

**Office of Mental Health
Direct Contract Forms and Instructions**

Introduction

The following material represents the general contracting provisions for all OMH direct contracts that are funded with Aid to Localities funds. These documents are effective for the period July 1, 2009 – June 30, 2010 in New York City and calendar year 2010 in Upstate and Long Island counties.

Providers are not authorized to incur expenditures that are eligible for reimbursement from State Aid unless the provider has executed a direct contract and has been informed, in writing, that the contract has been approved by the State Comptroller, or a written directive has been issued by the Office of Mental Health. Verbal authorizations should not be interpreted as approval to spend funds anticipated by contract.

Direct contract agencies are contractually bound to adhere to the OMH Fiscal Contracting Guidelines and the specific spending plan guidelines applicable to the funding they receive. These Fiscal Contracting Guidelines in conjunction with the individual funding source spending plan guidelines comprise the "Guidelines" referenced in the contract document, and are to be considered to be a part of the contract bearing equal weight in law.

Furthermore, the direct contract agency is responsible for monitoring subcontract agencies who receive State Aid for compliance with these Guidelines and must provide subcontract agencies with a copy of the Guidelines. The Guidelines are available on the OMH website at the following address: <http://www.omh.state.ny.us/omhweb/spguidelines/>.

Direct contract agencies in receipt of DSH funds should become familiar with the Disproportionate Share (DSH) guidelines included in the Fiscal Contracting Guidelines, promulgated as a result of the savings initiative included in the 1997-98 enacted budget, which replaces State and local aid with Disproportionate Share funding in Article 28 voluntary hospitals.

Direct contract agencies in receipt of CSP funds should become familiar with the Community Support Program (CSP) Guidelines included in the Fiscal Contracting Guidelines, promulgated as a result of the savings initiative included in the 1997-98 enacted budget, which replaces State and local aid with Medicaid and community support programs.

Direct contract agencies and subcontract agencies who receive Federal grant funds from the OMH should be familiar with the "Federal Funds Guidelines" section of the Fiscal Contracting Guidelines.

Completing the Contract Forms

The following documents need to be submitted to constitute a full contract:

1. Cover Sheet

This sheet is completed only once at the start of a new contract, regardless of term i.e. one year term or multi-year term. After the initial term of a multi-year contract, the amendment will consist of Appendix X and any other applicable appendices.

Contractor - Enter the contractor's name and address.

Charities Registration Number - Enter the contractor's Charities Registration number assigned by the NYS Department of State. If the contractor is exempt from Charity Registration, a copy of the exemption letter must be submitted to OMH with the contract.

Federal Tax Identification Number - Enter the contractor's Federal Tax Identification Number.

Municipality No. - Applicable only to governmental agencies such as a Town, City, County, etc.

Status - Check off applicable items.

NYS Comptroller's Number - This is the contract number to be assigned by OMH.

Originating Agency Code - Completed by OMH.

Type of Programs - Enter the type(s) of OMH program(s) that are funded through the contract, i.e. Community Residence, Supported Housing, C&F Community Support Programs, etc. If the contract is multi-program, list each program separately.

Initial Contract Period - Enter the start and end dates of the initial term (e.g. 1/1/09-12/31/00, 7/1/09-6/30/10).

Contract Amount for Initial Period - Enter the amount for the initial term.

Multi-Year Term - If the contract will operate for more than one term, enter the start date and the all-inclusive ending date, i.e. a five year contract will have a multi-year term of 1/1/06-12/31/10, a 32 month contract will have a term of 1/1/06-8/31/08, etc.

2. The 4 page Contract Agreement

Appendices Attached and Part of the Agreement

Appendix A	To be checked-off on contract face page and included in the initial submittal. These are the standard clauses for New York State contracts.
Appendix A-1	To be checked-off and included in the initial submittal. These are clauses that are required by the Office of Mental Health.
Appendix B	To be checked-off and included in the initial submittal. This Appendix is also required for amendments and renewals that result in fiscal changes.
Appendix C	To be checked-off and included in the initial submittal. This Appendix is also required for amendments and renewals that result in a change to the original contract payment schedule.
Appendix D	To be checked-off and included in each submittal.
Appendix E	This Appendix relates to OMH licensed programs and is completed by the OMH Community Budget and Financial Management group.
Appendix F	This Appendix relates to protected health information which is used or disclosed in connection with the course of contract performance of the Agreement.
Appendix H	This Appendix relates to Shelter + Care HUD contracts only.
Appendix X	This Appendix is not to be completed unless used to modify the Agreement.
Other	Identify and name (following alphabetical order starting with Appendix I) if required per individual OMH funding source packages.

3. Signature Page

- The individual authorized to sign contracts for the agency must sign and date the "Contractor" block under the agency name.
- The contractor will have the acknowledgment filled out, signed and dated by a Notary Public.

Description of Appendices

Appendix A	Standard Clauses for NYS Contracts
Appendix A-1	If a multi-term contract, indicate the period on the first line of Page 1.
Appendix B-Budget	Contract budget to be developed by contractor, using the Consolidated Budget Report (CBR) software unless otherwise specifically directed in a funding source spending plan guideline.
Appendix C-Payment Schedule	Generated by the Aid to Localities Financial System (ALFS).
Appendix D-Workplan	Program description to be developed by contractor.
Appendix E – Certification Regarding Licensed Programs	To be completed by OMH’s Community Budget and Financial Management group.
Appendix F	Confidentiality Agreement
Appendix H	To be completed for Shelter Plus Care HUD contracts only.
Appendix X	<p>To be left blank and included in initial contract submittal.</p> <p>Is completed when the original contract requires an amendment or at annual renewal. The amendment or renewal will consist of Appendix X completed by the contractor and any other applicable appendices, i.e. Appendix B-Budget, Appendix C-Payment Schedule, Appendix D Workplan attached to the back of Appendix X.</p> <p>When using this Appendix for amendments and renewals, complete the following: Contract number</p> <ul style="list-style-type: none"> • Amendment number • Period • Contract amount for period • Provider agency name • Additional attached appendix(ces) • Authorized individual signature – must be notarized • Complete acknowledgment

List of Riders

Non-Licensed Program Rider/Certification of Compliance
Residential Program Rider – Supported Housing
Residential Program Rider – Community Residence
Residential Program Rider – Family-Based Treatment Homes
Assisted Outpatient Treatment Rider
Community Projects Fund Rider

STATE AGENCY Office of Mental Health 44 Holland Avenue Albany, New York 12229	NYS COMPTROLLER'S NUMBER: C-00 ORIGINATING AGENCY CODE: 50000																											
CONTRACTOR (Name & Address):	TYPE OF PROGRAM(S):																											
CHARITIES REGISTRATION NUMBER: Contractor has ___/has not ___ timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports. I.D. No.: Exempt: Yes FEDERAL TAX IDENTIFICATION NUMBER: MUNICIPALITY NO.: (if applicable)	INITIAL CONTRACT PERIOD: FROM: TO: CONTRACT AMOUNT FOR INITIAL PERIOD: \$																											
STATUS: CONTRACTOR IS ___ IS NOT ___ A SECTARIAN ENTITY CONTRACTOR IS ___ IS NOT ___ A NOT-FOR- PROFIT ORGANIZATION CONTRACTOR IS ___ IS NOT ___ A MUNICIPALITY	MULTI-YEAR TERM: (if applicable) FROM: TO:																											
APPENDICES ATTACHED AND PART OF THIS AGREEMENT: (Applicable Appendixes must be checked [X]) <table border="0" style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 15%;">APPENDIX A</td> <td style="width: 5%;"><input type="checkbox"/></td> <td>Standard Clauses as required by the Attorney General for all State contracts.</td> </tr> <tr> <td>APPENDIX A-1</td> <td><input type="checkbox"/></td> <td>Agency-specific Clauses</td> </tr> <tr> <td>APPENDIX B</td> <td><input type="checkbox"/></td> <td>Budget</td> </tr> <tr> <td>APPENDIX C</td> <td><input type="checkbox"/></td> <td>Payment and Reporting Schedule</td> </tr> <tr> <td>APPENDIX D</td> <td><input type="checkbox"/></td> <td>Program Workplan</td> </tr> <tr> <td>APPENDIX E</td> <td><input type="checkbox"/></td> <td>Certification Regarding Licensed Programs</td> </tr> <tr> <td>APPENDIX F</td> <td><input type="checkbox"/></td> <td>Confidentiality Agreement</td> </tr> <tr> <td>APPENDIX H</td> <td><input type="checkbox"/></td> <td>Relates to S+C HUD contracts only</td> </tr> <tr> <td>APPENDIX X</td> <td><input type="checkbox"/></td> <td>Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)</td> </tr> </table> <p style="margin-top: 10px;">OTHER (Identify): Appropriate Riders</p>		APPENDIX A	<input type="checkbox"/>	Standard Clauses as required by the Attorney General for all State contracts.	APPENDIX A-1	<input type="checkbox"/>	Agency-specific Clauses	APPENDIX B	<input type="checkbox"/>	Budget	APPENDIX C	<input type="checkbox"/>	Payment and Reporting Schedule	APPENDIX D	<input type="checkbox"/>	Program Workplan	APPENDIX E	<input type="checkbox"/>	Certification Regarding Licensed Programs	APPENDIX F	<input type="checkbox"/>	Confidentiality Agreement	APPENDIX H	<input type="checkbox"/>	Relates to S+C HUD contracts only	APPENDIX X	<input type="checkbox"/>	Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
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**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, scope of work, 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 A1.

