuring of providers within the community;
- b) Referral and follow-up of displaced patients to appropriate providers within the community;
- c) Transfer of medical records and other documentation and information functions to new or remaining providers;
- d) Transition of services from emergency departments to ambulatory settings in order to reduce reliance on emergency rooms for primary and other non-emergency care by patients displaced from closed, merged, consolidated or restructured facilities;

- e) Expansion of residency and related GME training capacity to enhance primary and ambulatory care services.

8b. Capital Projects

Capital projects approved under this solicitation will be funded through HEAL NY grants. Activities eligible for HEAL NY funding include, but are not limited to⁵:

1. Construction, renovation, equipment costs, and planning, legal and consultant fees, for the consolidation of services between facilities, including but not limited to mergers, shared governance agreements, shared services arrangements and other collaborative activities designed to promote efficiency, eliminate duplication of beds and services, and/or enhance access to care.
2. Construction, renovation, and equipment costs to support the conversion of hospital inpatient space to outpatient and ambulatory services.
3. Construction, renovation, and equipment costs necessary for the conversion of challenged but needed hospitals to levels of care more consistent with community needs. This may include, but is not limited to, conversion to Critical Access Hospital (CAH) status.
4. Costs necessary to support functions and activities that will enable applicants to implement a closure or downsizing plan to either decommission or downsize buildings in order to take beds out of service in particular geographic areas. The objective of such projects should be to cover operational and closing costs that would otherwise impede efforts to downsize or close. For closures, grant support will be made available for a reasonable period while a facility operation or service is phased-down and its billable services may no longer be sufficient to support the orderly separation of staff, safeguard the physical infrastructure, or comply with applicable state and federal statutes and regulations. Eligible costs related to closure include but are not limited to:
 - a. Closing costs, net of all funds available to the eligible applicant, for no longer than a twelve-month period beginning no earlier than the date of approval to close;
 - b. Discharge of existing long term debt or mortgage associated with a facility being closed;
 - c. Payment of debt;
 - d. Security contract for abandoned building/equipment;
 - e. Modifications to close building/wing;

⁵Grants for these purposes will be eligible for funding from Bond Proceeds only to the extent that the proposed project contains a capital component eligible to be financed with the proceeds of state supported debt (see Section 9).

- f. Appropriate employee related expenses during the closure process;
- g. Demolition of buildings;
- h. Medical Records storage and transfer;
- i. Building insurance during the closure process;
- j. Medical Malpractice Insurance during closure.

Applications must include a justification for all costs included in the project budget, along with a discussion of how the expense relates to the project. If requesting HEAL funds, the application must state whether the applicant believes the expense to be a bondable capital expense.

HEAL grants will be made up of both State appropriations and DASNY bond proceeds. All grant funds derived from bond proceeds must be utilized for capital purposes, as defined by State Law, and if the bonds are issued on a tax-exempt basis, must be consistent with applicable Federal tax law (see Section). HEAL funds available from state capital appropriations have less stringent requirements than bond allocations. Those capital appropriations may be used for most closure-related expenses, as well as some types of debt restructuring costs. All costs to be reimbursed with grant funds must be incurred within the term of the approved grant disbursement agreement (GDA) or contract.

8c. Public Work

Pursuant to Public Health Law § 2818, all Project work or services performed under grant disbursement agreements (contracts) issued pursuant to this RFA which are funded by Grant funds shall be deemed “public work” and subject to and performed in accordance with Articles 8, 9 and 10 of the Labor Law.

8d. Minority/Women Business Enterprises

Pursuant to Public Health Law § 2818, the contractors performing work under grant disbursement agreements (contracts) issued pursuant to this RFA shall be deemed a state agency for the purposes of Article 15-A of the Executive Law and subject to the provisions of that Article.

9. Bond Proceeds

The bonds authorized to be issued by DASNY pursuant to section 1680-j of the Public Authorities Law (“HEAL Bonds”) will constitute “state-supported debt” for

purposes of the State Finance Law. The State Finance Law provides that state-supported debt may only be incurred for a “capital work or purpose” which is defined to mean any project involving:

“(i) the acquisition, construction, demolition, or replacement of a fixed asset or assets;

(ii) the major repair or renovation of a fixed asset, or assets which materially extends its useful life or materially improves or increases its capacity; or

(iii) the planning or design of the acquisition, construction, demolition, replacement, major repair or renovation of a fixed asset or assets, including the preparation and review of plans and specifications including engineering and other services, field surveys and sub-surface investigations incidental thereto.”

Therefore, only those components of a Project that constitute a “capital work or purpose,” as defined above, will be eligible to be financed with the proceeds of HEAL Bonds.

As a general rule, expenditures that are eligible to be capitalized for accounting or tax purposes will be eligible to be reimbursed from the proceeds of HEAL Bonds. On the other hand, amounts incurred for operational purposes, such as ordinary or recurring operating expenses or personal services, cannot be paid from bond proceeds. Thus, the proceeds of HEAL Bonds will not be available to directly assist grantees in paying the operational costs likely to be incurred in connection with the downsizing or closure of an institution. Nor will such Bond proceeds be directly available for the purpose of helping grantees manage their long and short term capital debt obligations.

SECTION 10. ADMINISTRATIVE PROCESS AND REQUIREMENTS

10a. Question and Answer Phase

The Department will respond to questions until the due date shown on the cover of this document. All questions of a substantive nature must be submitted in writing. Questions of a technical nature may be submitted in writing (see below) or via telephone by calling (518) 473-4700. Questions are of a technical nature if they bear on how to prepare the applications (e.g., formatting) rather than the substance of the application. All substantive questions, and any technical

questions to be submitted in writing, are to be sent via e-mail to MRT67@health.state.ny.us.

To the extent possible, each inquiry should cite the RFA section and paragraph to which it refers. Written questions will be accepted through the date shown on the cover page of this RFA.

Prospective applicants should note that all clarifications and exceptions, including those relating to the terms and conditions of the grant disbursement agreement (GDA, or contract) are to be raised prior to or on the date shown on the cover page of this RFA. Questions will not be answered after that date.

Within two weeks of the Questions Due date (as indicated on the cover page of this RFA), written answers to all questions raised will be posted on the DOH Web site at <http://www.health.ny.gov/funding/>. DOH and DASNY may elect to respond to questions in one or more sets; therefore, applicants are encouraged to monitor the Web site regularly. Applicants wishing to receive an e-mail notification of the posting should submit a request, including the applicant's e-mail address, MRT67@health.state.ny.us.

10b. How to File your Application

Applications must be **received** at the following address **by 3:00 PM** on the date shown on the cover page of this RFA.

Barry Gray
Director, Bureau of HEAL, Workforce Development and
Capital Investment
New York State Department of Health
Division of Health Facility Planning
Corning Tower, Room 1084
Albany, NY 12237

Late applications will not be accepted.⁶ Applications **WILL NOT** be accepted via FAX or e-mail.

Medicaid Rate Adjustment and APG Enhancement Applications

Eligible applicants must submit two complete original and signed applications, along with four hard copies of the application and three copies on separate flash drives. These electronically readable flash drives must include a complete copy of the application, readable in Adobe's .pdf format. Application

⁶ It is the applicant's responsibility to see that applications are delivered to the address above prior to the date and time specified. Late applications due to a documentable delay by the carrier may be considered at the Department of Health's discretion.

packages should be clearly labeled with the name and number of the RFA as listed on the cover of this RFA document.

