

<u>STATE AGENCY:</u> South Beach Psychiatric Center 777 Seaview Avenue Staten Island, NY 10305	<u>NYS COMPTROLLER'S NUMBER:</u> OMH01-X000227-3650614 <u>ORIGINATING AGENCY CODE:</u> 3650614
<u>CONTRACTOR:</u> Contractor Name Vendor Address City, State, Zip	<u>TYPE OF PROGRAM:</u> Concession Services
<u>CHARITIES REGISTRATION NUMBER:</u> Enter if applicable, or "N/A" <u>FEDERAL TAX IDENTIFICATION NUMBER:</u> Enter Tax ID # <u>VENDOR ID:</u> Enter ID Number	<u>CONTRACT PERIOD:</u> Complete after bid award <u>CONTRACT AMOUNT FOR PERIOD:</u> (As per Appendix B) Enter contract amount
<u>STATUS:</u> CONTRACTOR IS <input type="checkbox"/> IS NOT <input type="checkbox"/> A <u>SECTARIAN ENTITY</u> CONTRACTOR IS <input type="checkbox"/> IS NOT <input type="checkbox"/> A <u>NOT-FOR-PROFIT ORGANIZATION</u> CONTRACTOR IS <input type="checkbox"/> IS NOT <input type="checkbox"/> A <u>MUNICIPALITY</u>	<u>RENEWAL TERM:</u> N/A FROM: TO:
<u>APPENDICES ATTACHED OR REFERENCED AND PART OF THIS AGREEMENT:</u> (Applicable Appendixes must be checked [X])	
APPENDIX A APPENDIX A-1 APPENDIX A-2 APPENDIX B APPENDIX C APPENDIX D APPENDIX F APPENDIX G APPENDIX H APPENDIX I APPENDIX J APPENDIX K APPENDIX X OTHER	<input checked="" type="checkbox"/> Standard Clauses as required by the Attorney General for all State contracts. <input checked="" type="checkbox"/> Agency-specific Clauses <input checked="" type="checkbox"/> MWBE and EEO Requirements <input type="checkbox"/> Exhibit 1: MWBE Utilization Plan <input type="checkbox"/> Exhibit 2: MWBE Application for Waiver (if applicable) <input type="checkbox"/> Exhibit 3: MWBE Certification of Good Faith Efforts (if applicable) <input type="checkbox"/> Exhibit 4: Quarterly MWBE Contractor's Compliance Report Form <input checked="" type="checkbox"/> Exhibit 5: EEO Workforce Utilization Report Form <input checked="" type="checkbox"/> Budget <input checked="" type="checkbox"/> Payment and Reporting Schedule <input checked="" type="checkbox"/> Program Work Plan <input checked="" type="checkbox"/> Exhibit 1 – HEALTHY CHOICES <input checked="" type="checkbox"/> Exhibit 2 – NYC Food Standards – Cafeterias/Cafes <input checked="" type="checkbox"/> HIPAA Confidentiality Agreement <input checked="" type="checkbox"/> Additional Insurance Requirements <input checked="" type="checkbox"/> FACILITY specific clauses (where applicable) <input type="checkbox"/> Consulting Disclosure Instructions and Form B – 2 pages (where applicable) <input type="checkbox"/> Invitation For Bid <input type="checkbox"/> Contractor's Proposal <input checked="" type="checkbox"/> Modification Agreement Form <input type="checkbox"/>

CONTRACT SIGNATURE PAGE

Contract No. OMH01-X000227-3650614

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

CONTRACTOR: Contractor Name

By: Printed Name: Title:

Signature: _____ Date:

Must complete the Individual, Corporation, Partnership, or LLC Acknowledgement page and have it notarized

STATE AGENCY: South Beach Psychiatric Center / NYS Office of Mental Health

By: Printed Name: Title:

Signature: _____ 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. No information that may negatively impact the contractor's responsibility has come to the agency's attention and OMH has reasonable assurance that the contractor continues to be responsible.

CIVIL SERVICE APPROVAL (If Required)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT

Contract No.: OMH01-X000227-3650614

STATE OF)

SS:

County of)

On this ___ day of ___ 20___, before me personally appeared _____, to me known and known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at _____, Town of _____, County of _____ State of _____ and further that:

[CHECK ONE]

() If an Individual: he/she executed the foregoing instrument in his/her name and on his/her own behalf.

() If a Corporation: he/she is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

() If a Partnership: he/she is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he/she is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

() If a limited liability company: he/she is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that, he/she is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration Number: _____

State of _____

STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

- A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.
- B. Funding for the first PERIOD shall not exceed the contract amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.
- C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (The attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT to modify the AGREEMENT within an existing PERIOD; the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A-1.
- E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Work plan (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. Conflicts between documents shall be resolved in the following order of precedence:
 - 1. Appendix A (Standard Clauses for NYS Contracts).
 - 2. Amendment(s) to this Agreement.
 - 3. This Agreement (except Appendix A, Appendix J, and Appendix K).
 - 4. The Invitation for Bid (Appendix J)
 - 5. Contractor's Proposal (Appendix K).

STATE OF NEW YORK AGREEMENT (Cont.)

In the event of a conflict among documents included in a category listed above, the document latest in time shall take precedence.

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) all 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'S costs and services provided pursuant to This AGREEMENT.
- C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

III. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules 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 claim, demand or application to or for any right based upon any different status.

STATE OF NEW YORK AGREEMENT (Cont.)

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 or regulations, or as stated in Appendix A-1.

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.

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**APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

January 2014

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the 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). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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

APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records,

documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the

**APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of

the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every

**APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884

email: opa@esd.ny.gov

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
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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,

APPENDIX A STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers

pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**APPENDIX A-1
AGENCY SPECIFIC CLAUSES
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I. GENERAL PROVISIONS

- A.** If applicable, this agreement may be extended for an additional term as defined in the renewal term section on the cover page of the contract.
- B.** The OMH shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; or (iii) convenience. The OMH may invoke its right to terminate for convenience upon ninety (90) days written notice to the CONTRACTOR of its intent to terminate the contract; except that, if some other provision of the contract gives the State a general right to terminate upon less than ninety (90) days prior notice, that provision of the contract shall govern and ninety (90) days notice shall not be required. If the contract is not terminated, prices may be adjusted only as defined in the bid specifications (when incorporated by reference) and APPENDIX B.
- C.** The OMH reserves the right to terminate this contract in the event it is found that the certification filed by the CONTRACTOR in accordance with the New York State Finance Law 139-k was intentionally false or intentionally incomplete. Upon such finding, the OMH may exercise its termination right by providing written notification to the CONTRACTOR.

II. VENDOR RESPONSIBILITY

- A.** CONTRACTOR covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed CONTRACTOR's Vendor Responsibility Questionnaire (hereinafter "Responsibility Questionnaire") provided to CONTRACTOR by the STATE prior to execution of this Agreement. CONTRACTOR further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Responsibility Questionnaire.
- B.** CONTRACTOR shall at all times during the term of this Agreement remain a responsible vendor.
- C.** CONTRACTOR shall provide to the STATE updates to the Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Responsibility Questionnaire becomes available.
- D.** In addition, CONTRACTOR shall promptly report to the STATE the initiation of any investigation by any governmental entity for an alleged violation of federal or state law by CONTRACTOR, its Key Employees (as identified on its Responsibility Questionnaire), its officers and/or directors in connection with matters involving, relating to or arising out of CONTRACTOR'S business. Such report shall be made within five (5) business days following CONTRACTOR becoming aware of investigation and may, subject to the due process provided in Section (G) below, be considered by the STATE in making a Determination of Vendor Non-Responsibility pursuant to this section.
- E.** The STATE reserves the right, at its sole discretion, at any time during the term of this Agreement:
 - 1.** To require updates or clarifications to the Responsibility Questionnaire upon written request. To inquire about information included in or required information omitted from the Responsibility Questionnaire, and to require CONTRACTOR to provide such information to the STATE within a reasonable timeframe.
 - 2.** To require CONTRACTOR to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
 - 3.** To suspend any or all activities under this Agreement when the State discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, CONTRACTOR must comply with the terms of the suspension order.

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CONTRACTOR may resume activity under this Agreement at such time as the STATE issues a written notice authorizing a resumption of performance under the Agreement.