- E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

- F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.
- G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

II. Payment and Reporting

- A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) 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 A1.
- 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.

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 A1.

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 A1.

Appendix A

**Standard Clauses For New York State Contracts
(Revised June 2006)**

Please Retain This Document
For Future Reference.

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1. Executory Clause
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10. Records
11. Identifying Information and Privacy Notification
12. Equal Employment Opportunities For Minorities and Women
13. Conflicting Terms
14. Governing Law
15. Late Payment
16. No Arbitration
17. Service of Process
18. Prohibition on Purchase of Tropical Hardwoods
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Standard Clauses For NYS Contracts

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **Comptroller's Approval** - In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).
4. **Workers' Compensation Benefits** - In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **Non-Discrimination Requirements** - To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second of subsequent violation.

6. **Wage And Hours Provisions** - If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

8. **International Boycott Prohibition** - In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).
9. **Set-Off Rights** - The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
10. **Records** - The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.
11. **Identifying Information And Privacy Notification** –
 - a) **Federal Employer Identification Number and/or Federal Social Security Number.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's

Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

12. **Equal Employment Opportunities For Minorities And Women** - In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

- a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national

origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

- c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

13. **Conflicting Terms.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
14. **Governing Law.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
15. **Late Payment.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.
16. **No Arbitration.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.
17. **Service of Process.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
18. **Prohibition on Purchase of Tropical Hardwoods.** The Contractor certifies and

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **Macbride Fair Employment Principles.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the **Contractor** either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.
20. **Omnibus Procurement Act of 1992.** It is the policy of New York State to maximize **opportunities** for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

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

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

- a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 P.L. 92-261), as amended;
- c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. **Reciprocity and Sanctions Provisions.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.
22. **Purchases of Apparel.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**Appendix A-I
Aid to Localities**

Agency Specific Clauses

I. General Provisions

1. Unless modified as provided herein, this contract shall begin on _____ and end on _____.
2. 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.
3. 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 thirty 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 30 days prior notice, that provision of the contract shall govern and 30 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.
4. 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 Section 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.
5. 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 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.
- C. In addition, CONTRACTOR shall promptly report to the STATE the initiation of any investigation or audit by a governmental authority with enforcement authority with respect to any alleged violation of federal or state law by CONTRACTOR, its employees, 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 business days following CONTRACTOR becoming aware of such event, investigation or audit and may, subject to the due process provided in Section (F) below, be considered by the STATE in making a Determination of Vendor Non-Responsibility pursuant to this section.
- D. The STATE reserves the right, in its sole discretion, at any time during the term of this Agreement:
 - i. to require updates or clarifications to the Responsibility Questionnaire upon written request,
 - ii. to inquire about information included in or required information omitted from the Responsibility Questionnaire, and
 - iii. to require CONTRACTOR to provide such information to the STATE within a reasonable timeframe.
- E. 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:
 - i. Any information provided in the Responsibility Questionnaire and/or in any updates, clarifications or amendments thereof; or
 - ii. The STATE's discovery of any material information which pertains to CONTRACTOR's responsibility.
- F. 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 an opportunity to be heard.
- G. The State's final Determination of Non-Responsibility shall be a basis for termination pursuant to paragraph C of Section III, **Terminations**, in the State of New York Agreement.

6. 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.
7. 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.
8. 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.
9. If the deliverables for this agreement include goods or services relating to computer software and/or hardware, all such deliverables/deliveries shall be provided, where applicable, in accordance with the parameters contained within the specifications for the goods or services being purchased.
10. 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).
11. 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.
12. 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 or records for the limited purposes of this agreement and in accordance with Appendix F of this agreement, if and as applicable. Any such access

shall be neither construed nor considered a disclosure of confidential records to CONTRACTOR, but rather as a ministerial record keeping activity of the OMH. Any further dissemination or any use beyond that specifically authorized, of any such information, data or records, by CONTRACTOR, its 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, and CONTRACTOR acknowledges that it has an affirmative obligation to safeguard any such information, data or records from unnecessary distribution amongst its 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 records in the possession or control of CONTRACTOR.

13. 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 11 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 with the use of OMH's Confidential Information;
 - e. Is required to be disclosed, pursuant to law, regulation or court order; provided, however, that in the event of a demand for disclosure under law or court order, 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.

14. 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.

15. 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.
16. 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.state.ny.us/omhweb/about/>. Information can also be found at the New York State Medicaid Inspector General web site located at www.omig.state.ny.us to obtain information about these laws. Contractor's having difficulty finding this information or wish to request a paper copy, may contact OMH Counsel's Office at (518) 474-1331 or [OMH Counsel's Office](#).

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.

17. Notices

- All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - (a) via certified or registered United States mail, return receipt requested;
 - (b) by facsimile transmission;
 - (c) by personal delivery;
 - (d) by expedited delivery service; or
 - (e) by e-mail.

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

State of New York Office of Mental Health

Name: Nancy Splonskowski

Title: Director, Contracts & Claims, Community Budget & Financial Management

Address: 44 Holland Avenue, Albany N.Y. 12110

Telephone Number: (518) 473-7885

Facsimile Number: (518) 402-2529

E-Mail Address: cbfmalfs@omh.state.ny.us

[Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

- Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective 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.

II. Provisions Applicable to Agreements Related to the Provision of Community Mental Health Services

1. General

For contracts related to the provision of community mental health services, the OMH will issue instructions to CONTRACTOR which will provide specific instructions for conduct of the applicable program, including requirements and limitations applicable by virtue of the funding source for this Agreement. Such instructions will hereinafter be referred to as "Guidelines" and shall be deemed incorporated by reference and a binding part of this Agreement. CONTRACTOR shall adhere to provisions contained in the Guidelines. In the event that a conflict exists between the Guidelines and this Agreement, the provisions of this Agreement shall govern.

2. Payments

- a. **Payments:** OMH will make payments as set forth in Appendix C hereof ("Payments"). Such Payments may be used only for Eligible Expenditures as defined herein.

- b. Sums Subject to Recapture: OMH shall be entitled to recoup from any Payment made to CONTRACTOR any amount, under this or any contemporaneous or predecessor agreement, by which Payment exceeds Eligible Expenditures less Income for the relevant period.
- c. Income shall mean those funds available to CONTRACTOR from any source whatsoever, as payment for or reimbursement of costs associated with the provision of Contract Services; but shall not include: funds paid by OMH to the CONTRACTOR pursuant to this Agreement or for purposes other than the provision of Contract Services; or, Gifts or Donations (contributions or endowments from non-governmental sources, intended to further the general work and purposes of the CONTRACTOR and not for specific payment of an Eligible Expenditure), and may be limited as set forth in the Guidelines. As is consistent with good and prudent judgment, CONTRACTOR shall maximize all sources of income available to itself or its clients, and, encourage and assist all clients to or, on behalf of clients unable to do so, apply for income to which they are entitled.
- d. Eligible Expenditures are those actual, reasonable and necessary expenses incurred by the CONTRACTOR in the provision of contract services in accordance with and as limited by the amount set forth for these expenditures in the contract budget as contained in Appendix B, the Guidelines and the rules and regulations of the State Comptroller governing reimbursement of State employees (M/C Bargaining Unit), for expenses incurred while performing State business.
 - i. An expenditure shall not be an Eligible Expenditure if and to the extent that it exceeds the cost that a prudent person would pay in the open market under the circumstances prevailing at that time.
 - ii. Expenditures which are not Eligible Expenditures shall be disallowed and excluded from the calculation of Eligible Expenditures for purposes of determining Sums Subject to Recapture as provided above.
 - iii. The cost of items whose use is shared with non-contract purposes shall be prorated and only the portion utilized for the performance of contract services may be claimed as Eligible Expenditures. Except where payment is being prorated, no items claimed under any other agreement with the State of New York may be claimed hereunder.
- e. Contract Budget Modifications: Any budget modification which results in an increase equal to or greater than 10% in the annual, aggregated, budgeted contract amount for a particular budget category shall not be considered an Eligible Expenditure unless it has been approved by the State Comptroller or it falls within one of the exemptions set forth in subdivision one or two below. Proposed budget modifications shall be submitted to OMH for submission to the State Comptroller for approval as a contract amendment. If the modified expenditure occurs prior to approval by the State Comptroller, the Contractor is accepting the risk that the modified expenditure may not be approved and may be deemed an ineligible expenditure, subject to recapture as provided in paragraph 2(b) above.