HEAL Applications

Eligible applicants must submit two complete original and signed Technical Applications, along with four hard copies of the application and three copies on separate flash drives. Applicants must also submit two complete original and signed Financial Applications, along with four hard copies of the application and three copies on separate flash drives. These electronically readable flash drives must include a complete copy of the application, readable in Adobe's .pdf format. Application packages should be clearly labeled with the name and number of the RFA as listed on the cover of this RFA document.

Applications should be concise, single-spaced, and use at least a 12-point type. Technical Applications should not exceed 15 pages, including the executive summary (but excluding resumes of project team members, which may be appended). Financial Applications should not exceed 15 pages, excluding financial application forms and attachments.

10c. THE DEPARTMENT OF HEALTH AND THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK RESERVE THE RIGHT TO:

1. Reject any or all applications received in response to this RFA.
2. Award more than one grant disbursement agreement (GDA, or contract) resulting from this RFA.
3. Reserve the right to award additional funds pursuant to this RFA should they become available.
4. Waive or modify minor irregularities in applications received after prior notification to the applicant.
5. Adjust or correct cost figures with the concurrence of the applicant if errors exist and can be documented to the satisfaction of DOH, DASNY and the State Comptroller.
6. Negotiate with awardees within the requirements of the HEAL NY Program to serve the best interests of the State.
7. Modify the detailed specifications should an insufficient number of applications be received that meet all these requirements.
8. If DOH and DASNY are unsuccessful in negotiating a GDA with one or more awardees within an acceptable time frame, they may

award the funds to the next most qualified applicant(s) in order to serve and realize the best interests of the State.

9. DOH and DASNY reserve the right to award grants in amounts based on regional considerations to serve the best interests of the State.
10. Reject any application that is not in compliance with all state and federal requirements.

10d. Award Letter

DOH and DASNY will issue an award letter to each awardee. The award letter is not a commitment to provide funds, but may assist awardees in finalizing other sources of financing as required to secure the full Project cost.

10e. Term of GDA

Any grant disbursement agreement (GDA, or contract) resulting from this RFA will be effective only upon approval by the Office of the State Comptroller (OSC). It is expected that GDAs resulting from this RFA will be effective for a 24-month period, from on or about March 1, 2012 through on or about February 28, 2014.

10f. Payment Requirements

Payments under the resulting GDAs will be processed by DOH. The Grantee shall submit information of the type set forth below pursuant to the requirements to be set forth in the GDA.

1. Payment of such invoices by the State (NYS DOH) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be based on completion of specific milestones to be outlined in the Project work plan and must be within the specific GDA budget.
2. DOH shall make payment to the Grantee, no more frequently than monthly, based upon eligible expenses actually incurred by the Grantee, upon presentation to DOH of a Standard Voucher Form, together with such supporting documentation as DOH may require, in the forms to be set forth in the GDA or as otherwise determined by DOH.
3. The Grantee must provide proof of disbursement of Grant funds, in a form acceptable to DOH, within sixty (60) days of the date that Grant funds are disbursed to the Grantee to pay for such costs. In the event

acceptable proof of payment is not provided within that time frame, then DOH will not make any additional disbursements from Grant funds until such time as such proof of payment is provided.

4. In no event will DOH make any payment which would cause the aggregate disbursements to exceed the Grant amount.
5. All costs for which reimbursement is sought must have been incurred and paid for by the Grantee.

10g. Reporting Requirements

During the development and implementation phase, the grantee shall submit a quarterly report to DOH which, at a minimum, includes:

1. Discussion of milestones achieved and evaluation of Project status;
2. Discussion of any delays or other issues encountered;
3. Plan of action for addressing any delays or other issues encountered;
4. Objectives for the next reporting period;
5. Objectives for the remaining Project period;
6. Discussion of any quality control monitoring performed;
7. Financial report of Project expenses and revenues.

Post-implementation reports are required annually for three years.

10h. General Specifications

1. By signing the "Application Form" each signatory attests to their express authority to sign on behalf of the Eligible Applicant.
2. The Eligible Applicant 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 GDA will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
3. Submission of an application indicates the Eligible Applicant's acceptance of all conditions and terms contained in this RFA. If an Eligible Applicant does not accept a certain condition or term, this must be clearly noted in an attachment to the application cover letter.

4. An Eligible Applicant may be disqualified from receiving awards if such Eligible Applicant or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or other State contracts or has failed to meet all regulatory requirements relating to CON and federal and state standards of care.
5. Contracts awarded to eligible applicants shall require that work performed thereunder shall be deemed “public work” and subject to and performed in accordance with articles eight, nine and ten of the labor law, if applicable, and the contractors performing such work shall also be deemed state agencies for the purpose of Article 15-A of the Executive Law.

10i. Provisions Upon Default

1. The services to be performed by the Applicant shall be at all times subject to the direction and control of the State as to all matters arising in connection with or relating to the GDA resulting from this RFA.
2. In the event that the Eligible Applicant, through any cause, fails to perform any of the terms, covenants or promises of any GDA resulting from this RFA, DOH and DASNY shall thereupon have the right to take any action as they deem appropriate, including terminating the GDA by giving notice in writing of the fact and date of such termination to the Applicant and the right to recoup grant funds paid.
3. If, in the judgment of DOH and DASNY, the Applicant acts in such a way which is likely to or does impair or prejudice the interests of the State, DOH and DASNY shall thereupon have the right to terminate any GDA resulting from this RGA by giving notice in writing of the fact and date of such termination to the Eligible Applicant. In such case the Eligible Applicant shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Eligible Applicant 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 Eligible Applicant was engaged in at the time of such termination, subject to audit by the State Comptroller.

10j. GDA Appendices

The following will be incorporated as appendices into any GDA(s) resulting from this Request for Applications as listed in the sample Multi-Year Grant Contract in Attachment 7:

1. APPENDIX A: Standard Clauses for All New York State GDAs
2. APPENDIX A-1: Agency Specific Clauses
3. APPENDIX B: Budget (based on Application)
4. APPENDIX C : Payment and Reporting Schedule
5. APPENDIX D : Work plan (based on Application)
6. APPENDIX E : Unless the CONTRACTOR is a political subdivision 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 into this contract as **Appendix E-1**:

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

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

7. APPENDIX G : Notices
8. Appendix X: Renewal/Amendment of Contract

HEAL NY Legislation (PHL 2818)
Chapter 63 of the Laws of 2005, as amended

§ 2818. Health care efficiency and affordability law for New Yorkers (HEAL NY) capital grant program.

§ 2818. Health care efficiency and affordability law of New Yorkers (HEAL NY) capital grant program. 1. The commissioner and the director of the dormitory authority of the state of New York shall enter into an agreement, subject to the approval of the director of the budget, for the purpose of administering the funds available to the health care efficiency and affordability law for New Yorkers (HEAL NY) capital grant program as authorized under section sixteen hundred eighty-j of the public authorities law, in a manner that will encourage improvements in the operation and efficiency of the health care delivery system within the state. A copy of such agreement, and any amendments thereto, shall be provided to the chair of the senate finance committee, the director of the division of budget and the chair of the assembly ways and means committee. Such agreement shall include criteria, to be developed by the commissioner and the director of the authority, to be considered in their evaluation of applications and determination of awards, including, but not limited to:

- (a) determination of eligible applicants, provided that such eligible applicants shall include entities representative of any part of the health care delivery system;
- (b) consideration of statewide geographic distribution of funds;
- (c) minimum and maximum amounts of funding to be awarded under the program;
- (d) the relationship between the project proposed by an applicant and identified community need; and
- (e) the extent to which the applicant has access to alternative financing.