F. The STATE reserves the right to make a final determination of non-responsibility (hereinafter “Determination of Non-Responsibility”) at any time during the term of this Agreement based on:

1. Any information provided in the Responsibility Questionnaire and/or in any updates, clarifications or amendments thereof; or
2. The STATE’s discovery of any material information which pertains to CONTRACTOR’s responsibility.

G. Prior to making a final Determination of Non-Responsibility, the STATE shall provide written notice to CONTRACTOR that it has made a preliminary determination of non-responsibility. The STATE shall detail the reason(s) for the preliminary determination, and shall provide CONTRACTOR with a reasonable opportunity to be heard.

H. The STATE’s final Determination of Non-Responsibility shall be a basis for termination for cause under this Agreement at CONTRACTOR’s expense. In the event of a termination for cause under this, or any other provision of this Agreement, the STATE may complete the contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

III. BACKGROUND CHECKS AND REQUIREMENTS FOR CONTRACTORS PROVIDING SERVICES IN OMH OPERATED FACILITIES

A. If the CONTRACTOR is providing services described in Appendix D (Program Work Plan) in his or her individual capacity such that the CONTRACTOR will have regular and substantial contact with any person who is receiving services or support from OMH:

i. CONTRACTOR agrees to be screened by OMH against the Staff Exclusion List (“SEL”) and Statewide Child Abuse Registry List (“SCR”) in accordance with Social Services Law Sections 424-a and 495. In the event that SCR notifies OMH of the existence of an indicated report, CONTRACTOR agrees to provide written consent to the SCR to release to OMH any and all information SCR has regarding CONTRACTOR. CONTRACTOR shall provide such additional information as OMH, in its sole discretion, deems necessary to permit OMH to make a determination about CONTRACTOR’s suitability to provide the contract services. Any fees associated with this procedure will be paid by the OMH Facility.

ii. By signing this Agreement, CONTRACTOR represents and warrants that:
1. CONTRACTOR has not previously engaged in any act in violation of any law which could compromise the health and safety of Facility patients.
2. During the term of this Agreement, CONTRACTOR shall not engage in any act in violation of any law which could compromise the health and safety of Facility patients.

iii. Prior to being permitted to provide services under this Agreement, CONTRACTOR shall execute the [Justice Center Code of Conduct](#) as required by the Protection of People with Special Needs Act. A copy of the Justice Center Code of Conduct can be found at the following link: <http://www.justicecenter.ny.gov/sites/default/files/documents/CodeOfConductForm-002.pdf>

iv. OMH may terminate the Agreement for cause immediately in the event that:

1. CONTRACTOR is listed on the SEL;

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2. CONTRACTOR fails to provide consent for release of information from SCR as required in subparagraph (a) above;
 3. CONTRACTOR fails to provide such additional information as OMH, in its sole discretion, deems necessary to permit OMH to make a determination about CONTRACTOR's suitability to provide for the contract services;
 4. OMH, in its sole and absolute discretion, determines that CONTRACTOR is not suitable to provide the contract services based on information in the SCR or supplemental information provided by CONTRACTOR;
 5. OMH receives reliable information that, prior or during the term of the Agreement, CONTRACTOR has engaged in an act in violation of the law which, in OMH's sole and absolute discretion, could compromise the health and safety of Facility patients;
 6. CONTRACTOR fails to execute, or following execution, to comply with the required [Justice Center Code of Conduct](#);
- v. Prior to terminating the Agreement for cause as provided in subparagraph Appendix A-1, section 3 subparagraph 4, 3-6 above, OMH shall provide CONTRACTOR with written notice and an opportunity to be heard. Contractor shall be suspended from performing services under the Agreement pending OMH's final determination regarding termination.

B. If the CONTRACTOR provides the services described in Appendix D, via employees, agents, or subcontractors (subject individuals), wherein the subject individuals will have regular and substantial contact with any person who is receiving services or supports from OMH:

- i. CONTRACTOR shall assure that the subject individuals agree to be screened by OMH against the SEL and SCR in accordance with Social Services Law Sections 424-a and 495. In the event that SCR notifies OMH of the existence of an indicated report, CONTRACTOR agrees that subject individual must provide written consent to the SCR to release to OMH any and all information SCR has regarding the subject individual. CONTRACTOR shall ensure that subject individuals provide such additional information as OMH, in its sole discretion, deems necessary to permit OMH to make a determination about subject individual's ability to provide services to OMH patients. Any fees associated with this procedure will be paid by the OMH Facility.
- ii. CONTRACTOR, solely at its own expense, shall pre-screen and conduct background checks which shall consist of an investigation to determine evidence of criminal history; verification of education, professional license, certification or other credentials required. CONTRACTOR assumes responsibility for ensuring that no subject individual has previously engaged in any act in violation of any law which could compromise the health and safety of Facility patients.
- iii. CONTRACTOR must assure that subject individuals agree to read and sign the [Justice Center Code of Conduct](#).
- iv. OMH reserves the right to bar any subject individual from performing contract services under this Agreement in the event that such individual fails to meet the requirements set forth herein. OMH may terminate the Agreement for cause immediately in the event that CONTRACTOR is unable to provide services to the OMH facility via a subject individual who has complied with all requirements identified in items (i) – (iii) above.

IV. If Section 5-a of the NYS Tax Law is applicable, the CONTRACTOR must submit the following forms as and when required: to the NYS Tax Department, a Contractor Certification Form ST-220-TD, and to OMH, a Contractor Certification to Covered Agency Form ST-220-CA.

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- V. The OMH may order the CONTRACTOR, in writing, to suspend performance for a reasonable period of time. OMH shall have no obligation to reimburse CONTRACTOR'S expenses during the suspension period.
- VI. The CONTRACTOR warrants to the OMH that it has secured sufficient right, title and interest to ensure that OMH may use any design, device, material, source-code or process comprising all or part of the deliverables.
- VII. In the event that CONTRACTOR is provided access to any electronic data or computer application maintained by OMH, OMH may request, and CONTRACTOR shall execute, such additional forms or agreements as OMH generally requires as a condition of such access (e.g., Data Exchange Agreement, Computer Application Sharing Agreement, Confidentiality and Non-Disclosure Agreement). If CONTRACTOR is provided such access, the CONTRACTOR is responsible for complying with New York State Policies, Standards and Guidelines, including those available at: <http://its.ny.gov/eiso/policies/security> and <http://its.ny.gov/tables/technologypolicyindex>
- VIII. If the deliverables for this Agreement include goods or services relating to computer software and/or hardware, such deliverables shall be provided in accordance with the Contractor's specifications for the goods or services being purchased, in addition to any other applicable specifications (e.g., specifications set forth in the solicitation for such goods or services, Contractor's proposal to supply such goods or services or other provisions of this Agreement).
- IX. Unless otherwise provided, the OMH has an irrevocable, royalty-free, non-exclusive and world-wide license to publish, reproduce, display, disclose or otherwise use any of the contract deliverables; provided, however, that if and to the extent that the contract deliverables require CONTRACTOR to create, write, develop or produce an original work which is or could be subject to protection under the laws governing intellectual property, including but not limited to the laws of copyright and patents (the "Work"), such Work shall be deemed to be a work made for hire and in the course of the services being rendered under this Agreement and shall belong exclusively to OMH, with OMH having the sole right to obtain, hold and renew in its own name, all copyrights or other appropriate protection. To the extent that any such Work may not be deemed to be a work made for hire, CONTRACTOR hereby irrevocably assigns to OMH all right, title and interest therein. CONTRACTOR shall ensure that all copies of the Work are marked with appropriate copyright notices and shall give OMH all reasonable assistance and execute all documents necessary to assist and/or enable OMH to perfect, preserve, register and/or record its rights in any Work. Upon termination, cancellation or expiration of this Agreement, CONTRACTOR shall turn over all Works to OMH, and upon request, any OMH documents or items furnished to CONTRACTOR during the performance of this Agreement.
- X. In the event that CONTRACTOR, in the course of performance hereunder, obtains access to information, data or records deemed confidential in accordance with the provisions of Mental Hygiene Law Section 33.13 and/or "protected health information" as such term is defined in 45 C.F.R. Parts 160, 164, then CONTRACTOR shall restrict its use of that information, data, records or protected health information for the limited purposes of this Agreement and if a "business associate" within the meaning of 45 CFR §164.103, in accordance with Appendix F of this Agreement and/or such other Business Associate Agreement as may govern the relationship between the parties. Any further dissemination or any use beyond that specifically authorized, of any such information, data, records or protected health information by CONTRACTOR, its subcontractors, agents, successors or associates shall constitute an unlawful disclosure of confidential information in violation of Mental Hygiene Law Section 33.13, and/or 45 C.F.R. Parts 160, 164, as applicable. CONTRACTOR acknowledges that it has an affirmative obligation to safeguard any such information, data, records or protected health information from unnecessary distribution amongst its employees, subcontractors and agents and to any third parties. CONTRACTOR specifically agrees to indemnify OMH from damages to third parties flowing from any breach of the confidentiality of such information, data, records or protected health information in the possession or control of CONTRACTOR or any expenses that OMH may be required by law to incur to remediate any such breach.