- i. Exempt Transactions: The following budget modifications may be made by the CONTRACTOR without OSC approval. OMH approval may still be required as set forth in the Guidelines:
 - (Property Escalations: Providers may reallocate funding from the “other than personal services” category (OTPS) to the real property category where necessary to accommodate unanticipated costs increases related to rent, utilities or maintenance; and
 - Fringe Benefits: Providers may reallocate funding from the personal services category to the fringe benefits category where necessary to accommodate unanticipated costs increases related to health insurance premiums for their employees.

- ii. Exempt Programs/Contracts: Reallocations of budgeted amounts in the following contracts/programs do not require OSC approval, regardless of amount:
 - Performance-based contracts, meaning CONTRACTOR has agreed to provide, and the STATE has agreed to accept, a certain set of deliverables for a fixed price, without reference to CONTRACTOR’s costs (a “Performance-based Contract”); or
 - “Model driven” programs or ones for which payment is based on a fixed amount per unit (an “Exempt Program”). Exempt Programs include the following: (see next page)

**OMH Programs Exempt from OSC Approval
of Budget Reallocations**

Residential Programs, including, but not limited to:	Program Code
Community Residence, Children & Youth	7050
Community Residence, Adult	8050
Supported Single Room Occupancy	5070
Supported Housing	6050, 6060
Congregate Treatment	6070
Congregate Treatment Support	6080
Apartment Treatment	7070
Apartment Treatment Support	7080
Program Development Grant	0190
Transient Housing	2070
Residential Care Centers for Adults (RCCA)	6070, 6080
Shelter Plus Care Housing	3070
Teaching Family Home	4040
Family Based Treatment	2040
Family Care	0040
Case Management Programs, including, but not limited to:	Program Code
Adult Homes	6820, 6920
Blended Case Management (BCM)	0820, 0920
Intensive Case Management (ICM)	1810, 1910
Supportive Case Management (SCM)	6810, 6910
ICM/SCM/BCM	2830
Residential Treatment Facilities (RTF)	2880, 2980
Transition Coordinator	
Assertive Community Treatment (ACT)	0800-0806, 8810
HCBS (Home & Community-Based Services)	2230, 2240, 2250,
Waiver	2270, 2280
Vocational/Rehab Programs, including, but not limited to:	Program Code
Ongoing Integrated Supported Employment (OISE)	4340
Personalized Recovery Oriented Services (PROS)	6340, 7340, 8340

- iii. Reallocation of amounts between budget categories for a Performance-based Contract or an Exempt Program shall not affect the Payment due to CONTRACTOR from the State for provision of the Performance-based Contract or Exempt Program services.

- iv. In determining whether CONTRACTOR's expenditures for any given budgeted contract amount exceeds 10% of the total amount budgeted, in the aggregate, for that category, the amount included in that category for Performance-based Contract or Exempt Programs shall first be deducted.
- f. The CONTRACTOR shall not be paid for any Contract Services provided where New York State law or regulation requires that an operating certificate or similar authorization from an instrumentality of the State be issued before such Contract Services can legally be provided, unless CONTRACTOR possesses such authorization.

3. Acquisition of Property

The CONTRACTOR shall dedicate and utilize any real or personal property purchased or leased with funds provided under this agreement for purposes benefiting this and subsequent agreements with the Office of Mental Health, or its assigns, for the duration of that property's useful life. The CONTRACTOR hereby grants and assigns a purchase money security interest having first priority in all such property, even though hereafter acquired. The CONTRACTOR agrees that it will comply with the requirements concerning solicitation of bids and quotations as set forth in the Guidelines. CONTRACTOR shall cause sufficient insurance to be carried to cover all property acquired or let by the CONTRACTOR by virtue of this agreement, by reason of loss or damage attributable to any cause other than normal wear and tear. The CONTRACTOR shall execute any documents which OMH may reasonably require to effectuate the provisions of this section.

4. Optional Payment Provisions

In the event that a contractor is a Not For Profit Organization and that a Successor Agreement or modification agreement has not been executed by the parties hereto and approved by and filed with the OSC on or before the expiration of this Agreement, or of a fiscal year, in the discretion of the OMH, and, in return for CONTRACTOR'S continued provision of Contract Services, this Agreement or that fiscal year may be extended and a sum as set forth in the Payment and Reporting Schedule contained in Appendix C may be designated as an optional Total OMH payment, for the period set forth therein. The optional payment to be made under the provisions of this Paragraph shall be a sum Subject to Recapture for a succeeding Contract Period or under a Successor Agreement.

III. Community Mental Health Facility Real Estate Provisions

1. OMH has the right to review and approve in writing any new contract for the purchase of or lease for rental of real estate operated as a necessary adjunct to the provision of the community mental health services as specified in this contract, if applicable, and any modifications, amendments or extensions of an existing lease prior to its execution. If, in its discretion, OMH disapproves of any lease, then OMH shall not be obligated to make any Facility Real Estate payments for such property.
2. No member, officer, director or employee of CONTRACTOR shall retain or acquire any interest, direct or indirect, in any Facility Real Estate, nor retain any interest,

direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the CONTRACTOR and the OMH.

IV. Required Provider Training

OMH periodically offers or supports training programs for providers of mental health services. LGU's and agencies which are licensed and/or receive direct or indirect funding from OMH, shall send appropriate representatives to such training, if directed to do so by OMH.

V. Mental Health Regulations

Each provider who receives OMH State aid must comply with all applicable provisions of the *Official Compilation of Codes, Rules, and Regulations of the State of New York*, including, but not limited to Title 14 (Mental Hygiene).

VI. Required Criminal History Background Checks

Chapter 575 of the Laws of 2004 (Mental Hygiene Law § 31.35 and Executive Law §845-b) requires every provider of mental health services who is licensed by, contracts with or is otherwise approved by the Office of Mental Health, to request criminal history record checks for prospective employees and volunteers who will have regular and substantial unsupervised or unrestricted physical contact with clients. Chapter 673 of the Laws of 2006 further amends Executive Law § 845-b to expand the reach of the criminal history record check to also include a check of multi-state records maintained by the Federal Bureau of Investigation (FBI).

VII. Consumer Specific Records

In addition to any other requirements regarding record keeping, the records of accounts shall identify, in a manner designated by the OMH, all monies received and disbursed for or on behalf of each individual consumer. The OMH may review these and other consumer records, including records evidencing consumer identity.

Appendix B

Budget

Contract budget to be developed by contractor, using the Consolidated Budget Report (CBR) in the Consolidated Fiscal Reporting software (CFRS), unless otherwise specifically directed in a funding source spending plan guideline. CFR software downloads and the Guidelines for completion of the CBR are available online via the OMH home page at <http://www.omh.state.ny.us/omhweb/resources/providers/>.

Appendix C
Contract Summary Report
Schedule of Payments
Local Fiscal Year 20_____

NYS Office of Mental Health
Aid to Localities Financial System

Authorized on:
Printed On:
By:

Periodically, when monies are due, the Designated Payment Office shall, through its automated Aid-to-Localities Financial Management System, draw down a New York State Voucher from the CONTRACTOR'S approved payment schedule. For purposes of this provision and Article 11A Of the State Finance Law, the Designated Payment Office shall be:

Bureau of Contracts and Claims
NYS Office of Mental Health
44 Holland Avenue, 7th Floor
Albany, New York 12229

The OMH may, at its discretion, withhold any State Aid and/or Medicaid payment due under this Agreement until such time as the CONTRACTOR has submitted to OMH all Deliverables, including reports, which are due prior to any scheduled payments. Additionally, prior period overpayments and/or audit recoveries associated with the CONTRACTOR can be recouped against any payment OMH makes to the CONTRACTOR. The recoupment generally begins with the first payment made to the CONTRACTOR following OMH identification of the overpayment and/or audit recovery amount.