Such agreement shall be provided to the chair of the senate finance committee, the director of the division of budget and the chair of the assembly ways and means committee no later than thirty days prior to the scheduled approval of the first bond issuance for the program by the public authorities control board. The authority shall also report quarterly to such chairpersons on the awards made through the program, including the name of the applicant, a description of the project and the amount of the award.

The commissioner and the director of the authority shall award grants to eligible applicants after due public notice of the availability of funds and through a process which ensures to the maximum extent practicable and where appropriate, competition among such applicants, consistent with the following requirements: the commissioner and the director of the authority shall publish the priorities and goals that are to be achieved through grant funding, and regularly provide public notice of the availability of funding. These priorities and goals shall be consistent with objectives and determinations of the Commission on Health Care facilities in the Twenty-First Century established pursuant to a chapter of the laws of two thousand five, provided, however, that nothing shall prohibit the commissioner and the director for the authority from awarding grants prior to a final report by the commission. For each project that will be recommended for approval, the commissioner and the director of the authority shall report to the chair of the senate finance committee, the director of the division of budget

and the chair of the assembly ways and means committee how the project meets the priorities, goals and criteria established pursuant to this section.

Contracts awarded to eligible applicants shall require that work performed thereunder shall be deemed "public work" and subject to and performed in accordance with articles eight, nine and ten of the labor law and the contractors performing such work shall also be deemed a state agency for the purpose of article fifteen-A of the executive law and subject to the provisions of such article.

2. Notwithstanding the provisions of subdivision one of this section, the commissioner and the director of the dormitory authority may award, in an amount not to exceed twenty-five percent of the health care system improvement capital grant program allocation in any given fiscal year, grants to eligible applicants without the process set forth in subdivision one of this section. With respect to the process for the awarding of such funds without the process set forth in subdivision one of this section, the commissioner and the director of the dormitory authority shall determine eligible awardees based solely on an applicant's ability to meet the following criteria:

(i) have a loss from operations for each of the three consecutive preceding years as evidenced by audited financial statements; and

(ii) have a negative fund balance or negative equity position in each of the three preceding years as evidenced by audited financial statements; and

(iii) have a current ratio of less than 1:1 for each of three consecutive preceding years; or

(iv) be deemed to the satisfaction of the commissioner to be a provider that fulfills an unmet health care need for the community as determined by the department through consideration of the volume of Medicaid and medically indigent patients served; the service volume and mix, including but not limited to maternity, pediatrics, trauma, behavioral and neurobehavioral, ventilator, and emergency room volume; and, the significance of the institution in ensuring health care services access as measured by market share within the region.

(c) Prior to an award being granted to an eligible applicant without a competitive bid or request for proposal process, the commissioner and the director of the dormitory authority shall notify the chair of the senate finance committee, the chair of the assembly ways and means committee and the director of the division of budget of the intent to grant such an award. Such notice shall include information regarding how the eligible applicant meets criteria established pursuant to this section.

3. Notwithstanding subdivisions one and two of this section, sections one hundred twelve and one hundred sixty-three of the state finance law, or any other inconsistent provision of law, of the funds available for expenditure pursuant to this section, thirty million dollars may be allocated and distributed by the commissioner without a competitive bid or request for proposal process for grants to residential health care facilities for the purpose of restructuring such facilities to achieve a reduction in certified inpatient bed capacity. Consideration relied upon by the commissioner in determining the allocation and distribution of these funds shall include, but not be limited to, the following: (a) the existing and projected need for inpatient nursing home beds and community based long-term care services in the area in which a facility applying for such funds is located; (b) the quality of the care being provided by the facility; (c) the ability of the facility to access, in a timely manner, alternative sources of funding,

including other sources of government funding; and (d) whether additional funding would permit the facility to achieve greater stability and efficiency in the delivery of needed health care services.

4. Notwithstanding the provisions of subdivision one of this section, the commissioner and the director of the dormitory authority may award, in an amount not to exceed twenty-five million dollars of the health care system improvement capital grant program allocated in any given fiscal year, grants to eligible applicants without the process set forth in subdivision one of this section to provide necessary restructuring support to hospitals for transition to a new reimbursement methodology.

(a) With respect to the process for the awarding of such funds without the process set forth in subdivision one of this section, the commissioner and director of the dormitory authority shall determine eligible awardees based solely on an applicant's ability to meet the following criteria:

(i) have a loss of operations for each of the three consecutive preceding years as evidence by audited financial statements; and

(ii) have a negative fund balance or negative equity position in each of the three preceding years as evidence by audited financial statements; and

(iii) have a current ratio of less than 1:1 for each of three consecutive preceding days; or

(iv) be deemed to the satisfaction of the commissioner to be a provider that fulfills an unmet health care need for the community as determined by the department through consideration of the volume of Medicaid and medically indigent patients served; the service volume and mix, including but not limited to maternity, pediatrics, trauma, behavior and neurobehavioral, ventilator, and emergency room volume; and, the significance of the institution in ensuring health care services access as measured by market share within the region; or

(v) be deemed to the satisfaction of the commissioner to have incurred operating losses resulting from the implementation of reimbursement rate reforms and other reductions enacted by a chapter of the laws of two thousand nine, to provide for the continued financial viability of the applicant.

(b) Prior to an award being granted to an eligible applicant without a competitive bid or request for proposal process, the commissioner and the director of the dormitory authority shall notify the chair of the senate finance committee, the chair of the assembly ways and means committee and the director of the budget of the intent to grant such an award. Such notice shall include information regarding how the eligible applicant meets criteria established pursuant to this section.

5. (a) Notwithstanding subdivision one, two or three of this section, the commissioner, with the approval of the director of the budget, may expend funds for the purpose of providing cost effective increased access to the capital markets, including but not limited to through the use of mortgage insurance, credit enhancement, letters of credit, bond insurance or other arrangements, for capital projects that are determined to meet one or more of the following objectives for hospitals licensed under this article:

(i) securing financing for facilities in a manner that will improve the operation and efficiency of the health care delivery system within the state;

(ii) securing financing for facilities in a manner consistent with the objectives and determinations of the Commission on Health Care Facilities in the Twenty-First Century, established pursuant to chapter sixty-three of the laws of two thousand five;

(iii) securing financing for facilities in a manner that will help rightsize the state's acute care infrastructure, including reducing inpatient capacity, downsizing, restructuring, and closing facilities;

(iv) securing financing for facilities in a manner that advances the reform of the long-term care system, including through rightsizing and providing community-based services;

(v) securing financing for facilities in a manner that improves the primary and ambulatory care system including programs undertaken in collaboration with a local development corporation incorporated pursuant to sections four hundred one and one thousand four hundred eleven of the not-for-profit corporation law to foster the development and expansion of high quality, cost effective primary health care services and related ambulatory care and ancillary services benefiting medically underserved communities, principally in the state, to increase access of community residents to such services, to improve the health status of such residents and to lessen the burdens of government and act in the public interest; and

(vi) such other objectives as the commissioner deems appropriate to effectuate the intent of this subdivision.

(b) The commissioner may transfer funds to other state agencies or public authorities, with the approval of the director of budget, to effectuate the purposes of this subdivision.

6. Notwithstanding any contrary provision of this section, sections one hundred twelve and one hundred sixty-three of the state finance law, or any other contrary provision of law, subject to available appropriations, funds available for expenditure pursuant to this section may be distributed by the commissioner without a competitive bid or request for proposal process for grants to general hospitals and residential health care facilities for the purpose of facilitating closures, mergers and restructuring of such facilities in order to strengthen and protect continued access to essential health care resources. Prior to an awarded being granted to an eligible applicant without a competitive bid or request for proposal process, the commissioner shall notify the chair of the senate finance committee, the chair of the assembly ways and means committee and the director of the division of budget of the intent to grant such an award. Such notice shall include information regarding how the eligible applicant meets criteria established pursuant to this section.