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Protected health information includes all information about an individual receiving services and, depending on specific content, may be protected by a variety of state and federal laws, including:

New York Mental Hygiene Law Article 33

New York Public Health Law Article 27-F and 18 N.Y.C.R.R. 36—81.

Federal Regulations and 42 C.F.R. Part 2

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule at 45 C.F.R.Parts 160 and 164

Please note that, as required by New York Public Health Law Section 2782(5), the following notice is provided to you and is applicable in the event you receive access to information, data, records, or protected health information containing AIDS/HIV related confidential information as defined in Section 2780(7) of the New York Public Health Law:

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure."

- XI.** In the event that CONTRACTOR, in the course of performance hereunder, obtains access to information, data or records deemed confidential by OMH (other than information, data or records which is already covered by paragraph IX above) ("Confidential Information"), CONTRACTOR shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without OMH's written permission. CONTRACTOR further agrees to use such Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. This obligation will not apply to information which:
- A.** Was known to CONTRACTOR prior to receipt from OMH as evidenced through written documentation;
 - B.** Was or becomes a matter of public information or publicly available through no fault on the part of CONTRACTOR;
 - C.** Is acquired from a third party entitled to disclose the information to CONTRACTOR;
 - D.** Is developed independently by CONTRACTOR without the use of OMH's Confidential Information; or
 - E.** Is required to be disclosed pursuant to law, regulation or court order; provided, however, that in the event of a demand for such disclosure, CONTRACTOR shall not make such disclosure without prior written notice to OMH and an adequate opportunity for OMH to oppose such disclosure, including seeking an injunction as appropriate under the circumstances.
- XII.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken. The paragraph headings in this Agreement are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. This Agreement has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.
- XIII.** In that purchases by the State of New York are not subject to sales tax, transportation tax and Federal excise tax, payment for such amounts may not be claimed, declared or allowed under this agreement. Exemption certificates will be provided upon request.

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XIV. Federal law requires that OMH provide their Contractors with information about the Federal False Claims Act, the New York State False Claims Act and other federal and state laws that play a role in preventing and detecting fraud, waste and abuse in federal health care programs. This information must include the whistleblower protections that are in these laws. OMH must also provide its Contractors with information about OMH's own policies and procedures for detecting and preventing waste, fraud and abuse.

Detailed descriptions of these laws, their whistleblower protections and OMH's policies are at:
<http://www.omh.ny.gov/omhweb/guidance/MFA/MedicaidFraudabuse.html>

Information can also be found at the New York State Medicaid Inspector General web site located at www.omig.ny.gov to obtain information about these laws. CONTRACTORS having difficulty finding this information or wishing to request a paper copy may contact OMH Counsel's Office at (518) 474-1331 or MedicaidPolicy@omh.ny.gov.

All Contractors of OMH are required to participate in the reviews and audits described in the OMH policies, and to abide by these policies with respect to funding for OMH services. Contractors are required to make the information at the web site address listed above available to all their employees and to sub-contractors involved in performing work under the contract with OMH.

XV. On April 26, 2008, Governor David A. Paterson signed Executive Order No. 4 – establishing a State Green Procurement and Agency Sustainability Program that will promote environmental sustainability and stewardship. These programs and policies will focus on reducing potential impacts on public health and the environment by supporting recycling, reducing or eliminating the use of toxic substances, pollution and waste, increasing energy efficiency and using renewable energy source.

Where feasible, contractors shall adhere to the NYS Executive Orders No. 4 (issued 04/26/08) which is referenced at the online web address of <http://www.ogs.ny.gov/EO/4/> and Executive Order No. 134 (issued 01/05/05 by former Governor George E. Pataki), which is referenced at the on-line address of <http://www.ogs.ny.gov/purchase/GreenPurchasing.asp>

XVI. Force Majeure: Neither Party shall be responsible for any delay or failure of performance under this Agreement to the extent resulting from causes beyond its reasonable control and without its fault or negligence, including but not limited to acts of God, fire, flood, war, terrorism, labor disputes, strikes, lockouts, riot or civil commotion; provided that the party claiming non-responsibility hereunder shall give prompt notice to the other that a force majeure event has occurred and if requested, evidence thereof. Dates for the performance or completion of the work shall be extended by such delay of time as may be reasonably necessary to compensate for the delay.

XVII. **New York State Business Usage in Contract Performance** New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders are reminded that they must continue to utilize small, minority and women-owned business, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York

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State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

XVIII.NOTICES

A.All notices permitted or required hereunder shall be in writing and shall be transmitted by one of the following methods:

1. certified or registered United States mail, return receipt requested;
2. facsimile transmission;
3. personal delivery;
4. expedited delivery service, or
5. e-mail.

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

South Beach Psychiatric Center

Name: Stephen Chow

Title: Business Officer

**777 Seaview Avenue
Staten Island, NY 10305**

Telephone Number: 718-667-2753

E-Mail Address: Stephen.Chow@omh.ny.gov

Contractor Name

Name:

Title:

Vendor Address
City, State, Zip

Telephone Number:

E-Mail Address:

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

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

XIX.INSURANCE: Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and Appendix G of this contract boilerplate and shall upon request promptly provide documentation of specified coverages at any point during the contract term.

APPENDIX A-2

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

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

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OMH establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, OMH hereby establishes an overall goal **of 30% for MWBE participation, 16% for Minority-Owned Business Enterprises ("MBE") participation and 14% for Women-Owned Business Enterprises ("WBE") participation** (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that OMH may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687> . For guidance on how OMH will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

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

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

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

- A.** Bidders are required to submit a MWBE Utilization Plan on Attachment L with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OMH.
- B.** OMH will review the submitted MWBE Utilization Plan and advise the Bidder of OMH acceptance or issue a notice of deficiency within 20 days of receipt.

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C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OMH, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OMH to be inadequate, OMH shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Attachment M, if not previously submitted with its Bid Proposal. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

D. OMH may disqualify a Bidder as being non-responsive under the following circumstances:

1. If a Bidder fails to submit a MWBE Utilization Plan;
2. If a Bidder fails to submit a written remedy to a notice of deficiency;
3. If a Bidder fails to submit a request for waiver in the event that MWBE participation goals set forth in this contract are not met; or
4. If OMH determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OMH, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Quarterly MWBE Contractor's Compliance Report set forth in Contract Appendix A-2, Exhibit 3, to the OMH, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract. The schedule for submitting the Compliance Report is detailed in Appendix C: Payment and Reporting Schedule.

Equal Employment Opportunity Requirements

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

Bidder further agrees, where applicable, to submit with the bid a staffing plan set forth in Attachment K-2 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the OMH, a workforce utilization report set forth in Appendix A-2, Exhibit 5, identifying the workforce actually utilized on the Contract if known.

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

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

**APPENDIX A-2
EXHIBIT 1**

Attach Final MWBE Utilization Plan (if applicable)

**APPENDIX A-2
EXHIBIT 2**

Attach Request for Waiver (if applicable)

**APPENDIX A-2
EXHIBIT 3**

Insert MWBE Certification of Good Faith Efforts (if applicable)

**APPENDIX A-2
EXHIBIT 4
CONTRACTOR QUARTERLY COMPLIANCE REPORT**

Beginning FIVE (5) DAYS following the end of the first calendar quarter after a contract is awarded; quarterly compliance reports will be due for the preceding quarter's activity.

Instructions: List all M/WBEs used during the quarter, providing all requested information in appropriate columns. In the event that an M/WBE is used more than one time during the quarter, list the M/WBE only once for each expenditure category. Use the Expenditure Code below to indicate the category of expenditures for which the M/WBE was used.