Payments to CONTRACTOR shall be due upon the first day of the applicable period, and made in accordance of this Agreement, and the CONTRACTOR's approved payment schedule.

[As referenced in this Appendix C, the Contractor's approved payment schedule refers to the payment schedule which is generated by the automated Aid-to-Localities Financial Management System in connection with Contractor's assembly of the final contract documents. Contractor should contact OMH if there is any disparity between the information that appears on the approved payment schedule and the payment schedule in the Contract Summary Report which has been provided to Contractor.]

The term of the Optional Payment shall commence on the termination date of the period stated above and end on the last day of the third successive month.

Payment shall only be rendered electronically, unless payment by paper check is expressly authorized by the Commissioner of the Office of Mental Health, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment under this contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Appendix D Program Workplan

For all programs provide a detailed workplan including services to be provided by vendor and objectives to be met. Where applicable include reporting requirements and dates by which stated services are to be delivered and/or objectives are to be met.

For residential programs, the workplan shall include the following:

I. CAIRS Reporting (Adult and Children)

Providers must report all admissions and discharges to OMH via the Child and Adult Integrated Reporting System (CAIRS). In general providers should report an admission or discharge within 7 days of occurrence.

II. Priority Admissions for Adults

It is the expectation of OMH that providers will give priority admission for all adult residential referrals to priority populations as defined in the OMH CAIRS reporting system. OMH defines priority admissions as recipients with any of the following pre-admission living situations:

- State-operated psychiatric centers
- State operated residential programs (congregate treatment or congregate support facilities)
- Article 28 inpatient hospital units
- Streets or homeless shelters
- Adult homes
- Children's Residential Treatment Facilities

In addition individuals on AOT status are considered a priority population.

Supported Housing: When a person moves from other OMH licensed or funded housing programs to supported housing, the tenant moving to supported housing will be considered a priority admission if the vacancy created by this move is filled with an individual meeting the priority admission criteria listed above.

As referenced in the Residential Program Rider attached to this contract, providers agree to participate in the Single Point of Access established by the county in which a provider operates residential programs. OMH recognizes that there will be some variation in the percentage of priority admissions, based on location within the State. If a provider does not admit a priority referral, the agency must provide written documentation of the reasons for the rejection to the OMH Field Office, the referring facility and local SPOA entity.

III. Psychiatric Center/state-Operated Residential Program Admissions

It is a goal to increase the number of admissions to residential programs coming from OMH psychiatric centers and State-operated residential programs. It is expected, therefore, that providers will increase admissions from these facilities commensurate with the number of referrals they receive. As noted in paragraph II above, if a provider does not admit a psychiatric center or state-operated residential program referral, the agency must provide written documentation of the reasons for the rejection to the OMH Field Office, the referring facility and the local SPOA entity.

IV. Utilization Management

OMH prepares and distributes to all residential providers, on a quarterly basis, the Residential Program Indicators (RPI) report. The data in those reports are based on information entered by individual providers, using CAIRS. The reports are intended to provide benchmarks regarding certain measures of program performance, including occupancy rates, lengths of stay, admissions and discharges, and priority admissions. In addition to reviews at the individual recipient level regarding continuing need for the level of rehabilitation and support provided in the housing and rehabilitation program, it is expected that providers will use the information contained in the RPI report, in addition to any internal utilization review procedures, to monitor their performance and make modifications, as appropriate.

Appendix F Confidentiality Agreement

1. The terms and conditions of this document entitled “Appendix F, Confidentiality Agreement” (“Confidentiality Agreement”), and attached to and incorporated in the Agreement, shall apply in the event that Protected Health Information (as defined below) 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 defined in the Health Insurance and Portability 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 either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH ACT”) as Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-115).
2. For purposes of this Confidentiality 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 Confidentiality Agreement shall have the same meaning as those terms in 45 CFR §§160.103, 164.103, and 164.501.
 - a. Breach. “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. “Covered Entity” shall mean the New York State Office of Mental Health.
 - c. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.
 - d. Individual. “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)
 - e. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, subparts A and E.
 - f. Protected Health Information. “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 for or on behalf of Covered Entity in connection with or in the course of Contractor’s performance of the Agreement.

- g. Required by Law. "Required by Law" shall have the same meaning as the term "Required by Law" in 45 CFR §164.103.
- h. Secretary. "Secretary" shall mean the Secretary of the Federal Department of Health and Human Services or his/her designee.
- i. Security Rule. "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.
- j. Unsecured Protected Health Information. "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. Further, Contractor agrees to report to Covered Entity any security incident of which it becomes aware, including a Breach of Unsecured Protected Health Information. In the event of such a breach:
 - (1) Contractor shall promptly notify Covered Entity of the breach when it is discovered. 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, and their contact information, whose Unsecured Protected Health Information has, or is reasonably believed to have been, the subject of the breach.
 - (2) Covered Entity or Contractor, as determined by 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 be in a form and format prescribed by Covered Entity and shall meet the requirements of §13402 of the HITECH Act.

- e. 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 Confidentiality Agreement to Contractor with respect to such Protected Health Information.
- 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 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 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 Privacy Rule.
- i. 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.
- j. 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 Confidentiality 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.

- k. Contractor 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.

5. Permitted Uses and Disclosures by Contractor

Except as otherwise limited in the Agreement and this Confidentiality 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 Privacy Rule 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 Confidentiality 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 Confidentiality Agreement, Contractor may disclose Protected Health Information for the proper management and administration of the Contractor, 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 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 Confidentiality Agreement have been breached.
- c. Except as otherwise limited in the Agreement and this Confidentiality Agreement, Contractor may use Protected Health Information to provide Data Aggregation services to 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 Covered Entity produces 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 Privacy Rule 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

Contractor hereby recognizes that irreparable harm may result to Covered Entity, and to the business of Covered Entity, in the event of breach by Contractor of any of the covenants and assurances contained in this Confidentiality Agreement. 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. Furthermore, in the event of breach of Sections 4, 5, or 6 by Contractor, Covered Entity is entitled to reimbursement and indemnification from Contractor for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Contractor's breach. The remedies contained in this Section shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

10. Consideration

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

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

Should there be any conflict between the language of this Agreement and any other contract or agreement entered into between the Parties (either prior or subsequent to the date of this Confidentiality Agreement), the language and provisions of this Confidentiality Agreement shall control and prevail unless, in a subsequent written agreement, the Parties specifically refer to this Confidentiality Agreement by its title and date, and specifically state that the provisions of the later written agreement shall control over this Confidentiality Agreement.

12. Term and Termination

- a. Term. The provisions of this Confidentiality 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 9 (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 Confidentiality Agreement by either party shall be considered a material breach pursuant to Section III, B of the Agreement and may give rise to termination of the Agreement in accordance with Section III, B of the Agreement.
- 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 Confidentiality 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.

13. Miscellaneous

- a. Regulatory References. A reference in this Confidentiality Agreement to the Privacy or Security Rules means the rules as in effect or as 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 Confidentiality Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule 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 Confidentiality Agreement shall survive the termination of this Confidentiality Agreement.

- c. Interpretation. Any ambiguity in this Confidentiality Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

Appendix H

Part 582-Shelter Plus Care

Subpart A-General

- 582.1 Purpose and scope.
- 582.5 Definitions.

Subpart B-Assistance Provided

- 582.100 Program component descriptions.
- 582.105 Rental assistance amounts and payments.
- 582.110 Matching requirements.
- 582.115 Limitations on assistance.
- 582.120 Consolidated plan.

Subpart C-Application and Grant Award

- 582.200 Application and grant award.
- 582.230 Environmental review.

Subpart D-Program Requirements

- 582.300 General operation.
- 582.305 Housing quality standards; rent reasonableness.
- 582.310 Resident rent.
- 582.315 Occupancy agreements.
- 582.320 Termination of assistance to participants.
- 582.325 Outreach activities.
- 582.330 Nondiscrimination and equal opportunity requirements.
- 582.335 Displacement, relocation, and real property acquisition.
- 582.340 Other Federal requirements.

Subpart E-Administration

- 582.400 Grant agreement.
 - 582.405 Program changes.
 - 582.410 Obligation and de-obligation of funds.
- AUTHORITY: 42 U.S.C. 3535(d) and 11403–11407b.
SOURCE: 58 FR 13892, Mar. 15, 1993, unless otherwise noted.