Application Materials
For
Medicaid Rate Adjustments
And
APG Enhancements

**Restructuring Initiatives
In Medicaid Redesign**

**Medicaid Rate Adjustment and
APG Enhancement**

Application

Project Name: _____

Eligible Applicant Legal Corporate Name: _____

Applicant Category: (Circle one category)

- Hospital
 - RHCF
 - Sole Community Hospital
 - D&T Center
- Article 28 Network
 - Article 28 Active Parent
- CHHA

Applicant Address (include county):

Applicant Federal ID #: _____

NYS Charities Registration #: _____

Type of Application:

- Medicaid Rate Adjustment
- APG Rate Enhancement

Restructuring Initiatives In Medicaid Redesign

Medicaid Rate Adjustments and APG Enhancement Application Format

The application should demonstrate how the requested adjustment to Medicaid reimbursement rates or enhancement of APG rates will support one or more of the operational activities listed in **section 8a** of this announcement.

Executive Summary

This part of the application should briefly describe:

- The overall Project.
- How the Project meets the objectives of the Medicaid Redesign Team to close, merge, downsize or restructure health care facilities in favor of a reconfigured health care system delivering more efficient, higher-quality health care appropriate to the identified health care needs of the community.
- How the Eligible Applicant meets the eligibility criteria (see RFA Section 2).

Narrative

Description of Problem

The narrative should describe the problem or changed circumstance that the facility seeks to address with the assistance of the requested rate adjustment or APG enhancement. This change should be the result of a merger, consolidation, bed reduction, closure or other restructuring activity being undertaken by the applicant facility; **or** should reflect the impact on the applicant facility of a merger, consolidation, bed reduction, closure or other restructuring occurring elsewhere in the community. The effects of the particular change or problem, actual or anticipated, should be stated in specific, measurable terms. For example, a heightened number of visits to emergency rooms or ambulatory care facilities, a rising inpatient census, or lengthened waiting times for placement in community-based care. Anecdotal information and generalized statements will not suffice to demonstrate these effects.

Applicants requesting assistance to close their facilities must describe how the requested rate adjustment or APG enhancement will help implement their facility's plan of closure required by 10 NYCRR Part 405. Applicants proposing to absorb patients displaced by the closure of another facility must indicate how their proposed activities will relate to the plan of closure put forth by the closing facility. Both types of applications should also include a listing and brief description of benchmarks on Attachment 1b, Closure Plan Benchmarks.

Applicants subject to or affected by recommendations of the Medicaid Redesign Team Brooklyn Work Group should describe how the requested rate adjustment or APG enhancement will support the implementation of those recommendations as they affect the applicant.

Community Need

The narrative should describe the health needs of the community. This should be based on documented information, such as Prevention Quality Indicators (PQI's), Census information, insurance status of the population, and data on service volume, occupancy, and discharges by existing providers. The community and associated data should be referred to by Zip codes, Census tracts or other defined delineation. Generalized designations such as "neighborhood," and "market area" will not be viewed favorably.

Applicants should also describe, if applicable, their participation in regional or local health planning activities, including those supported by grants awarded under HEAL Phase 9.

Activities

The narrative should describe in detailed terms the actual activities to be supported through the rate adjustment or APG enhancement; for example expanded hours of services, additional equipment or devices, or number and type of additional FTE staff. The applicant should describe how these relate to the bed reduction, merger, closure or other restructuring being undertaken by, or having an impact upon, the applicant.

The applicant should also describe how the proposed activities will

- protect or enhance access to care; or
- protect or enhance quality of care;
- improve the cost effectiveness of health care services;
- otherwise protect or enhance the health care delivery system, as determined by the Department.

Cost-Effectiveness and Medicaid Impact

The activities supported by the rate adjustment or APG enhancement should yield a favorable return on State dollars have no adverse impact on Medicaid expenditures. The narrative should therefore describe how the proposed project activities will result in cost savings to the health care system and the Medicaid program through improved efficiency, more appropriate levels of care for the community, or other factors. These effects should be demonstrable by the end of the third year of the project, using indicators such as:

- an increase in primary care visits;
- a reduction in PQI-related admissions;
- a reduction in overall inpatient admissions
- higher occupancy rates for reduced complements of inpatient beds;
- improved patient through-put in ED's and ambulatory settings;
- increased availability of home- and community-based long-term care services.

Applicants with approved Medicaid Transition I and/or Medicaid Transition II plans should describe how the proposed project will support or complement the Plan(s).

Expenses and Justification

The expenses to be supported by the rate adjustment or APG enhancement should be submitted on the attached Operating Budget form. If the project involves the closure of a facility, the key benchmarks of the closure plan should be described using the Closure Plan Benchmarks format shown in Attachment 1b.

Submission of Application

Applications should be submitted to:

Mr. Barry Gray
Director
Bureau of HEAL, Workforce Development and Capital Investment
Department of Health
Corning Tower, Room 1084
Albany, NY 12237

Applications must be **received** in this office **no later than 3:00 p. m on January 17, 2012.**

Medicaid Rate Adjustment and APG Enhancement

Sample Operating Budget

Sample Closure Plan Benchmarks

**Restructuring Initiatives Operating Budget - Sample
Rate Adjustment/APG Enhancement**

Category of Costs:		Additional Costs			
	# FTE's	Total	Salaries	Fringe Benefits	Comments
Employees	660				Work with community hospitals for the orderly transfer of needed employees to other hospitals with funds to support. Some Employees will go elsewhere on their own
Executive	10	\$ 200,000	\$ 150,000	\$ 50,000	
Management	50	\$ 1,000,000	\$ 750,000	\$ 250,000	
Patient Care	350	\$ 11,000,000	\$ 8,250,000	\$ 2,750,000	
Support Staff	250	\$ 5,000,000	\$ 3,750,000	\$ 1,250,000	
Costs of closing hospital		<u>Total</u>	<u>Salary</u>	<u>Non-Salary</u>	
		These represent costs not covered by other assets or funds			
Capital Debt Retirement					
Union Benefit Payments					
Malpractice					
Vendor Debt					
Severance					
Unemployment Insurance					
Unpaid Income tax withhold					
Medical Record Storage					
Other - Describe					
Other - Describe					

Other - Describe				
Capital related costs - Describe	Total	Building/Fixed	Major movable	
Expand Emergency Room at another community hospital	\$ 10,000,000	\$ 7,500,000	\$ 2,500,000	Costs related to other hospitals in community needing to modify space to take on services of closing hospital
Enhance existing FQHC and other ambulatory care services in the community	\$ 4,000,000	\$ 3,000,000	\$ 1,000,000	Initial costs covered with HEAL grant awards. Annual depreciation and interest covered by normal reimbursement

Closure Plan Benchmarks – Sample

Attachment 1b

Current Capacity	Staffed Beds	First quarter	Second Quarter	Third Quarter	Fourth quarter
Medical/Surgical	150	Close initial 50 beds and transfer remaining patients to neighboring hospitals	Close additional 50 beds and transfer remaining patients to neighboring hospitals	Close remaining 50 beds and transfer remaining patients to neighboring hospitals	
ICU	10		Close 5 ICU beds	Close remaining 5 beds	
CCU	10		Close 5 ICU beds	Close remaining 5 beds	
Pediatric	20	Close 10 Pediatric beds			
Maternity	20	Stop admissions and direct patients to other hospitals in the community	Close Maternity Unit		
Psychiatric	20	Work with community hospitals to place patients			
Medical Rehabilitation	10	Close the medical rehab unit and transfer patients			
Chemical Dependency					
Detox					
Rehab					