Expenditure Code:		C – Commodities	SC – Services	CC – Construction Consultants	CN – Construction	
Grants Expenditure Code:		GM – Materials/Equipment		GC – Construction	GS – Services/Consultants	
Contract Number: OMH01-X000227-3650614			Reporting Period:		M/WBE Goal:	
Contractor:			<input type="checkbox"/> Q1: April 1 – June 30 <input type="checkbox"/> Q3: Oct. 1 – Dec. 31		% MBE % WBE	
			<input type="checkbox"/> Q2: July 1 – Sept. 30 <input type="checkbox"/> Q4: Jan. 1 – March 30			
A		B			C	
Amount of Actual Expenditures in Reporting Period		MBE Subcontracting Expenditures in Reporting Period			WBE Subcontracting Expenditures in Reporting Period	
\$ (if none enter 0)		\$ (if none enter 0)			\$ (if none enter 0)	
M/WBE FEIN/SFS VENDOR ID	M/WBE Vendor Name	Certification	Work Status This Report	Expenditure Code	Product Code	Amount
FEIN: SFS ID:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Dual	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete			\$
FEIN: SFS ID:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Dual	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete			\$
FEIN: SFS ID:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Dual	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete			\$
FEIN: SFS ID:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Dual	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete			\$
Total: \$						
Name and Title of Preparer (Print or Type):			Telephone No:	E-mail Address:		
Signature:			Date:	FOR AGENCY USE ONLY		
Quarterly Reports should be submitted to: mwbe@omh.ny.gov					Reviewed By:	Date:
Column A:	Total Amount of Actual Expenditures in Report Period: Enter the amount (\$) expended in total for the Reporting Period.					
Column B:	MBE Subcontracting Expenditures: Enter the total amount (\$) of expenditures with certified Minority owned businesses made during the report period under the contract.					
Column C:	WBE Subcontracting Expenditures: Enter the total amount (\$) of expenditures with certified Women owned businesses made during the report period under the contract.					

Expenditure: An actual payment which is made by an agency, either through the Office of the State Comptroller or by the agency's finance office directly, including subcontractor/supplier payments made by a prime contractor and verified by the agency.

Grants: For the purposes of this report, grants are monies dispensed by a contracting governmental agency to a person or institution to accomplish a public purpose authorized by law. According to Article 15-A, grants are considered State contracts. For the purpose of compliance reporting, the recipient of the grant is considered to be the "contractor". These contracts are subject to M/WBE goals and reported in the same fashion as any other contractor.

Not-for-Profit: According to Article 15-A, Not-for-Profits entities are considered to be "contractors". These contracts are subject to M/WBE goals and reported in the same fashion as any other contractor.

**APPENDIX A-2
EXHIBIT 4
CONTRACTOR QUARTERLY COMPLIANCE REPORT**

Use the following codes in the Product Code column to indicate the category of work for which the M/WBE was utilized

PRODUCT CODE KEY:

A	Agriculture/Landscaping (e.g., all forms of landscaping services)
B	Mining (e.g., Geological investigations)
C	Construction
C15	Building Construction – General Contractors
C16	Heavy Construction (e.g., highway, pipe laying)
C17	Special Trade Contractors (plumbing, heating, electrical, carpentry)
D	Manufacturing (production of goods)
E	Transportation, Communication, Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	Wholesale/Retail Goods (e.g. gravel, hospital supplies, food stores, computer stores, office supplies)
G52	Construction Materials (e.g., lumber, paint, lawn supplies)
H	Financial, Insurance and Real Estate Services
I	Services
I73	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services or equipment, computer programming, security services)
I80	Health Services
I81	Legal Services
I82	Educational Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	Social Services (e.g., counselors, vocational training, child care)
I87	Engineering, architectural, accounting, research, management and related services

**APPENDIX A-2
EXHIBIT 5
EQUAL EMPLOYMENT OPPORTUNITY
WORK FORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT**

Contract No.: OMH01-X000227-3650614	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Reporting Period: <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
Offerer's Name:		Report includes: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
Offerer's Address:		

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran			
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		(M)	(F)	(M)	(F)
Officials/Administrators																	
Professionals																	
Technicians																	
Service Maintenance Workers																	
Office/Clerical																	
Skilled Craft Workers																	
Paraprofessionals																	
Protective Service Workers																	
Totals																	

PREPARED BY (Signature):	TELEPHONE NO.: EMAIL ADDRESS:	DATE:
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APPENDIX B BUDGET

(To be completed after CONTRACTOR selection utilizing **Attachment “D”, Bid Quote Sheet** from the selected bid. Provide detailed budget breakdown; include travel and conditions – **then delete this instructional paragraph.**)

Subcontractors Costing:

The prices/rates quoted include all direct and indirect costs of any subcontractors, including those used to meet any stated M/WBE participation goals.

Travel:

There is no reimbursement for travel expenses or travel time.

Escalation:

Product Selling Prices: The first year's selling prices are fixed and OMH expects to make no adjustment to them during the term of the contract. However, if an unforeseen event occurs the CONTRACTOR may request in writing a price adjustment for years two (2) through five (5) of the contract. If OMH approves the request the adjustment shall be based on the Product Price Index and utilizing the Finished Consumer Food Data Index (WPUSOP3110) in effect 90 days prior to the yearly contract anniversary date, calculated for the prior 12 month time period. Adjustments to selling prices will be based on actual calculated PPI increase or a maximum of 3%, whichever is less and will be rounded up to the nearest nickel amount. Written requests for escalation in the product selling prices must be made no later than 30 days prior to effective contract anniversary date and must include the appropriate PPI chart with supporting documentation. There will not be any retroactive adjustments allowed. **The CONTRACTOR is only allowed to make this request two (2) times during the term of this contract.**

Reference: <http://data.bls.gov/cgi-bin/survey/most?cu> to obtain PPI chart.

**APPENDIX C
PAYMENT AND REPORTING SCHEDULE**

CONTRACTOR shall submit to the OMH one properly completed commission check together with required supporting documentation, in a format satisfactory to the OMH. For purposes of this provision and Article 11A of the State Finance Law, the remit to address for all correspondence shall be:

**NYS Office of Mental Health
South Beach Psychiatric Center
777 Seaview Avenue
Staten Island, NY 10305**

REFERENCE CONTRACT #: OMH01-X000227-3650614 and Agency Code 50790 on all invoices and correspondence.

Fixed commission percentage is to be determined.

Reporting and Payment: Contractor commissions shall be due and payable to the South Beach Psychiatric Center no later than the 15th day of each month covering the gross receipts activity for the preceding month. Gross receipts are identified as the total dollar amount collected minus any applicable sales tax. An interest penalty of 10% per month calculated on a weekly basis will be applied to all commission checks post marked, or otherwise received, after the due date. Commission payment shall include a monthly report of sales (showing a detailed explanation of sales and cash register readings, including "No Sales") as well as the commission check to the facility's Business Office.

On or before the fifteenth day of April of each calendar year of this agreement, Contractor shall provide SBPC with a Certified Financial Statement in a format approved by SBPC covering the operation of the Contractor concession premises for the preceding calendar year. In addition, Contractor will be responsible for any reports as requested by SBPC which will be identified and agreed upon by the Facility and the Contractor.

Books of Account and Financial Reporting: In addition to criteria defined in Appendix A, SBPC reserves the right to conduct periodic "spot" inspections of the concession premises at any time during business hours for the purpose of conducting cash accounts, health code and regulatory compliance inspections, maintenance and cleanliness inspections, and quality assurance inspections. Such records and supporting data, NYC Health Department inspection reports/grade shall be maintained or posted for ready access at the SBPC concession premises and shall not be removed from the premises without the prior written consent of SBPC. In the event a cash register error occurs, a detailed transactions report must be provided to SBPC.

Non-Compliance: Ongoing revenue submission problems (failure of the contractor to provide the proper contract number, commission percentage, proper breakdown of items sold, incorrect rates, etc.), may result in the Contractor being deemed non-compliant and the contract being canceled.

Damage/Theft: All losses incurred in the operation of the Contractor's authorized retail services due to theft, fire, accident, vandalism, spoilage, etc., will be the responsibility of the Contractor. All customers complaints will be resolved by either a correction of deficiency or a refund of the amount paid. Settlements of refunds are to be made month with the facility's Business Office.