Subpart A-General

582.1 Purpose and scope.

(a) General. The Shelter Plus Care program (S+C) is authorized by title IV, subtitle F, of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act) (42 U.S.C. 11403–11407b). S+C is designed to link rental Assistance to supportive services for hard-to-serve homeless persons with disabilities (primarily those who are seriously mentally ill; have chronic problems with alcohol, drugs, or both; or have acquired immunodeficiency syndrome (AIDS) and related diseases) and their families. The program provides grants to be used for rental assistance for permanent housing for homeless persons with disabilities. Rental assistance grants must be

matched in the aggregate by supportive services that are equal in value to the amount of rental assistance and appropriate to the needs of the population to be served. Recipients are chosen on a competitive basis nationwide.

(b) Components. Rental assistance is provided through four components described in § 582.100. Applicants may apply for assistance under any one of the four components or a combination. [58 FR 13892, Mar. 15, 1993, as amended at 61 FR 51169, Sept. 30, 1996]

582.5 Definitions.

The terms Fair Market Rent (FMR), HUD, Public Housing Agency (PHA), Indian Housing Authority (IHA), and Secretary are defined in 24 CFR part 5.

As used in this part:

Acquired immunodeficiency syndrome (AIDS) and related diseases has the meaning given in section 853 of the AIDS Housing Opportunity Act (42 U.S.C. 12902). Applicant has the meaning given in section 462 of the McKinney Act (42 U.S.C. 11403g).

Eligible person means a homeless person with disabilities (primarily persons who are seriously mentally ill; have chronic problems with alcohol, drugs, or both; or have AIDS and related diseases) and, if also homeless, the family of such a person. To be eligible for assistance, persons must be very low income, except that low-income individuals may be assisted under the SRO component in accordance with 24 CFR 813.105(b).

Homeless or homeless individual has the meaning given in section 103 of the McKinney Act (42 U.S.C. 11302).

Indian tribe has the meaning given in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Low-income means an annual income not in excess of 80 percent of the median income for the area, as determined by HUD. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Nonprofit organization has the meaning given in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704). The term nonprofit organization also includes a community mental health center established as a public nonprofit organization.

Participant means an eligible person who has been selected to participate in S+C.

Person with disabilities means a household composed of one or more persons at least one of whom is an adult who has a disability.

(1) A person shall be considered to have a disability if such person has a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (ii) Is manifested before the person attains age 22; (iii) Is likely to continue indefinitely; (iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

- (A) Self-care;
- (B) Receptive and expressive language;
- (C) Learning;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency; and
- (H) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(3) Notwithstanding the preceding provisions of this definition, the term person with disabilities includes, except in the case of the SRO component, two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted under this part, with the deceased member of the household at the time of his or her death. (In any event, with respect to the surviving member or members of a household, the right to rental assistance under this part will terminate at the end of the grant period under which the deceased member was a participant. Recipient means an applicant approved to receive a S+C grant. Seriously mentally ill has the meaning given in section 462 of the McKinney Act (42 U.S.C. 11403g).

Single room occupancy (SRO) housing means a unit for occupancy by one person, which need not but may contain food preparation or sanitary facilities, or both.

Sponsor means a nonprofit organization which owns or leases dwelling units and has contracts with a recipient to make such units available to eligible homeless persons and receives rental assistance payments under the SRA component.

State has the meaning given in section 462 of the McKinney Act (42 U.S.C. 11403g).

Supportive service provider, or service provider, means a person or organization licensed or otherwise qualified to provide supportive services, either for profit or not for profit.

Supportive services means assistance that:

- (1) Addresses the special needs of eligible persons; and
- (2) Provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health treatment, alcohol and other substance abuse services, child care services, case management services, counseling, supervision, education, job training, and other services essential for achieving and maintaining independent living. (Inpatient acute hospital care does not qualify as a supportive service.).

Unit of general local government has the meaning given in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Very low-income means an annual income not in excess of 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

[61 FR 51169, Sept. 30, 1996; 62 FR 13539, Mar. 21, 1997]239

Subpart B—Assistance Provided

582.100 Program component descriptions.

(a) Tenant-based rental assistance (TRA). Tenant-based rental assistance provides grants for rental assistance which permit participants to choose housing of an appropriate size in which to reside. Participants retain the rental assistance if they move. Where necessary to facilitate the coordination of supportive services, grant recipients may require participants to live in a specific area for their entire period of participation or in a specific structure for the first year and in a specific area for the remainder of their period of participation. Recipients may not define the area in a way that violates the Fair Housing Act or the Rehabilitation Act of 1973. The term of the grant between HUD and the grant recipient for TRA is five years.

(b) Project-based rental assistance (PRA). Project-based rental assistance provides grants for rental assistance to the owner of an existing structure, where the owner agrees to lease the subsidized units to participants. Participants do not retain rental assistance if they move. Rental subsidies are provided to the owner for a period of either five or ten years. To qualify for ten years of rental subsidies, the owner must complete at least \$3,000 of eligible rehabilitation for each unit (including the unit's prorated share of work to be accomplished on common areas or systems), to make the structure decent, safe and sanitary. This rehabilitation must be completed within 12 months of the grant award.

(c) Sponsor-based rental assistance (SRA). Sponsor-based rental assistance provides grants for rental assistance through contracts between the grant recipient and sponsor organizations. A sponsor may be a private, nonprofit organization or a community mental health agency established as a public nonprofit organization. Participants reside in housing owned or leased by the sponsor. The term of the grant between HUD and the grant recipient for SRA is five years.

(d) Moderate rehabilitation for single room occupancy dwellings (SRO).

(1) The SRO component provides grants for 24 rental assistance in connection with the moderate rehabilitation of single room occupancy housing units. Resources to initially fund the cost of rehabilitating the dwellings must be obtained from other sources. However, the rental assistance covers operating expenses of the rehabilitated SRO units occupied by homeless persons, including debt service to retire the cost of the moderate rehabilitation over a ten-year period.

(2) SRO housing must be in need of moderate rehabilitation and must meet the requirements of 24 CFR 882.803(a). Costs associated with rehabilitation of common areas may be included in the calculation of the cost for assisted units based on the proportion of the number of units to be assisted under this part to the total number of units.

(3) SRO assistance may also be used for efficiency units selected for rehabilitation under this program, but the gross rent (contract rent plus any utility allowance) for those units will be no higher than for SRO units (i.e., 75 percent of the 0-bedroom Moderate Rehabilitation Fair Market Rent).

(4) The requirements regarding maintenance, operation, and inspections described in 24 CFR 882.806(b) 4) and 882.808(n) must be met.

(5) Governing regulations. Except where there is a conflict with any requirement under this part or where specifically provided, the SRO component will be governed by the regulations set forth in 24 CFR part 882, subpart H.

582.105 Rental assistance amounts and payments.

(a) Eligible activity. S+C grants may be used for providing rental assistance for housing occupied by participants in the program and administrative costs as provided for in paragraph (e) of this section, except that the housing may not be currently receiving Federal funding for rental assistance or operating costs under other HUD programs. Recipients may design a housing program that includes a range of housing types with differing levels of supportive services.

Rental assistance may include security deposits on units in an amount up to one month's rent.

(b) Amount of the grant. The amount of the grant is based on the number and size of units proposed by the applicant to be assisted over the grant period. The grant amount is calculated by multiplying the number of units proposed times the applicable Fair Market Rent (FMR) of each unit times the term of the grant.

(c) Payment of grant. (1) The grant amount will be reserved for rental assistance over the grant period. An applicant's grant request is an estimate of the amount needed for rental assistance. Recipients will make draws from the reserved amount to pay the actual costs of rental assistance for program participants. For TRA, on demonstration of need, up to 25 percent of the total rental assistance awarded may be spent in any one of the five years, or a higher percentage if approved by HUD, where the applicant provides evidence satisfactory to HUD that it is financially committed to providing the housing assistance described in the application for the full five-year period.

(2) A recipient must serve at least as many participants as shown in its application. Where the grant amount reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factor as contract rents being lower than FMRs and participants are being able to pay a portion of the rent, recipients may use the remaining funds for the costs of administering the housing assistance, as described in paragraph (e) of this section, for damage to property, as described in paragraph (f) of this section, for covering the costs of rent increases, or for serving a great number of participants.

(d) Vacancies. (1) If a unit assisted under this part is vacated before the expiration of the occupancy agreement described in § 582.315 of this part, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. (2) As used in this paragraph (d), the term "vacate" does not include brief periods of inpatient care, not to exceed 90 days for each occurrence.

(e) Administrative costs. (1) Up to eight percent of the grant amount may be used to pay the costs of administering the housing assistance. Recipients may contract with another entity approved by HUD to administer the housing assistance. (2) Eligible administrative activities include processing rental payments to landlords, examining participant income and family composition, providing housing information and assistance, inspecting units for compliance with housing quality standards, and receiving into the program new participants. This administrative allowance does not include the cost of administering the supportive services or the grant (e.g., costs of preparing the application, reports or audits required by HUD), which are not eligible activities under a S+C grant.