Closure Plan Benchmarks – Sample

Ambulatory Care	Total Visits	First quarter	Second Quarter	Third Quarter	Fourth quarter
Emergency Room	40,000	Work with EMS to develop plan for Ambulance diversion			
General Clinic	35,000	Work with patients to develop placement of existing patients with other clinic programs in the community	Close some of the clinics operated after patients re-assigned to another provider	Close some of the clinics operated after patients re-assigned to another provider	Close remaining clinics - Follow up with patients on re-assignment to be sure they are enrolled
Ambulatory Surgery	7,500	Stop scheduling electives and begin to work on re-assignment of elective procedures to other providers in community			
Other - describe					
Other - describe					
Other - describe					
Graduate Medical Education	# of Residents	First quarter	Second Quarter	Third Quarter	Fourth quarter
Interns and Residents	30	No change - find slots for reassignment of residents	Reassign 10 residents to another teaching program in community	Reassign 10 residents to another teaching program in community	Reassign remaining 10 residents to another teaching program in community
	# of FTE's				
Employee re-deployment	660	Work with other health care providers in community to place employees	Place employees who are hired by other providers in the community.	Place employees who are hired by other providers in the community.	Place remaining employees who are hired by other providers in the community.

**Restructuring Initiatives in
Medicaid Redesign**

Application Materials

for

HEAL Grant Awards

TECHNICAL APPLICATION PACKAGE CHECKLIST

1. Technical Application

(Applications should include all of these sections and forms)

- Technical Application Cover Page
- Eligible Applicant Certification
- Multiple Provider / Participant Consent Form
- Table of Contents
- Executive Summary
- Eligible Applicant
- Attach Proof of Eligibility (Copy of Operating Certificate)
- Project Description
- Project Monitoring Plan

2. Packaging the Technical Application

- The package contains:
 - Two original, signed, Technical Applications
 - Four copies of the Technical Application
 - Three Flash Drive's of the Technical Application
- Application is scheduled to be delivered by 3:00 PM on the date shown on the RFA cover page.
- Technical Application package, shipping boxes and flash drives are clearly labeled:
 - HEAL NY Medicaid Redesign Technical Application
 - RFA # 1111091042
- Mail Technical Application to:
 - Barry Gray
 - Director, HEAL, Workforce & Capital Investment
 - New York State Department of Health
 - Corning Tower, Room 1084
 - Albany, NY 12237

**Restructuring Initiatives in
Medicaid Redesign
HEAL Grant Awards**

Technical Application Cover Page

Project Name _____

Project involve facility closure(s): Yes or No

Eligible Applicant Legal Corporate Name _____

Applicant's Category: (Circle one category)

General Hospital

RHCF

Article 28 Network

Article 28 Active Parent

Applicant's Address (include County) _____

Applicant Federal ID #: _____ **NYS Charities Registration #:** _____

Contact Information

Name _____ **Title** _____

Phone _____ **Fax** _____ **E-mail** _____

Signature of an individual who will be authorized to bind the Eligible Applicant to any GDA resulting from this application:

Signature _____

Title, if signatory is different from contact person _____

ELIGIBLE APPLICANT CERTIFICATION
CERTIFICATION FOR
HEALTH CARE EFFICIENCY AND AFFORDABILITY LAW (HEAL NY)
GRANTS

I hereby warrant and represent to the New York State Department of Health (“DOH”) and the Dormitory Authority of the State of New York (“the Authority”) that:

- Applicant will make every effort to ensure that the project described in this application will be consistent with the goals and recommendations of the Commission on Health Care Facilities in the Twenty-First Century, as established pursuant to Section 31 of Part E of Chapter 63 of the Laws of 2005, and with the goals and recommendations set forth in the Commission’s report of December, 2006.
- All contracts entered into by the Grantee in connection with the Project shall (A) provide that the work funded by Grant funds covered by such contract shall be deemed “public work” subject to and in accordance with Articles 8, 9 and 10 of the Labor Law; and (B) shall provide that the contractors performing work under such contract shall be deemed “state agencies” for the purposes of Article 15A of the Executive Law
- If awarded a HEAL NY grant, the funds will be expended solely for the project purposes described in this RFA and in the GDA and for no other purpose.
- I understand that in the event that the project funded with the proceeds of a HEAL NY grant ceases to meet one or more of the criteria set forth above, then DOH and/or the Dormitory Authority shall be authorized to seek recoupment of all HEAL NY grant funds paid to the Grantee and to withhold any grant funds not yet disbursed.

Applicant Name _____

Project Name _____

Signature _____ Date _____

Name (Please Print) _____

Title (Please Print) _____

Please note that in accordance with Part 86-2.6 of the Commissioner’s Administrative Rules and Regulations, **ONLY** the following individuals may sign the attestation form: Proprietary Sponsorship – Operator/Owner

- Voluntary Sponsorship – Officer (President, Vice President, Secretary or Treasurer), Chief Executive Officer, Chief Financial Officer or any Member of the Board of Directors
- Public Sponsorship – Public Official Responsible for Operation of the Facility

HEAL NY Funds

Technical Application Format

Project Name:_____

Eligible Applicant Name:

Table of Contents

Executive Summary

A. Eligible Applicant

B. Project Description

1. Overview
2. Community Need
3. Project Activities
4. Project Timeline
5. Continuation
6. Project Team

C. Project Monitoring Plan

Technical Application Format

Project Name: _____

Eligible Applicant Name:

Applicants must follow the format below, using the titles in bold.

Table of Contents

Executive Summary

D. Eligible Applicant

E. Project Description

Overview

Community Need

Project Activities

Project Timeline

Continuation

Project Team

F. Project Monitoring Plan

Technical Application Format

Project Name: _____

Eligible Applicant Name: _____

Note: *Applications should include all sections listed below, clearly labeled.*

Executive Summary

This part of the Technical Application must briefly describe:

- The overall Project.
- How the Project meets the objectives of the Medicaid Redesign Team to close, merge, downsize or restructure health care facilities in favor of a reconfigured health care system delivering more efficient, higher-quality health care appropriate to the identified health care needs of the community.
- How the Eligible Applicant meets the eligibility criteria (see RFA Section 2).

A. Eligible Applicant

In this section, provide basic organizational information on the Eligible Applicant. Complete the Eligible Applicant Certification (see RFA Attachment 3). This should include information such as the Eligible Applicant's exact corporate name, board composition, ownership and affiliations, staffing, and services provided. Also provide information that will allow DOH and DASNY to understand how the Eligible Applicant is prepared to proceed with the Project. Provide any experience the Eligible Applicant has with Projects of this type, how the Eligible Applicant fits within the public health community, and evidence that the Eligible Applicant will be able to implement the Project.

B. Project Description

1. Overview: Provide a general description of the Project, its goals and objectives. Describe how the goals and objectives of the Project are consistent with those outlined by the HEAL NY Program, as well as the goals and criteria set forth in this RFA.
2. Community Need: Describe how the Project will relate to identified health needs in the community. This must be based on documented information, such as health status indicators, demographics, insurance status of the population, and data on

service volume, occupancy, and discharges by existing providers. Identify areas of overcapacity and/or under-capacity. Generalized statements and anecdotal information will not be viewed favorably.

Applicants should also describe, if applicable, their participation in regional or local health planning activities, including those supported by grants awarded under HEAL Phase 9.