OSHA 10 Compliance: For contracts with a total value of \$250,000.00 or more the CONTRACTOR and/or subcontractor must comply with the OSHA 10 Compliance Law (Chapter 282 of the Laws of 2007, codified as Labor Law 220-h). Under this law every one of the CONTRACTOR'S and/or SUB-CONTRACTOR'S employees who will perform service under this contract must be certified as having completed an OSHA 10 safety training course before they can perform any work under this contract. When applicable, the CONTRACTOR and/or its SUB-CONTRACTORS must attach a copy of proof of completion of the OSHA 10 Course for each employee on the 1st certified payroll submitted to OMH and on each succeeding payroll where any new or additional employees are first listed. **If OSHA 10 Compliance applies than the above information is a deliverable of this contract and a condition of payment.**

***Proof of completion may include but is not limited to the following:**

- Copies of bona fide course completion card;

**APPENDIX C
PAYMENT AND REPORTING SCHEDULE**

- Training roster, attendance record or other documentation from the certified trainer pending the issuance of the card;
- Other valid proof.

*A certification by the employer attesting that all employees have completed such course is **not** sufficient proof that the course has been completed.

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APPENDIX D Program Work Plan

All terms and conditions of Bid/Solicitation #: OMH01-X000227-3650614 apply to this contract, including all questions and answers.

The Contractor will pay the fixed Commission percentage on the gross monthly receipts for all items specified, as indicated in the budget portion of this contract, during the entire contract period. The Contractor is to provide cafeteria services at the facility Monday through Saturday, 8:00am to 4:30pm; except for State Holidays. The cafeteria service, at a minimum, must provide breakfast, lunch, and snacks, which should include a variety of hot, cold and healthy food and beverage options. A list of healthy foods are outlined in Exhibit 2 – HEALTHY CHOICES. Daily customer count will be approximately 600 employees, as well as a large number of patients and families/visitors. The operational plan provided by the Contractor must include provisions for the placement and use of the proper/required equipment, staffing, menu and pricing.

The contractor is also required to operate a concession stand at the lobby of the new in-patient building set to open in 2018. The contractor is to provide concession services at the new building, Monday through Saturday, 7:30 a.m. to 4 p.m.; except for State Holidays. The concession service must provide hot/cold beverages, pre-packaged hot/cold food items, fresh fruits, dairy products and snack items.

Contractor may also provide catering services for the facility, as requested. The facility reserves the right to engage other caterers.

The Contractor must utilize the cash list debit card terminals provided by the facility for all client/patient related transactions.

The Contractor shall agree to pay for all permits, licenses, fees, and taxes and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made, and of the State of New York.

The Contractor must have the approval of the local Health Department and will meet all specifications established by the U.S. Public Health Federation, the National Sanitation Foundation, and in addition, any local or governmental authority having applicable jurisdiction. Contractor must provide, maintain and display all permits and licenses.

Contractor space is located in Building #9; the cafeteria area on the first floor is approximately 1,461 square feet, with seating capacity of 30 and an additional 168 square feet for storage. The space at the concession stand in the new in-patient building will be about 400 square feet, equipped with ambient temperature and refrigerated side by side food display cases and counter space for merchandising and beverage stands. There is an additional 520 square feet on the second floor for cooking and additional storage. This facility area that is provided to the contractor shall not be used for any other purpose other than those included in this contract. The storage space provided and security for the contractor/cafeteria area are to be determined by mutual agreement of the contractor and the facility. However, in no case shall the facility or its representatives be responsible for losses from any means that might occur.

Contractor must provide and display a daily menu for breakfast and lunch with pricing information.

Contractor will not be allowed to sell cigarettes, energy drinks or over the counter medicines.

Contractor must have, maintain, and post all permits, licenses and restaurant inspection grade.

Contractor is to use paper or other biodegradable products. **No glass or metal containers are permitted.**

Contractor is responsible to keep grease traps clean.

APPENDIX D Program Work Plan

Contractor is responsible for keeping court yard outside of Community Store clean and free from litter.

Contractor is responsible for keeping all cafeteria equipment up and running at the Contractors own expense.

Contractor must keep the cafeteria clean at all times; the contractor must supply all cleaning items needed.

Contractor shall have use of an in-house telephone.

All contractor employees assigned to this location must show evidence of annual TB testing and comply with and attend all Facility-related staff trainings that are applicable.

Contractor's employees must be clearly identifiable as an employee and must wear appropriate uniforms, including a head covering and name badges at all times. The facility reserves the right to object to personnel who may not be compatible with the mission and activities of the facility and require that they not work at the facility.

Healthy Cafeteria/Concession Program- All Cafeteria/Concession menu items should use, Exhibit 2 - "New York City Food Standards – Cafeterias/Cafes" below, as a model to base their menu. Even if all standards cannot be met, the Contractor should strive to apply as many as possible to ensure healthier food and beverage options can be provided to their customers.

Service Schedule – Service Schedule, price and portion changes may be made during the term of the contract only after notifying and with the agreement of the facility's Business Office. The facility reserves the right to review these changes and disallow them if it is determined that to do so would be in the best interest of the State. Prices must be kept competitive with similar food service establishments in the community. Brands should be specified whenever possible; the contractor must provide high quality products in a sufficient manner. Products offered for sale must remain equal to or better than those initially offered in the bid, throughout the term of the contract.

Equipment – All non-existing equipment (equipment not supplied by the facility) shall be installed entirely by and at the expense of the contractor. This equipment shall be of the latest design and this non-existing equipment shall remain as the property of the contractor. A list of all equipment to be installed or proposed renovation must be furnished to, and approved by, the facility's work Control/Maintenance Department prior to the installation of any and all supplementary equipment. The listing must include make, model, serial number, age, value, date of installation and location. The facility's Business Office must be advised of any equipment change. Capital improvements become the property of the facility. All facility owned equipment used by the contractor, must be returned to the facility at the termination and/or conclusion of the contract at working condition.

Installation work shall be performed so as to cause the least inconvenience to the facility, and with proper consideration of the rights of other contractors or workmen. The Contractor shall keep in touch with the facility Work Control/Maintenance department during the entire process and install the equipment promptly. Contractor shall clean-up and remove all debris and rubbish resulting from the installed work.

Sanitary Code Compliance – The Contractor must have the approval of the local Health Department and must meet all specifications established by the U.S. Public Health Federation, the National Sanitation Foundations and any local or government authority having applicable jurisdiction. The contractor must also comply with New York State Sanitary Codes and with the local County Health Department. All food should be displayed and/or dispensed in a professional and appetizing manner and in compliance with all applicable Federal, State and local regulations. All merchandise kept on hand must be stored and handled with due regard to sanitation.

APPENDIX D Program Work Plan

Copies of any and all State, County or local Health Department inspection reports must be forwarded immediately to the facility's Business Office. The Contractor must produce evidence of a continuous self-monitoring or quality control program.

Contractor must provide energy efficiency equipment, including all models which qualify for the EPA/DOE **ENERGY STAR PROGRAM**. This requirement includes refrigerated and non- refrigerated machines. The State reserves the right to restrict award to products designated by the EPA as being "Energy Star". The contractor shall have no recourse with the State for such discontinuance/deletion.

All utilities, water and electricity, including outlets, shall be furnished at the location by the facility.

Cleaning Supplies – The Contractor will supply all cleaning supplies. The Contractor will not use any cleaning product unless authorized by the facility. The Contractor is required to provide cleaning supplies MDS sheet to facility Safety department. The Contractor must ensure that all cleaning supplies are kept locked and are not to be readily accessible to clients.

The facility will provide integrated pest management services as needed, and a dumpster.

The facility will provide orientation for the employees of the Contractor; all employees are expected to attend this orientation.

The facility reserves the right to relocate the cafeteria site, as needed. The facility will give Contractor 15 business days to comply with such changes.

OMH reserves the right to delete services, locations and/or facilities as needed. OMH, with the mutual agreement of the Contractor, reserves the right, should the need arise, to add additional services to the contract and/or to other psychiatric centers through the amendment process which will require OSC approval.