(f) Property damage. Recipients may use grant funds in an amount up to one month's rent to pay for any damage to housing due to the action of a participant. [58 FR 13892, Mar. 15, 1993, as amended at 61 FR 51170, Sept. 30, 1996]

582.110 Matching requirements.

(a) Matching rental assistance with supportive services. To qualify for rental assistance grants, an applicant must certify that it will provide or ensure the provision of supportive services, including funding the services itself if the planned resources do not become available for any reason, appropriate to the needs of the population being served and at least equal in value to the aggregate amount of rental assistance funded by HUD. The supportive services may be newly created for the program or already in operation, and may be provided or funded by other Federal, State, local, or private programs in accordance with 42 U.S.C. 11403b. This statute provides that a recipient may use funds from any source, including any other Federal source (but excluding the specific statutory subtitle from which S+C funds are provided), as well as State, local, and private sources, provided that funds from the other source are not statutorily prohibited to be used as a match.. Only services that are provided after the execution of the grant agreement may count toward the match.

(b) Availability to participants. Recipients must give reasonable assurances that supportive services will be available to participants for the entire term of the rental assistance. The value of the services provided to a participant, however, does not have to equal the amount of rental assistance provided that participant, nor does the value have to be equal to the amount of rental assistance on a year-to-year basis.

(c) Calculating the value of supportive services. In calculating the amount of the matching supportive services, applicants may count: (1) Salaries paid to staff of the recipient to provide supportive services to S+C participants; (2) The value of supportive services provided by other persons or organizations to S+C participants; (3) The value of time and services contributed by volunteers at the rate of \$10.00 an hour, except for donated professional services which may be counted at the customary charge for the service provided (professional services are services ordinarily performed by donors for payment, such as the services of health professionals, that are equivalent to the services they provide in their occupations); It is the responsibility of the recipient to ensure that any funds or services used to satisfy the matching requirements of this section are eligible under the laws governing the funds or services to be used as matching funds or services for a grant awarded under this program. (4) The value of any lease on a building used for the provision of supportive services, provided the value included in the match is no more than the prorated share used for the program; and (5) The cost of outreach activities, as described in § 582.325(a) of this part.

[58 FR 13892, Mar. 15, 1993, as amended at 73 FR 75325, Dec. 11, 2008]

582.115 Limitations on assistance.

a) Current occupants. Current occupants of the real property are not eligible for assistance under this part. However, as described in § 582.335, persons displaced as a direct result of acquisition, rehabilitation, or demolition for a project under the S+C program are eligible for and must be provided relocation assistance at Uniform Relocation Act levels.

(b) Amount of assistance provided within a jurisdiction. HUD will limit the amount of assistance provided within the jurisdiction of any one unit of local government to no more than 10 percent of the amount available.

(c) Faith-based activities. (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the S+C program. Neither the Federal government nor a State or local government receiving funds under S+C programs shall discriminate against an organization on the basis of the organization's religious character or affiliation. (2) Organizations that are directly funded under the S+C program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services. (3) A religious organization that participates in the S+C program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct S+C funds to support any inherently religious activities, such as worship, religious instruction, or proselytization.

Among other things, faith-based organizations may use space in their facilities to provide S+C-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an S+C-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents. (4) An organization that participates in the S+C program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. (5) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

(d) Maintenance of effort. No assistance received under this part (or any State or local government funds used to supplement this assistance) may be used to replace funds provided under any State or local government assistance programs previously used, or designated for use, to assist persons with disabilities, homeless persons, or homeless persons with disabilities. [58 FR 13892, Mar. 15, 1993, as amended at 68 FR 56407, Sept. 30, 2003]

582.120 Consolidated plan.

(a) Applicants that are States or units of general local government. The applicant must have a HUD-approved complete or abbreviated consolidated plan, in accordance with 24 CFR part 91, and must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan. If the applicant is a State, and the project will be located in a unit of general local government that is required to have, or has, a complete consolidated plan, or that is applying for Shelter Plus Care assistance under the same Notice of Fund Availability (NOFA) and will have an abbreviated consolidated plan with respect to that application, the State also must submit a certification by the unit of general local government that the State's application is consistent with the unit of general local government's HUD-approved consolidated plan.

(b) Applicants that are not States or units of general local government. The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the jurisdiction is following its HUD-approved consolidated plan and the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the

consistency certification provisions of the consolidated plan regulations, 24 CFR part 91, subpart F.

(c) Indian tribes and the Insular Areas of Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands. These entities are not required to have a consolidated plan or to make consolidated plan certifications. An application by an Indian tribe or other applicant for a project that will be located on a reservation of an Indian tribe will not require a certification by the tribe or the State. However, where an Indian tribe is the applicant for a project that will not be located on a reservation, the requirement for a certification under paragraph (b) of this section will apply.

(d) Timing of consolidated plan certification submissions. Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA. [60 FR 16379, Mar. 30, 1995]

Subpart C—Application and Grant Award

582.200 Application and grant award.

(a) Review. When funds are made available for assistance, HUD will publish a notice of fund availability in the FEDERAL REGISTER in accordance with the requirements of 24 CFR part 4. Applications will be reviewed and screened in accordance with the guidelines, rating criteria and procedures published in the notice.

(b) Rating criteria. HUD will award funds based on the criteria specified in section 455(a) (1) through (8) of the McKinney Act (42 U.S.C. 11403d (1) — 11403d (8)) and on the following criteria authorized by section 455(a) (9) of the McKinney Act (42 U.S.C. 11403d (9)):

(1) The extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable; (2) Extent to which the project targets homeless persons living in emergency shelters, supportive housing for homeless persons, or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; (3) Quality of the project; (4) Extent to which the program will serve homeless persons who are seriously mentally ill, have chronic alcohol and/or drug abuse problems, or have AIDS and related diseases.

(Approved by the Office of Management and Budget under control number 2506–0118) [61 FR 51170, Sept. 30, 1996]

582.230 Environmental review.

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an environmental review in accordance with part 50 of this title prior to its approval of any conditionally elected applications from PHAs for Fiscal Year 2000 and prior years for other than the SRO component. For activities under a grant to a PHA that generally would be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient PHA objects in writing to the responsible entity's performing the review under part 58. Irrespective of whether the responsible entity in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the responsible entity (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the responsible entity (or HUD, if applicable) or select alternate

eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and the recipient has received HUD approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required). [68 FR 56130, Sept. 29, 2003]

Subpart D—Program Requirements

582.300 General operation.

(a) Participation of homeless individuals.

(1) Each recipient must provide for the consultation and participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any housing assisted under this part or services for the participants. This requirement is waived if the applicant is unable to meet the requirement and presents a plan, which HUD approves, to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions. Participation by such an individual who also is a participant under the program does not constitute a conflict of interest under § 582.340(b) of this part. (2) To the maximum extent practicable, each recipient must involve homeless individuals and families, through employment, volunteer services, or otherwise, in constructing or rehabilitating housing assisted under this part and in providing supportive services required under § 582.215 of this part.

(b) Ongoing assessment of housing and supportive services. Each recipient of assistance must conduct an ongoing assessment of the housing assistance and supportive services required by the participants, and make adjustments as appropriate.

(c) Adequate supportive services. Each recipient must assure that adequate supportive services are available to participants in the program.

(d) Records and reports. (1) Each recipient must keep any records and, within the timeframe required, make any reports (including those pertaining to race, ethnicity, gender, and disability status data) that HUD may require. (2) Each recipient must keep on file, and make available to the public on request, a description of the procedures used to select sponsors under the SRA component and buildings under the SRO, SRA, and PRA components. (3) Each recipient must develop, and make available to the public upon request, its procedures for managing the rental housing assistance funds provided by HUD. At a minimum, such procedures must describe how units will be identified and selected; how the responsibility for inspections will be handled; the process for deciding which unit a participant will occupy; how participants will be placed in, or assisted in finding appropriate housing; how rent calculations will be made and the amount of rental assistance payments determined; and what safeguards will be used to prevent the misuse of funds. (Approved by the Office of Management and Budget under control number 2506–0118) [58 FR 13892, Mar. 15, 1993, as amended at 61 FR 51171, Sept. 30, 1996]

582.305 Housing quality standards; rent reasonableness.

(a) Housing quality standards. Housing assisted under this part must meet the applicable housing quality standards (HQS) under § 982.401 of this title—except that § 982.401(j) of this title does not apply and instead part 35, subparts A, B, K and R of this title apply—and, for SRO under § 882.803(b) of this title.