3. Project Activities: Describe the project objectives to be attained and the activities to achieve each. Objectives may be process objectives or outcome objectives. Process objectives involve an action or set of actions; for example, renovation of a building or development of a governance agreement. Outcome objectives address a measurable change or impact; for example an increase in number of patients served or a decrease in average length of inpatient stay. Objectives are attained through implementation of an accompanying set of activities (or subobjectives), usually occurring in sequence. Objectives should be verifiable through measurable indicators wherever possible.

Applicants subject to or affected by recommendations of the Medicaid Redesign Team Brooklyn Work Group should describe how the project will support the implementation of those recommendations as they pertain to the applicant.

4. Project Timeline: Provide a timeline for the Project up through the date of implementation, including identification of major milestones and the person or entity accountable for each milestone. If applicable, the Eligible Applicant must describe in detail the phasing plan anticipated to achieve implementation. This phasing plan must identify specific milestones and dates of completion for each milestone. If applicable, the application and phasing plan must also address:

- Timeframes for any architectural and engineering design and construction necessary to accomplish each phase.
- Scheduled milestones for the preparation and processing of any application, as required by CON regulations (10 NYCRR Part 710), necessary to secure DOH approval for service revisions, relocations, or capital construction that rises to the level of CON review.

5. Continuation: Describe how the services and activities established or enhanced by the project will continue after its completion.

6. Project Team: Provide resumes and references for each key staff member of the Project team. Describe how this team has the expertise and experience necessary to successfully complete the project within the timeframes outlined and achieve the goals and objectives set forth in the application. Provide information on any key contractors that the Eligible Applicant will contract with to facilitate the implementation of the project.

C. Project Monitoring Plan

Describe the methodology that will be used to track progress within the project, including any quality assurance testing that will be performed. Describe how the monitoring plan will include identification of barriers and strategies to resolve issues.

The Technical Application should not exceed 15 pages, including the executive summary (but excluding resumes of project team members, which may be appended).

Submit the Technical Application to:

Mr. Barry Gray
Director
Bureau of HEAL, Workforce Development and Capital Investment
Department of Health
Corning Tower, Room 1084
Albany, NY 12237

Applications must be **received** in this office **no later than 3:00 p. m on January 17, 2012.**

**Restructuring Initiatives
In Medicaid Redesign**

HEAL NY Funds

Financial Application Format

Project Name: _____

Eligible Applicant Name: _____

Table of Contents

Executive Summary

A. Project Budget

- **Project Expenses and Justification**

B. Project Fund Sources

C. Cost Effectiveness

D. Project Financial Viability

E. Eligible Applicant Financial Stability

F. General Corporate Information

Financial Application Format

Project Name: _____

Eligible Applicant Name: _____

Note: Applications should include all sections listed below, clearly labeled.

Executive Summary

This part of the Financial Application must briefly describe:

- The overall Project.
- How the Project meets the objectives of the Medicaid Redesign Team to close, merge, downsize or restructure health care facilities in favor of a reconfigured health care system delivering more efficient, higher-quality health care appropriate to the identified health care needs of the community.
- How the Eligible Applicant meets the eligibility criteria in RFA Section 2.

A. Project Budget

Provide a Project Budget that includes all components of the application, including those that will be funded with sources other than HEAL NY grant funds. Show the amount of each budget line that will be funded with HEAL NY grant funds. **Provide a detailed discussion of the reasonableness of each budgeted item.** These budget justifications should be specific enough to show what the Eligible Applicant means by each request and how the request supports the overall Project.

B. Project Fund Sources

Identify and describe all private or other sources of funding, if any, for the Project, including governmental agencies or other grant funds.

C. Cost Effectiveness and Medicaid Impact

Describe why the project is a cost-effective investment as compared to other alternatives. Describe how the proposed project activities will result in cost savings to the health care system and the Medicaid program through improved efficiency, more appropriate levels of care for the community, or other factors. These effects should be demonstrable by the end of the third year of the project, using indicators such as:

- an increase in primary care visits;
- a reduction in PQI-related admissions;
- a reduction in overall inpatient admissions

- higher occupancy rates for reduced complements of inpatient beds;
- improved patient through-put in ED's and ambulatory settings;
- increased availability of home- and community-based long-term care services.

Include a discussion of all means by which projected savings can be verified after the project is complete.

Applicants with approved Medicaid Transition I and/or Medicaid Transition II plans should describe how the proposed project will support or complement the Plan(s).

D. Project Financial Viability

Provide a detailed discussion showing how the project will support the institution's financial viability upon completion. Provide financial feasibility projections for retiring any capital debt, associated with the project. Include supporting documents such as projected balance sheets, income statements, cash flows, etc. from the project start through three years after project completion.

E. Eligible Applicant Financial Stability

Provide evidence of the financial stability of the Eligible Applicant. This would include a copy of the prior two annual audited financial statements and any other evidence of this stability. Entities whose financial statements have not been subjected to an audit must include any additional information available to satisfy this test and appropriate certifications.

F. General Corporate Information

1. Provide a list of vendors or contractors who can be contacted regarding the applicant's business practices.
2. Provide a list of grants applied for in the last three years and whether the grants were awarded or declined.
3. Provide the name of any parent, sibling, or subsidiary corporation of the applicant.
4. Include with the application a copy of Form 990 or evidence of an up-to-date filing with the Attorney General of New York State.
5. Provide a current New York State Vendor Responsibility Questionnaire (see RFA Attachment 6).

Budget Forms Required

Three budget forms are included in this RGA:

- Project Expenses and Justification
- Project Fund Sources

The two forms must be completed to show all expenses and fund sources associated with the proposed project.

Total fund sources should equal total expenses. If fund sources exceed expenses, please write a detailed explanation.

The budget forms should include the name, phone number, and e-mail address of the person responsible preparing for the budget.

Note: Failure to utilize and submit the budget forms included in this RFA may result in disqualification of your application.

Project Expenses and Justification

Project Name: _____

Eligible Applicant Name: _____

Each category of expenses (left column) must be accompanied by a written justification (right column). Each justification must include a discussion of how the expense will support the project, and state whether the applicant believes the expense is capitalizable.

Cost Category EXAMPLES ONLY	Anticipated HEAL NY Funds	Total Expense	Capitalizable Expense <i>Choose YES or NO for each line.</i>	Justification
<u>Acquisition</u>				
Land Costs	\$	\$	YES NO	
Building Costs	\$	\$	YES NO	
Other (specify)	\$	\$	YES NO	
<u>Capital Work</u>				
New Construction	\$	\$	YES NO	
Equipment	\$	\$	YES NO	
Renovation	\$	\$	YES NO	
Other (specify)	\$	\$	YES NO	
<u>Fees</u>				
Architectural/Design	\$	\$	YES NO	
Engineering	\$	\$	YES NO	
Legal	\$	\$	YES NO	
Installation	\$	\$	YES NO	
Construction Management	\$	\$	YES NO	
Other (specify)	\$	\$	YES NO	
<u>Closure</u>				
Discharge of LT Debt	\$	\$	YES NO	
Payment of Debt	\$	\$	YES NO	
Security Contract	\$	\$	YES NO	
Employee Expenses	\$	\$	YES NO	
Demolition of Building	\$	\$	YES NO	
Medical Records Storage	\$	\$	YES NO	
Building Insurance	\$	\$	YES NO	
Medical Malpractice	\$	\$	YES NO	
Other (specify)	\$	\$	YES NO	
Other (specify)	\$	\$	YES NO	
<u>Debt Restructuring</u>	\$	\$	YES NO	
<u>Other Categories (specify)</u>				
-	\$	\$	YES NO	
-	\$	\$	YES NO	
-	\$	\$	YES NO	
TOTAL	\$	\$		

Name, phone number, and e-mail address of the person responsible preparing for the budget:

Name_____

Phone_____

E-mail_____

Project Fund Sources

Project Name: _____

Eligible Applicant Name: _____

	Currently Committed	Anticipated	Total	
HEAL NY	\$	\$	\$	
Other Funds	\$	\$	\$	A
Total	\$	\$	\$	B

Other Funds' Components

Applicant Direct Funds	\$	\$	\$
Program Income	\$	\$	\$
Federal Government	\$	\$	\$
Foundations	\$	\$	\$
Corporations	\$	\$	\$
Bonds	\$	\$	\$
Loans	\$	\$	\$
Board/Individual Contributions	\$	\$	\$
Other (describe)	\$	\$	\$
Total	\$	\$	\$

- Calculate the Other Funds as a Percent of Total Funds.

$$\mathbf{A / B = \underline{\hspace{2cm}}}$$

- Any program income realized during the project must be applied to project costs.