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APPENDIX D
Program Work Plan

Exhibit 1
HEALTHY CHOICES

Healthy Beverage Choices

Bottled Water
Flavored Water
1% or Fat Free Milk (regular or flavored) 8oz.
100% Fruit and Vegetable Juices
Diet and unsweetened drinks
Sports drinks <100 cal per serving

Healthy Snacks

Baked Chips 1 oz.
Pretzels 1 oz.
Dried Fruit ¼ cup (raisin, apricots, etc.)
Whole grain crackers
100 Calorie snacks
Nuts (preferably unsalted)
Trail mix
Sunflower seeds
Soy Chips
Animal crackers
Fig Newtons
Graham cracker bites
Corn nuts, plain
Dry cereal
Low fat sports/nutrition bars
100% fruit snacks
Mini-bagels
Bread sticks
Flavored mini rice cakes
Vanilla wafers
Low fat popcorn
Low fat/low-sugar breakfast bars
Granola bars

Refrigerated Items

Baby carrots (about 8)
Fruits- apples, unsweetened applesauce, oranges
Low fat or fat free yogurt 6 oz.
Pudding cups/Jell-O
String cheese
Cottage cheese
Fruit cups in water or fruit juice

**APPENDIX D
Program Work Plan**

Additional Resources

<http://www.healthysd.gov/Documents/HealthyVendingMachine.pdf>

<http://www.columbuschildrens.com/gd/templates/pages/pfv/PFV.aspx?page=257>

http://www.forbes.com/health/2005/10/05/vending-foods-health-cx_sy_1006feat_ls.html

http://www.cspinet.org/nutritionpolicy/healthy_school_snacks.pdf

<http://www.humboldt.k12.nv.us/foodservice/Information%20for%20Healthy%20Snacks.htm>

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APPENDIX D
Program Work Plan

Exhibit 2

New York City
Food Standards

CAFETERIAS / CAFES

Follow these standards to increase the availability of healthier food and beverage options.

Fruits and Vegetables

- 1 Require at least four different fruit choices be available.
- 2 Require leafy green salads and at least one vinegar-based salad dressing be available.

Sandwiches, Salads, and Entrees

- 3 Require at least 50% of all sandwiches, salads and entrees offered contain 500 calories or less; all must contain 700 calories or less.
- 4 Require at least 50% of all sandwiches, salads and entrees offered contain 800 mg sodium or less.
- 5 Require at least 50% of all sandwiches, salads and entrees offered, when applicable, be made or served with whole grains (e.g. whole wheat bread, brown rice, whole wheat pasta).

Soups and Sides

- 6 Require at least one steamed, baked or grilled vegetable option be available daily and contain 200 mg sodium or less.
- 7 Require all soups contain 480 mg sodium or less per 8 ounces.

Breakfast Breads, Desserts, and Snacks

- 8 Require at least 50% of all breakfast breads offered contain 300 calories or less.
- 9 Require at least 50% of all desserts offered contain 200 calories or less.
- 10 Require all pre-packaged snacks contain no more than: 200 calories, 200 mg sodium, 7 grams fat, 2 grams saturated fat and 10 grams sugar per package.

If item is grain/potato-based, must also contain at least 2 grams fiber.

Cooking Method

- 11 Require no use of deep fryers; no deep frying.

Trans Fat

- 12 Require all items contain 0 grams trans fat per serving.

Beverages

- 13 Require water be available at no charge.
- 14 Require at least 75% of all beverage options be low calorie beverages (beverages that contain 25 calories or less per 8 ounces).
- 15 Require all high calorie beverages be 16 ounces or less.

Placement, Promotion, and Pricing

- 16 Require only healthy options stocked near the entrance to the cafeteria and at the cash registers.
- 17 Require advertising or promotional materials only be for healthy food and beverage options. This includes promotion as part of a value meal.
- 18 Require calorie information posted for items that do not include a Nutrition Facts label.
- 19 Require, if a value meal is offered, that one contain no more than 650 calories and 800 mg sodium; fresh fruit or a non-starchy vegetable; and water. Price the meal lower than other value meals.
- 20 Require sandwiches be available in half-size portions at half the price of a full-size sandwich.

For more information, please contact: nycfoodstandards@health.nyc.gov

Made possible by funding from the Department of Health and Human Services.



**APPENDIX F
BUSINESS ASSOCIATE AGREEMENT**

Updated September 6, 2013

1. The terms and conditions of this document entitled "*Appendix F, Business Associate Agreement*" ("Business Associate Agreement"), and attached to and incorporated in the Agreement, shall apply in the event that Protected Health Information is used or disclosed in connection with or in the course of Contractor's performance of the Agreement, and pursuant to which Contractor may be considered a "business associate" of the New York State Office of Mental Health as such term is defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services, as amended.
2. For purposes of this Business Associate Agreement, the term "Contractor" shall mean and include the term "Business Associate" as such term is defined in 45 CFR §164.103.
3. **Definitions:** Terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in 45 CFR §§160.103, 164.103, and 164.501.
 - a. *Breach* shall have the same meaning as the term "Breach" in §13400 of the HITECH Act and guidance issued by the Department of Health and Human Services, and shall include the unauthorized acquisition, use, or disclosure of Protected Health Information that compromises the privacy or security of such information.
 - b. *Covered Entity* shall mean the New York State Office of Mental Health.
 - c. *Data aggregation* shall mean, with respect to protected health information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
 - d. *Designated Record Set* shall have the same meaning as the term "Designated Record Set" in 45 CFR §164.501.
 - e. *HIPAA Rules* shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.
 - f. *HITECH Act* shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 226 (Feb. 17, 2009), codified at 42 U.S.C. §§300jj *et seq.*, §§17901 *et seq.*
 - g. *Individual* shall have the same meaning as the term "Individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
 - h. *Protected Health Information* shall have the same meaning as the term "Protected Health Information" in 45 CFR §160.103, but is limited to the protected health information created or received by Contractor from, for or on behalf of Covered Entity in connection with or in the course of Contractor's performance of the Agreement.
 - i. *Required by Law* shall have the same meaning as the term "Required by Law" in 45 CFR §164.103.
 - j. *Secretary* shall mean the Secretary of the Federal Department of Health and Human Services or his/her designee.
 - k. *Security Incident* shall have the same meaning as the term "Security Incident" in 45 CFR §164.304.

**APPENDIX F
BUSINESS ASSOCIATE AGREEMENT**

l. *Security Rule* shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, subparts A and C.

m. *Unsecured Protected Health Information* shall mean Protected Health Information that is not secured through the use of a technology or methodology specified by the Secretary in guidance, or as otherwise defined in §13402(h) of the HITECH Act.

4. Obligations and Activities of Contractor:

a. Contractor agrees not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

b. Contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Agreement, and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity pursuant to this Agreement. Contractor agrees to fully comply with the responsibilities of Business Associates as set forth in §13401 of the HITECH Act.

c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of the Agreement.

d. Contractor agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR §164.410, and any Security Incident of which it becomes aware. In the event of a Breach of Unsecured Protected Health Information:

(1) Contractor shall promptly notify Covered Entity of the Breach when it is discovered, but no later than 30 days from the discovery of the Breach. A Breach is considered discovered on the first day on which Contractor knows or should have known of such Breach. Such notification shall identify the Individuals whose Unsecured Protected Health Information has, or is reasonably believed to have, been the subject of the Breach, and their contact information.

(2) Covered Entity shall promptly notify Individuals about a Breach of their Unsecured Protected Health Information as soon as possible, but not later than 60 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall meet the requirements of §13402 of the HITECH Act.

e. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, Contractor agrees to ensure that any agent or subcontractor of Contractor to whom Contractor provides Protected Health Information received from, or created or received by Contractor on behalf of Covered Entity pursuant to the Agreement agrees to at least the same restrictions and conditions that apply through this Business Associate Agreement to Contractor with respect to such Protected Health Information. Contractor will ensure that Business Associate Agreements are executed with all subcontractors that will perform functions or activities on behalf of Contractor that involve the use or disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, Covered Entity.

f. To the extent that the information made available to Contractor under the Agreement includes Protected Health Information in a Designated Record Set, Contractor agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information

**APPENDIX F
BUSINESS ASSOCIATE AGREEMENT**

in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.

g. To the extent that the information made available to Contractor in connection with or in the course of Contractor's performance of the Agreement includes Protected Health Information in a Designated Record Set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

h. Contractor agrees to document such disclosures of Protected Health Information under the Agreement and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

i. Contractor agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with paragraph (i) of Section 4 of this Business Associate Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528. If Contractor assists Covered Entity in maintaining an electronic health record (EHR), Contractor shall support Covered Entity in providing, upon the request of the Individual, an accounting of disclosures of Protected Health Information in the EHR within the prior three years, as well as an electronic copy of Protected Health Information that is part of an EHR.

j. To the extent Contractor is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations; and shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent that Covered Entity is responsible for compliance with such rule.

k. Contractor agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of Covered Entity pursuant to the Agreement, available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner as designated by the Covered Entity, for purposes of the Secretary's determining Covered Entity's compliance with the HIPAA Rules.

l. Contractor shall make its internal practices, books, and records available to the Secretary for purposes of determining its compliance with the HIPAA Rules.