Before any assistance will be provided on behalf of a participant, the recipient, or another entity acting on behalf of the recipient (other than the owner of the housing), must physically inspect each unit to assure that the unit meets the HQS. Assistance will not be provided for units that fail to meet the

HQS, unless the owner corrects any deficiencies within 30 days from the date of the lease agreement and the recipient verifies that all deficiencies have been corrected. Recipients must also inspect all units at least annually during

the grant period to ensure that the units continue to meet the HQS.

(b) Rent reasonableness. HUD will only provide assistance for a unit for which the rent is reasonable. For TRA, PRA, and SRA, it is the responsibility of the recipient to determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit, as well as not in excess of rents currently being charged by the same owner for comparable unassisted units. For SRO, rents are calculated in accordance with 24 CFR 882.805(g). [58 FR 13892, Mar. 15, 1993, as amended at 61 FR 51171, Sept. 30, 1996; 64 FR 50226, Sept. 15, 1999]

582.310 Resident rent.

(a) Amount of rent. Each participant must pay rent in accordance with section 3 (a) 1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a (a) (1)), except that in determining the rent of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act, the gross income of this person is the same as if the person were being assisted under title XVI of the Social Security Act.

(b) Calculating income. (1) Income of participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). (2) Recipients must examine a participant's income initially, and at least annually thereafter, to determine the amount of rent payable by the participant.

Adjustments to a participant's rental payment must be made as necessary. (3) As a condition of participation in the program, each participant must agree to supply the information or documentation necessary to verify the participant's income. Participants must provide the recipient information at any time regarding changes in income or other circumstances that may result in changes to a participant's rental payment. [66 FR 6225, Jan. 19, 2001]

582.315 Occupancy agreements.

(a) Initial occupancy agreement. Participants must enter into an occupancy agreement for a term of at least one month. The occupancy agreement must be automatically renewable upon expiration, except on prior notice by either party.

(b) Terms of agreement. In addition to standard lease provisions, the occupancy agreement may also include a provision requiring the participant to take part in the supportive services provided through the program as a condition of continued occupancy.

582.320 Termination of assistance to participants.

(a) Termination of assistance. The recipient may terminate assistance to a participant who violates program requirements or conditions of occupancy. Recipients must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination, so that a participant's assistance is terminated only in the most severe cases. Recipients are not prohibited from resuming assistance to a participant whose assistance has been terminated.

(b) Due process. In terminating assistance to a participant, the recipient must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law.

This process, at a minimum, must consist of:

(1) Written notice to the participant containing a clear statement of the reasons for termination;

(2) A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Prompt written notice of the final decision to the participant.

582.325 Outreach activities.

Recipients must use their best efforts to ensure that eligible hard-to-reach persons are served by S+C. Recipients are expected to make sustained efforts to engage eligible persons so that they may be brought into the program. Outreach should be primarily directed toward eligible persons who have a nighttime residence that is an emergency shelter or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., persons living in cars, streets, and parks). Outreach activities are considered to be a supportive service, and the value of such activities that occur after the execution of the grant agreement may be included in meeting the matching requirement.

582.330 Nondiscrimination and equal opportunity requirements.

(a) General. Recipients may establish a preference as part of their admissions procedures for one or more of the statutorily targeted populations (i.e., seriously mentally ill, alcohol or substance abusers, or persons with AIDS and related diseases). However, other eligible disabled homeless persons must be considered for housing designed for the target population unless the recipient can demonstrate that there is sufficient demand by the target population for the units, and other eligible disabled homeless persons would not benefit from the primary supportive services provided.

(b) Compliance with requirements. (1) In addition to the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, recipients serving a designated population of homeless persons must, within the designated population, comply with the prohibitions against discrimination against handicapped individuals under section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 41 CFR chapter 60–741. (2) The nondiscrimination and equal opportunity requirements set forth at part 5 of this title are modified as follows: (i) The Indian Civil Rights Act (25 U.S.C. 1301 et seq.) applies to tribes when they exercise their powers of self-government, and to IHAs when established by the exercise of such powers. When an IHA is established under State law, the applicability of the Indian Civil Rights Act will be determined on a case-by-case basis. Projects subject to the Indian Civil Rights Act 246 must be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(c) Affirmative outreach. (1) If the procedures that the recipient intends to use to make known the availability of the program are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for assistance, the recipient must establish additional procedures that will ensure that interested persons can obtain information concerning the assistance. (2) The recipient must adopt procedures to make available information on the existence and locations of facilities and services that are accessible to persons with a handicap and maintain evidence of implementation of the procedures. (d) The accessibility requirements, reasonable modification, and accommodation requirements of the Fair Housing Act and of section 504 of the Rehabilitation Act of 1973, as amended. [58 FR 13892, Mar. 15, 1993, as amended at 61 FR 5210, Feb. 9, 1996]

(ii) [Reserved]

582.335 Displacement, relocation, and real property acquisition.

(a) Minimizing displacement. Consistent with the other goals and objectives of this part, recipients must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of supportive housing assisted under this part.

(b) Relocation assistance for displaced persons. A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. (c) Real property acquisition requirements. The acquisition of real property for supportive housing is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) Responsibility of recipient. (1) The recipient must certify (i.e., provide assurance of compliance) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with these provisions. (2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources. (3) The recipient must maintain records in sufficient detail to demonstrate compliance with provisions of this section.

(e) Appeals. A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

(f) Definition of displaced person. (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently as a direct result of acquisition, rehabilitation, or demolition for supportive housing project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person that moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice or refuses to renew an expiring lease, if the move occurs on or after: (A) The date that the recipient submits to HUD an application for assistance that is later approved and funded, if the recipient has control of the project site; or (B) The date that the recipient obtains control of the project site, if such control is obtained after the submission of the application to HUD. (ii) Any person, including a person who moves before the

date described in paragraph (f) (1) (i) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project. (iii) A tenant-occupant of a dwelling unit who moves permanently from the building/complex on or after the date of the “initiation of negotiations” (see paragraph (g) of this section) if the move occurs before the tenant has been provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions must include a monthly rent and estimated average monthly utility costs that do not exceed the greater of: (A) The tenant’s monthly rent before the initiation of negotiations and estimated average utility costs, or (B) 30 percent of gross household income. If the initial rent is at or near the maximum, there must be a reasonable basis for concluding at the time the project is initiated that future rent increases will be modest. (iv) A tenant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either: (A) A tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or (B) Other conditions of the temporary relocation are not reasonable. (v) A tenant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex, if either: (A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or (B) Other conditions of the move are not reasonable. (2) Notwithstanding the provisions of paragraph (f) (1) of this section, a person does not qualify as a “displaced person” (and is not eligible for relocation assistance under the URA or this section), if: (i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local or tribal law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; (ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a “displaced person” (or for any assistance provided under this section), if the project is approved; (iii) The person is ineligible under 49CFR 24.2(g) 2); or (iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project. (3) The recipient may request, at any time, HUD’s determination of whether a displacement is or would be covered under this section (g) Definition of initiation of negotiations. For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term “initiation of negotiations” means the execution of the agreement between the recipient and HUD, or selection of the project site, if later.

582.340 Other Federal requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, the following requirements apply to this program:

(a) OMB Circulars.1 (1) The policies, guidelines, and requirements of OMB Circular No. A-87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A-

110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and 24 CFR part 84 and A-122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with provisions of the McKinney Act, other Federal statutes, or this part.(2) The financial management systems used by recipients under this program must provide for audits in accordance with the provisions of 24 CFR part 44. Private nonprofit organizations who are sub recipients are subject to the audit requirements of 24 CFR part 45. HUD may perform or require additional audits as it finds necessary or appropriate.

(b) Conflict of interest. (1) In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds hereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. Participation by homeless individuals who also are participants under the program in 1 policy or decision making under § 582.300 of this part does not constitute a conflict of interest. Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7332. (This is not a toll-free number.) There is a limit of two free copies. (2) Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b)(1) of this section on a case-by-case basis when it determine that the exception will serve to further the purposes of the program and the effective and efficient administration of the recipient's project. An exception may be considered only after the recipient has provided the following: (i) For States, units of general local governments, PHAs and IHAs, a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and (ii) For all recipients, an opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law. (3) In determining whether to grant a requested exception after the recipient has satisfactorily met the requirement of paragraph(b) (2) of this section, HUD will consider the cumulative effect of the following factors, where applicable: (i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the project which would otherwise not be available; (ii) Whether the person affected is a member of a group or class of eligible persons and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class; (iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question; (iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) (1) of this section; (v) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and (vi) Any other relevant considerations. [58 FR 13892, Mar. 15, 1993, as amended at 61 FR 5210, Feb. 9, 1996; 61 FR 51171, Sept. 30, 1996; 62 FR 13539, Mar. 21, 1997]

Subpart E—Administration

582.400 Grant agreement.

(a) General. The grant agreement will be between HUD and the recipient.