Name, phone number, and e-mail address of the person responsible preparing for the budget:

Name _____

Phone _____

E-mail _____

Submit the Financial Application to:

Mr. Barry Gray
Director
Bureau of HEAL, Workforce Development and Capital Investment
Department of Health
Corning Tower, Room 1084
Albany, NY 12237

Applications must be **received** in this office **no later than 3:00 p. m on January 17, 2012.**

Vendor Responsibility Attestation

To comply with the Vendor Responsibility requirement in Financial Application Format, Section F(5), Vendor Responsibility Questionnaire, I hereby certify:

Choose one:

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.

- A hard copy Vendor Responsibility Questionnaire is included with this application and is dated within the last six months.

- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: _____

Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____

GRANT CONTRACT (MULTI YEAR)

Sample

STATE AGENCY (Name and Address): _____ . NYS COMPTROLLER'S
NUMBER: _____ .

CODE: _____ .
_____ .
_____ .

CONTRACTOR (Name and Address): _____ . TYPE OF PROGRAM(S)
_____ .
_____ .

FEDERAL TAX IDENTIFICATION NUMBER: _____ . INITIAL CONTRACT
PERIOD _____ .

MUNICIPALITY NO. (if applicable): _____ . FROM:
_____ . TO:
_____ .

CHARITIES REGISTRATION NUMBER: _____ . FUNDING AMOUNT FOR
INITIAL PERIOD: _____ .
____ - ____ - ____ or () EXEMPT: _____ .
(If EXEMPT, indicate basis for exemption): _____ .

_____ . MULTI-YEAR TERM (if
applicable): _____ . FROM:
_____ . TO:
_____ .

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

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

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

_____ APPENDIX A Standard clauses as required by the Attorney General
for all State contracts.

_____	APPENDIX A-1	Agency-Specific Clauses (Rev 10/08)
_____	APPENDIX B	Budget
_____	APPENDIX C	Payment and Reporting Schedule
_____	APPENDIX D	Program Workplan
_____	APPENDIX G	Notices
_____	APPENDIX X	Modification Agreement Form (to accompany modified

appendices

for changes in term or consideration on an existing

period or for

renewal periods)

OTHER APPENDICES

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

Act

Business Associate Agreement

_____ APPENDIX _____

_____ APPENDIX _____

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

_____	.	_____
_____	.	Contract No.
_____	.	_____
_____	.	STATE AGENCY
_____	.	_____
By: _____	.	By: _____
(Print Name)		(Print Name)

Title: _____

Title:

Date: _____

Date:

State Agency Certification:

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

STATE OF NEW YORK)
) SS:
County of _____)

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

(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE

COMPTROLLER'S SIGNATURE

Title: _____

. Title:

Date: _____

. Date:

STATE OF NEW YORK

AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

- A. The period of this AGREEMENT shall be as specified on the face page hereof. Should funding become unavailable, this AGREEMENT may be suspended until funding becomes available. In such event the STATE shall notify the CONTRACTOR immediately of learning of such unavailability of funds, however, any such suspension shall not be deemed to extend the term of this AGREEMENT beyond the end date specified on the face page hereof.
- B. Funding for the entire contract period shall not exceed the amount specified as "Funding Amount for Initial Period" on the face page hereof.
- C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.

- D. To modify the AGREEMENT, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A-1.
- E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.
- F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.
- G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

II. Payment and Reporting

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

CONTRACTOR costs and services provided pursuant to this AGREEMENT.

- C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

- D. The CONTRACTOR shall provide complete and accurate billing vouchers to the Agency's designated payment office in order to receive payment. Billing vouchers submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for vouchers submitted by the CONTRACTOR shall be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any 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. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules and regulations, policies or procedures affecting this AGREEMENT.
- C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A-1.
- D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.
- E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.
- F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

IV. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every

nature arising out of the provision of services pursuant to this AGREEMENT.

- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

V. Property

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules and regulations, or as stated in Appendix A-2.

VI. Safeguards for Services and Confidentiality

- A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
- B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
- C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A-1.

APPENDIX A-1

AGENCY SPECIFIC CLAUSES

FOR ALL

DEPARTMENT OF HEALTH CONTRACTS

APPENDIX A-1
(REV 10/08)

AGENCY SPECIFIC CLAUSES FOR ALL
DEPARTMENT OF HEALTH CONTRACTS

1. If the CONTRACTOR is a charitable organization required to be registered with the New York State Attorney General pursuant to Article 7-A of the New York State Executive Law, the CONTRACTOR shall furnish to the STATE such proof of registration (a copy of Receipt form) at the time of the execution of this AGREEMENT. The annual report form 497 is not required. If the CONTRACTOR is a business corporation or not-for-profit corporation, the CONTRACTOR shall also furnish a copy of its Certificate of Incorporation, as filed with the New York Department of State, to the Department of Health at the time of the execution of this AGREEMENT.
2. The CONTRACTOR certifies that all revenue earned during the budget period as a result of services and related activities performed pursuant to this contract shall be used either to expand those program services funded by this AGREEMENT or to offset expenditures submitted to the STATE for reimbursement.
3. Administrative Rules and Audits:
 - a. If this contract is funded in whole or in part from federal funds, the CONTRACTOR shall comply with the following federal grant requirements regarding administration and allowable costs.
 - i. For a local or Indian tribal government, use the principles in the common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments".
 - ii. For a nonprofit organization other than
 - ◆ an institution of higher education,
 - ◆ a hospital, or
 - ◆ an organization named in OMB Circular A-122, "Cost Principles for Non-profit Organizations", as not subject to that circular,use the principles in OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations," and OMB Circular A-122.
 - iii. For an Educational Institution, use the principles in OMB Circular A-110 and OMB Circular A-21, "Cost Principles for Educational Institutions".
 - iv. For a hospital, use the principles in OMB Circular A-110, Department of Health and Human Services, 45 CFR 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals" and, if not covered for audit purposes by OMB Circular A-133, "Audits of States Local Governments and Non-profit Organizations", then subject to program specific audit requirements following Government Auditing Standards for financial audits.
 - b. If this contract is funded entirely from STATE funds, and if there are no specific administration and allowable costs requirements applicable, CONTRACTOR shall adhere to the applicable principles in "a" above.