5. Permitted Uses and Disclosures by Contractor

Except as otherwise limited in the Agreement and this Business Associate Agreement, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

6. Specific Use and Disclosure Provisions

a. Except as otherwise limited in the Agreement or this Business Associate Agreement, Contractor may use Protected Health Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.

b. Except as otherwise limited in the Agreement and this Business Associate Agreement, Contractor may disclose Protected Health Information for the proper management and administration of the Contractor,

APPENDIX F
BUSINESS ASSOCIATE AGREEMENT

provided that disclosures are Required by Law, or Contractor obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will remain confidential and shall be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality obligations under this Business Associate Agreement have been breached.

c. Except as otherwise limited in the Agreement and this Business Associate Agreement, Contractor may use Protected Health Information to provide Data Aggregation services relating to the health care operations of Covered Entity as permitted in 45 CFR §164.504(e)(2)(i)(B).

d. Contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with New York State Mental Hygiene Law and 45 CFR §164.502(j)(1).

7. Obligations of Covered Entity

a. Covered Entity shall notify Contractor of any limitation(s) in its Notice of Privacy Practices produced in accordance with 45 CFR §164.520, to the extent that such limitation may affect Contractor's use or disclosure of Protected Health Information.

b. Covered Entity shall notify Contractor of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Contractor's permitted or required uses and disclosures.

c. Covered Entity shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

8. Permissible Requests by Covered Entity

Covered Entity shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity. Covered Entity may permit Contractor to use or disclose Protected Health Information for Data Aggregation or management and administrative activities of Contractor, if the Agreement includes provisions for same.

9. Remedies in Event of Breach/Indemnification

a. In the event of breach by Contractor of any of the covenants and assurances contained in this Business Associate Agreement, Contractor hereby agrees that immediate and irreparable harm may result to Covered Entity, and to the business of Covered Entity, which harm would not be adequately compensated by monetary damages. As such, in the event of breach of any of the covenants and assurances contained in Sections 4, 5, or 6 above, Covered Entity shall be entitled to enjoin and restrain Contractor from any continued violation of such Sections.

b. Contractor shall defend, indemnify and hold Covered Entity harmless against all claims, losses, liability, costs and other expenses (including reasonable attorneys' fees), without limitation (collectively, "Liability"), resulting from or arising out of the acts or omissions of Contractor in the performance of its duties and obligations under this Business Associate Agreement, except to the extent that such Liability results from or arises out of the acts or omissions of Covered Entity. Contractor's Liability under the foregoing provision shall include responsibility to pay, or where appropriate, to reimburse Covered Entity, for all costs associated with notification required by HIPAA or HITECH due to a Breach within the meaning of this Business Associate Agreement, except to the extent that such Liability results from or arises out of the acts or omissions of Covered Entity. Contractor shall be fully liable for the actions of its agents, employees and subcontractors.

**APPENDIX F
BUSINESS ASSOCIATE AGREEMENT**

c. The terms of this Section 9 shall survive expiration or termination of the Agreement.

10. Consideration

Contractor acknowledges that the promises it has made in this Business Associate Agreement shall, henceforth, be relied upon by Covered Entity in choosing to continue or commence a business relationship with Contractor.

11. Interpretation of this Business Associate Agreement in Relation to Other Contracts Between the Parties

Should there be any conflict between the language of this Business Associate Agreement and any other contract or agreement entered into between the Parties (either prior or subsequent to the date of this Business Associate Agreement), the language and provisions of this Business Associate Agreement shall control and prevail unless, in a subsequent written agreement, the Parties specifically refer to this Business Associate Agreement by its title and date, and specifically state that the provisions of the later written agreement shall control over this Business Associate Agreement; except that in the event of a conflict with Appendix A (Standard Terms and Conditions of New York State Contracts) in any agreement to which such Appendix A applies (either prior or subsequent to the date of this Business Associate Agreement), Appendix A shall govern.

12. Term and Termination

a. Term. The provisions of this Business Associate Agreement shall be effective as of the effective date of the Agreement and shall survive termination of the Agreement and shall not terminate unless and until all Protected Health Information is destroyed, or returned to Covered Entity or, if it is infeasible to return or destroy Protected Health Information, in accordance with the termination provisions in Section (c)(2) of this Section, in which case Contractor's obligations hereunder shall continue for so long as Contractor maintains the Protected Health Information.

b. Termination for Cause. A breach of this Business Associate Agreement by either party shall be considered a material breach of the Agreement and may be grounds for termination of the Agreement for cause.

c. Effect of Termination.

(1) Except as provided in subparagraph (2) of this paragraph, upon termination of the Agreement for any reason, Contractor shall return to Covered Entity or destroy all Protected Health Information received from Covered Entity, or created or received by Contractor on behalf of Covered Entity. This provision shall apply to all Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information. Upon request by Covered Entity, Contractor shall certify in writing to Covered Entity that all Protected Health Information has been returned or destroyed as required by this section.

(2) In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information. Upon request by Covered Entity, Contractor shall certify in writing to Covered Entity that it has taken all the steps required by this section to protect Protected Health Information which could not feasibly be returned or destroyed.

**APPENDIX F
BUSINESS ASSOCIATE AGREEMENT**

13. Miscellaneous

a. Regulatory References. A reference in this Business Associate Agreement to the HIPAA Rules means the rules as in effect or amended, and for which compliance by a Covered Entity and/or Business Associate is required.

b. Amendment. The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

c. Survival. The respective rights and obligations of Contractor under Section 9 of this Business Associate Agreement shall survive the termination of this Business Associate Agreement.

d. Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits compliance with the HIPAA Rules.

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**APPENDIX G
ADDITIONAL INSURANCE REQUIREMENTS**

Insuring Requirements

Prior to the start of work the **Contractor** shall procure at its sole cost and expense, and shall maintain in force at all times **during the term of this Agreement**, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York with an A.M. Best Company rating of —A-II or better. The OMH may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the OMH to accept insurance placed with a non-authorized carrier under any circumstances.

The **Contractor** shall deliver to OMH evidence of such policies in a form acceptable to the OMH. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

General Conditions

A. Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:

- 1.Coverage Types and Policy Limits.** The types of coverage and policy limits required from the **Contractor** are specified herein.
- 2.Policy Forms.** Except as may be otherwise specifically provided herein or agreed in writing by OMH, policies must be written on an **occurrence** basis. Under certain circumstances, the OMH may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the OMH prior to the policy's expiration or cancellation.
- 3. Certificates of Insurance/Notices.** **Contractor** shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the OMH, before commencing any work under this contract. Certificates shall reference the Contract Number. Certificates shall be mailed to the:

**Contract and Procurement Services
NYS Office of Mental Health
Consolidated Business Office
Contract & Procurement Services – Unit N Upper
75 New Scotland Avenue
Albany, NY 12208**

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to the OMH, Attn: NYS Office of Mental Health, 75 New Scotland Avenue, Albany, NY 12208. In addition, if required by the OMH, the **Contractor** shall deliver to the OMH within forty-five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

Certificates of Insurance shall:

- a.Be in the form approved by OMH.

APPENDIX G
ADDITIONAL INSURANCE REQUIREMENTS

- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
- c. Specify the Additional Insureds and Named Insureds as required herein.
- d. Refer to this Contract by number, the Supplemental Certificate, and any other attachments on the face of the certificate,
- e. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and
- f. Be signed by an authorized representative of the insurance carrier or producer.

Originals, copies, faxed, and electronic documents (Certificates of Insurance, Supplemental Insurance Certificates and other attachments) will be accepted.

4. Primary Coverage: All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the OMH for any claim arising from the **Contractor's** Work under this contract, or as a result of the **Contractor's** activities. Any other insurance maintained by the OMH shall be excess of and shall not contribute with the **Contractor's** insurance regardless of the —other insurance clause contained in the OMH's own policy of insurance.

5. Policy Renewal/Expiration: At least two (2) weeks prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the OMH than the expiring policies shall be delivered to the OMH in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. If, at any time during the term of this contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the OMH, the **Contractor** shall immediately cease Work on the Project. The **Contractor** shall not resume Work on the Project until authorized to do so by the OMH. Any delay, time lost, or additional cost incurred as a result of the **Contractor** not having insurance required by the Contract or not providing proof of same in a form acceptable to the OMH, shall not give rise to a delay claim or any other claim against the OMH. Should the **Contractor** fail to provide or maintain any insurance required by this contract, or proof thereof is not provided to the OMH, the OMH may withhold further contract payments, treat such failure as a breach or default of the contract, and/or, after providing written notice to the **Contractor**, require the Surety, if any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the **Contractor**.