- c. The CONTRACTOR shall comply with the following grant requirements regarding audits.
 - i. If the contract is funded from federal funds, and the CONTRACTOR spends more than \$500,000 in federal funds in their fiscal year, an audit report must be submitted in accordance with OMB Circular A-133.
 - ii. If this contract is funded from other than federal funds or if the contract is funded from a combination of STATE and federal funds but federal funds are less than \$500,000, and if the CONTRACTOR receives \$300,000 or more in total annual payments from the STATE, the CONTRACTOR shall submit to the STATE after the end of the CONTRACTOR's fiscal year an audit report. The audit report shall be submitted to the STATE within thirty days after its completion but no later than nine months after the end of the audit period. The audit report shall summarize the business and financial transactions of the CONTRACTOR. The report shall be prepared and certified by an independent accounting firm or other accounting entity, which is demonstrably independent of the administration of the program being audited. Audits performed of the CONTRACTOR's records shall be conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States covering financial audits. This audit requirement may be met through entity-wide audits, coincident with the CONTRACTOR's fiscal year, as described in OMB Circular A-133. Reports, disclosures, comments and opinions required under these publications should be so noted in the audit report.
 - d. For audit reports due on or after April 1, 2003, that are not received by the dates due, the following steps shall be taken:
 - i. If the audit report is one or more days late, voucher payments shall be held until a compliant audit report is received.
 - ii. If the audit report is 91 or more days late, the STATE shall recover payments for all STATE funded contracts for periods for which compliant audit reports are not received.
 - iii. If the audit report is 180 days or more late, the STATE shall terminate all active contracts, prohibit renewal of those contracts and prohibit the execution of future contracts until all outstanding compliant audit reports have been submitted.
4. The CONTRACTOR shall accept responsibility for compensating the STATE for any exceptions which are revealed on an audit and sustained after completion of the normal audit procedure.
5. FEDERAL CERTIFICATIONS: This section shall be applicable to this AGREEMENT only if any of the funds made available to the CONTRACTOR under this AGREEMENT are federal funds.
- a. LOBBYING CERTIFICATION
 - 1) If the CONTRACTOR is a tax-exempt organization under Section 501 (c)(4) of the Internal Revenue Code, the CONTRACTOR certifies that it will not engage in lobbying activities of any kind regardless of how funded.
 - 2) The CONTRACTOR acknowledges that as a recipient of federal appropriated funds, it is subject to the limitations on the use of such funds to influence certain Federal contracting and financial transactions, as specified in Public Law 101-121, section 319, and codified in section 1352 of Title 31 of the

United States Code. In accordance with P.L. 101-121, section 319, 31 U.S.C. 1352 and implementing regulations, the CONTRACTOR affirmatively acknowledges and represents that it is prohibited and shall refrain from using Federal funds received under this AGREEMENT for the purposes of lobbying; provided, however, that such prohibition does not apply in the case of a payment of reasonable compensation made to an officer or employee of the CONTRACTOR to the extent that the payment is for agency and legislative liaison activities not directly related to the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. Nor does such prohibition prohibit any reasonable payment to a person in connection with, or any payment of reasonable compensation to an officer or employee of the CONTRACTOR if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal, or application for a Federal contract, grant, loan, or cooperative agreement, or an extension, continuation, renewal, amendment, or modification thereof, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan or cooperative agreement.

- 3) This section shall be applicable to this AGREEMENT only if federal funds allotted exceed \$100,000.
 - a) The CONTRACTOR certifies, to the best of his or her knowledge and belief, that:
 - ◆ No federal appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal amendment or modification of any federal contract, grant, loan, or cooperative agreement.
 - ◆ If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - b) The CONTRACTOR shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000

and not more than \$100,000 for each such failure.

- c) The CONTRACTOR shall disclose specified information on any agreement with lobbyists whom the CONTRACTOR will pay with other Federal appropriated funds by completion and submission to the STATE of the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. This form may be obtained by contacting either the Office of Management and Budget Fax Information Line at (202) 395-9068 or the Bureau of Accounts Management at (518) 474-1208. Completed forms should be submitted to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower Building, Room 1315, Albany, 12237-0016.
 - d) The CONTRACTOR shall file quarterly updates on the use of lobbyists if material changes occur, using the same standard disclosure form identified in (c) above to report such updated information.
- 4) The reporting requirements enumerated in subsection (3) of this paragraph shall not apply to the CONTRACTOR with respect to:
- a) Payments of reasonable compensation made to its regularly employed officers or employees;
 - b) A request for or receipt of a contract (other than a contract referred to in clause (c) below), grant, cooperative agreement, subcontract (other than a subcontract referred to in clause (c) below), or subgrant that does not exceed \$100,000; and
 - c) A request for or receipt of a loan, or a commitment providing for the United States to insure or guarantee a loan, that does not exceed \$150,000, including a contract or subcontract to carry out any purpose for which such a loan is made.
- b. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE:

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this AGREEMENT, the CONTRACTOR certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The CONTRACTOR agrees that it will require that the language of this certification be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

c. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

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

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

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

Instructions for Certification

- a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d) The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded From Federal Procurement and Non-procurement Programs.
- h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i) Except for transactions authorized under paragraph "e" of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

- a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department agency.
 - b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
6. The STATE, its employees, representatives and designees, shall have the right at any time during normal business hours to inspect the sites where services are performed and observe the services being performed by the CONTRACTOR. The CONTRACTOR shall render all assistance and cooperation to the STATE in making such inspections. The surveyors shall have the responsibility for determining contract compliance as well as the quality of service

being rendered.

7. The CONTRACTOR will not discriminate in the terms, conditions and privileges of employment, against any employee, or against any applicant for employment because of race, creed, color, sex, national origin, age, disability, sexual orientation or marital status. The CONTRACTOR has an affirmative duty to take prompt, effective, investigative and remedial action where it has actual or constructive notice of discrimination in the terms, conditions or privileges of employment against (including harassment of) any of its employees by any of its other employees, including managerial personnel, based on any of the factors listed above.
8. The CONTRACTOR shall not discriminate on the basis of race, creed, color, sex, national origin, age, disability, sexual orientation or marital status against any person seeking services for which the CONTRACTOR may receive reimbursement or payment under this AGREEMENT.
9. The CONTRACTOR shall comply with all applicable federal, State and local civil rights and human rights laws with reference to equal employment opportunities and the provision of services.
10. The STATE may cancel this AGREEMENT at any time by giving the CONTRACTOR not less than thirty (30) days written notice that on or after a date therein specified, this AGREEMENT shall be deemed terminated and cancelled.
11. Where the STATE does not provide notice to the NOT-FOR-PROFIT CONTRACTOR of its intent to not renew this contract by the date by which such notice is required by Section 179-t(1) of the State Finance Law, then this contract shall be deemed continued until the date that the agency provides the notice required by Section 179-t, and the expenses incurred during such extension shall be reimbursable under the terms of this contract.
12. Other Modifications
 - a. Modifications of this AGREEMENT as specified below may be made within an existing PERIOD by mutual written agreement of both parties:
 - ◆ Appendix B - Budget line interchanges; Any proposed modification to the contract which results in a change of greater than 10 percent to any budget category, must be submitted to OSC for approval;
 - ◆ Appendix C - Section 11, Progress and Final Reports;
 - ◆ Appendix D - Program Workplan will require OSC approval.
 - b. To make any other modification of this AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s), and a Modification Agreement (Appendix X is the blank form to be used), which shall be effective only upon approval by the Office of the State Comptroller.
13. Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for

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

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

- **C-105.2** -- Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
- **SI-12** -- Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** -- Certificate of Participation in Workers' Compensation Group Self-Insurance

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

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

14. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.
15. All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.
16. Additional clauses as may be required under this AGREEMENT are annexed hereto as appendices and are made a part hereof if so indicated on the face page of this AGREEMENT.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

TABLE OF CONTENTS

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

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

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law 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.