6. Self-Insured Retention/Deductibles: Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. For Construction contracts – General, Environmental, and/or Builders' Risk deductibles or self-insured retentions above \$100,000 are subject to approval from the OMH. Additional surety/security may be required in certain circumstances. The **Contractor** shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. Subcontractors: Should the **Contractor** engage a Subcontractor, the **Contractor** shall endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to the OMH.

**APPENDIX G
ADDITIONAL INSURANCE REQUIREMENTS**

1. General Liability

Commercial General Liability Insurance, (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit - \$1,000,000
- General Aggregate – \$2,000,000
- Products/Completed Operations - \$2,000,000
- Personal Advertising Injury – \$1,000,000
- Damage to Rented Premises - \$50,000
- Medical Expense – \$5,000

Coverage shall include, but not be limited to, the following:

- premises liability,
- independent contractors, blanket contractual liability, including tort liability of another assumed in a contract,
- defense and/or indemnification obligations, including obligations assumed under this contract,
- cross liability for additional insured's,
- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract,
- explosion, collapse, and underground hazards,
- contractor means and methods,
- liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- b. CG 20 10 11 85, or, an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B)
- c. CG 25 03 11 85 or, an equivalent - Designated Construction Project(s) general aggregate limit (only required for construction contracts).

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name NYS Office of Mental Health as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the — Each Occurrence limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by the OMH. Any other insurance maintained by the OMH shall be excess of and shall not contribute with the Contractor's or Subcontractor's insurance, regardless of the other insurance clause contained in either party's policy of insurance.

When the Work involves construction or demolition within 50 feet of rail stations, yards, tracks, or other railroad property, the exclusion for work done within 50 feet of railroad property (the Railroad exclusion) must be deleted. Also see requirements for Railroad Protective Liability insurance.

**APPENDIX G
ADDITIONAL INSURANCE REQUIREMENTS**

2. Workers' Compensation

For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Workers' Compensation Law.

If the Agreement involves work on or near a shoreline, a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Acts policy as applicable must be provided. Any waiver of this requirement must be approved by the OMH and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- (1) C-105.2 (September 2007, or most current version) – Certificate of Workers' Compensation Insurance
- (2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund
- (3) GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

3. Disability Benefits

For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Disability Benefits Law. Any waiver of this requirement must be approved by the OMH and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- (1) DB-120.1(May 2006 or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law.
- (2) DB-155 – Certificate of Disability Self Insurance.
- (3) CE-200 – Certificate of Attestation of Exemption. [Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by Law. The Agency will not accept this as an exemption from providing Workers' Compensation Insurance].

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier

4. Crime

CRIME INSURANCE, on loss sustained from an amount not less than [/\$ XXX], including coverage for:

- Employee Theft
- Forgery or Alteration
- Inside the Premises - Theft of Money and Securities
- Inside the Premises- Robbery or Safe Burglary of Other Property

**APPENDIX G
ADDITIONAL INSURANCE REQUIREMENTS**

- Outside the Premises
- Computer Fraud
- Money Orders and Counterfeit Paper Currency

Policy must allow for reporting of circumstances or incidents that might give rise to future claims. The policy must include an extended reporting period of no less than three years with respect to events which occurred but were not reported during the term of the policy.

The OMH, including its affiliates and subsidiaries, must be included as Loss Payees as respects this specific amount as their interests may appear.

Any warranties required by the insurer must be disclosed and complied with. Said insurance shall extend coverage to include the principals.

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APPENDIX X

- A. Maximum speed limit on FACILITY grounds is 25 miles per hour or as posted.
- B. CONTRACTORS must park vehicle(s) only in those areas designated by FACILITY authorities. All vehicles parked on State property must be locked when unattended.
- C. CONTRACTOR'S employees are prohibited from entering FACILITY buildings except on Official Business:
 - 1. In each case, the immediate FACILITY supervisor must be notified.
 - 2. CONTRACTOR'S employees shall be required to wear visible identification cards at all times while working at the FACILITY.
 - 3. Access to and from the pick-up/delivery sites will be over those routes laid out by FACILITY authorities.
 - 4. In each case, when entering patient occupied areas, the FACILITY supervisor in charge of that area must be notified.
 - 5. Proper sanitary conditions are to be maintained throughout the work area at all times.
 - 6. Unless otherwise arranged, contractors will be responsible for unlocking and relocking of all doors located in their access route, storage or work location.
 - 7. All windows, screens and doors must be kept locked at all times for the safety of the patients.
 - 8. CONTRACTOR'S employees should be watchful for any FACILITY patient in or near their work area where safety hazards may be present. FACILITY staff or the Safety/Security Department should be notified, if necessary, to remove any patients from the immediate work area.
 - 9. Mistreatment in the form of physical, verbal or psychological abuse of patients or staff will not be tolerated under any circumstances. Even at their invitation, any form of sexual relations with a patient is felony statutory rape.
 - 10. CONTRACTOR'S employees should not receive or give items to patients such as cigarettes, money, food, lighters, glass, sharp objects, medication, etc. No unauthorized person will mail letters or packages for patients or deliver same to them. There will be no financial transactions allowed.
- D. No firearms, weapons, alcohol, or illegal substances are permitted on the FACILITY grounds; any person found with any such items or under the influence of alcohol or illegal substances will be immediately removed from the job site and in the case of illegal drugs, immediately prosecuted.
- E. Smoking is prohibited in all FACILITY buildings and if permitted at all, is allowed only in designated areas.
- F. Cameras are not permitted to be used on FACILITY grounds unless approved by the proper FACILITY authority. Under no circumstances shall CONTRACTOR or CONTRACTOR's employees take any photographs of patients.
- G. All fires and emergency situations of any nature or size should be reported to the FACILITY's Safety/Security Department immediately. Fire Drills - Contractors are required to participate in FACILITY fire drills when they are in areas where the fire drill is being conducted. There are **no exceptions**.
- H. Key deposit: A \$100 deposit will be required for each set of keys issued by the FACILITY. Deposits will be kept in a non-interest bearing account refunded upon termination of services. Contractor employees' will sign out and sign in, on a daily basis, all keys and identification cards as required, from the FACILITY's Safety Department. Keys must be kept on the CONTRACTOR'S employees person at all times. Keys are not to be removed from

APPENDIX X

the FACILITY grounds.

- I. Contractors will adhere to all FACILITY rules of conduct and mandatory training.
- J. Use of cell phones is prohibited on facility grounds.

FACILITY PHONE NUMBERS

Facility main number/Switchboard.....718-667-2300
Work Control Center.....ext. 2695
Safety Department.....ext. 2780
Fire/Emergency (**FOR EMERGENCY USE ONLY**).....ext. 2333

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APPENDIX X

Agency Code _____ Contract No. _____ Amendment # _____

Entire Contract Period _____ Entire Contract Amount for Period _____ (As per Appendix B)

Amendment Period _____ Amendment Amount for Period _____ (As per Appendix B)

This is an AGREEMENT between The State of New York, acting by and through _____, having its principal office at _____ (hereinafter referred to as the STATE), and _____ (hereinafter referred to as the CONTRACTOR), for modification of Contract Number _____, as amended in attached Appendix (ices) _____.

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

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

CONTRACTOR: _____

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Must complete the Individual, Corporation, Partnership, or LLC Acknowledgement page and have it notarized

STATE AGENCY _____

Printed Name: _____ Title: _____

Signature: _____ 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."

"No information that may negatively impact the contractor's responsibility has come to the agency's attention and OMH has reasonable assurance that the contractor continues to be responsible

CIVIL SERVICE APPROVAL (If Required)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX X (Continued)

Contract Number: _____

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT

STATE OF _____)
County of _____) SS:

On this ____ day of _____, 20____, before me personally appeared _____, to me known and known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at _____, Town of _____, County of _____, State of _____; and further that:

[CHECK ONE]

If an Individual): he/she executed the foregoing instrument in his/her name and on his/her own behalf.

If a Corporation): he/she is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If a Partnership): he/she is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he/she is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

If a Limited Liability company): he/she is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that, he/she is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration Number: _____ **State of** _____