HUD will hold the recipient responsible for the overall administration of the program, including overseeing any sub-recipients or contractors. Under the grant agreement, the recipient must agree to operate the program in accordance with the provisions of this part and other applicable HUD regulations.

(b) Enforcement. HUD will enforce the obligations in the grant agreement through such action as may be necessary, including recapturing assistance awarded under the program.

582.405 Program changes.

(a) Changes. HUD must approve, in writing, any significant changes to an approved program. Significant changes that require approval include, but are not limited to, a change in sponsor, a change in the project site for SRO or PRA with rehabilitation projects, and a change in the type of persons with disabilities to be served. Depending on the nature of the change, HUD may require a new certification of consistency with the CHAS (see § 582.120).

(b) Approval. Approval for such changes is contingent upon the application ranking remaining high enough to have been competitively selected for funding in the year the application was selected.

582.410 Obligation and de-obligation of funds.

(a) Obligation of funds. When HUD and the applicant execute a grant agreement, HUD will obligate funds to cover the amount of the approved grant. The recipient will be expected to carry out the activities as proposed in the application.

After the initial obligation of funds, HUD is under no obligation to make any upward revisions to the grant amount for any approved assistance.

(b) Deobligation. (1) HUD may deobligate all or a portion of the approved grant amount if such amount is not expended in a timely manner, or the proposed housing for which funding was approved or the supportive services proposed in the application are not provided in accordance with the approved application, the requirements of this part, and other applicable HUD regulations. The grant agreement may set forth other circumstances under which funds may be deobligated, and other sanctions may be imposed. (2) HUD may readvertise, in a notice of fund availability, the availability of funds that have been deobligated, or may reconsider applications that were submitted in response to the most recently published notice of fund availability and select applications for funding with the deobligated funds. Such selections would be made in accordance with the selection process described in § 582.220 of this part. Any selections made using deobligated funds will be subject to applicable appropriation act requirements governing the use of deobligated funding authority. (Approved by the Office of Management and Budget under control number 2506-0118).

APPENDIX X
(Corporation/Municipal Corporation)

Agency Code: 50000

Contract No. C-00

Amendment #

Period

Contract Amount for Period \$

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the Office of Mental Health, having its principal office at 44 Holland Avenue, Albany, New York 12229 (hereinafter referred to as the STATE), and _____ (hereinafter referred to as the CONTRACTOR), for modification of Contract Number C-00 _____, 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 SIGNATURE

STATE AGENCY SIGNATURE

By: _____

By: _____

Printed Name _____

Printed Name: Nancy P. Splonskowski

Title: _____

Title: Director, Contracts and Claims Unit, CBFM

Date: _____

Date _____

State Agency Certification

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

STATE OF NEW YORK)

) SS.:

County of _____)

On this _____ day of _____, 20____, before me personally came _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, and that he/she is _____ of the corporation or municipality described in and which executed the above instrument, and that he/she executed the above instrument by order of the board of directors of the corporation and that he/she signed his/her name thereto by like order, or that he/she was duly authorized by the municipal corporation described in and which executed the above instrument, and that he/she executed the above instrument pursuant to authority vested in him/her.

(Notary) _____

STATE COMPTROLLER'S SIGNATURE

Thomas P. DiNapoli
State Comptroller

Date: _____

By: _____

Date: _____

**Certification of Compliance
For Contractors of Non-Licensed Programs**

On behalf of _____ (“CONTRACTOR”), I hereby certify that, as of the date hereof:

- CONTRACTOR is in compliance with and current on all programmatic and financial obligations under its agreement with the New York State Office of Mental Health (“OMH”), C# _____ (the “Agreement”).
- CONTRACTOR shall remain in compliance with and current on all such obligations.
- CONTRACTOR agrees that any breach of this Certification may be deemed a breach of the Agreement and a legally sufficient basis for termination under Section III(B) of the Agreement.
- I am fully authorized to make this Certification on behalf of CONTRACTOR.

DATED: _____

SIGNATURE

PRINTED NAME

TITLE

NAME OF CONTRACTOR

OMH Statement

- To the best of our knowledge, we are not aware of any material issues regarding Contractor’s performance of its obligations under this contract which would warrant non-renewal of the contract for the recommended term. To the extent that a material issue may exist, OMH has determined that the best interests of the users of the program will be served by continuing the Agreement while providing the Contractor with an opportunity to develop and/or implement a corrective action plan. Where appropriate, the proposed renewal term has been adjusted accordingly.

DATED: _____

SIGNATURE

PRINTED NAME

TITLE

Non-Licensed Program Rider

1. Renewal

In order to exercise the right of renewal referenced in Paragraph 2 of Appendix A-1 of the Agreement, at the time CONTRACTOR provides notice of its intent to renew (but in any event no later than ninety days prior to expiration of the Agreement), CONTRACTOR must provide a Certification of Compliance in the form attached hereto as Exhibit A. CONTRACTOR agrees that breach of the Certification may be deemed a material breach of the Agreement and a legally sufficient basis for termination under Section III (B) of the Agreement.

2. Contract Performance

In the event that OMH determines that CONTRACTOR is not performing, or has not performed, its obligations under this Agreement to the State's satisfaction, as required by Section I (E) of the Agreement, OMH:

- a. may, but shall not be obligated to, provide CONTRACTOR with an opportunity to cure the breach and/or to develop and implement a corrective action plan within a designated timeframe. In the event that CONTRACTOR fails to cure the breach and/or to develop and implement a corrective action plan to OMH's satisfaction within such timeframe, such failure shall itself be deemed a material breach of this Agreement and a legally sufficient basis for termination under Section III (B) of the Agreement; and/or
- b. may reduce the term for which the Agreement may be renewed as provided in Paragraph 2 of Section I of Appendix A-1 of the Agreement.

Nothing in this paragraph shall be deemed to be a waiver of any breach of this Agreement or to otherwise affect OMH's rights to terminate or enforce the Agreement.

Residential Program Rider Residential Capacity

The funding provided in this State Aid Allocation is intended for the operation of adult and children's community residential programs, as they are defined in OMH regulation and Guidelines. The county/direct contractor is funded to operate the following beds:

- _____ Supported Housing beds
- _____ Supported - Single Room Occupancy beds
- _____ Total Beds - All programs

Single Point of Access Admissions

It is the general policy of the OMH that, statewide, equal access to voluntary-operated residential program admissions be provided to individuals discharged from state hospitals as well as those referred through community referrals. The CONTRACTOR and the OMH State-operated Psychiatric Center have utilized good faith efforts towards entering into Affiliation Agreements, stipulating policy and procedures essential to the accomplishment of the residential program admission goals, and shall continue to utilize such efforts to revise and refine such existing agreements.

Provider agrees to participate in the Single Point of Access established by the county(ies) in which the provider operates residential programs, according to terms established by such county(ies).

- The single point of access process is designed to assist counties in managing their most intensive mental health services, primarily housing, assertive community treatment and case management, to facilitate better coordination of services and to provide opportunities for the county to add wraparound services in support of more difficult or tenuous residential placements.
- The single point of access process for housing is intended to be a collaborative one in which the county and service providers share responsibility for ensuring that individuals with the greatest need are given priority access to the most appropriate available placements.
- Providers have the right to make an admissions decision on each referral, based on the clinical appropriateness of their service for the individual and an assessment of current conditions that might make the placement unsuitable. In turn, counties have the right to monitor admissions by provider, and to take action should a provider show a pattern of inappropriate admissions decisions. Inappropriate decisions would include rejection of entire categories of individuals, and determinations based solely on an individual's history without consideration of current clinical condition and additional supports that the county can make available.

Residential Program Rider Residential Capacity

The funding provided in this State Aid Allocation is intended for the operation of adult and children's community residential programs, as they are defined in OMH regulation and Guidelines. The county/direct contractor is funded to operate the following beds:

- _____ Adult CR Supervised beds
- _____ Adult CR - MI-MR beds
- _____ Adult CR - Intensive Supportive beds
- _____ Adult CR - Supportive beds
- _____ Children's CR Shift Model beds
- _____ Children's CR Teaching Family beds
- _____ CR - Single Room Occupancy beds
- _____ Total Beds - All programs

Single Point of Access Admissions

It is the general policy of the OMH that, statewide, equal access to voluntary-operated residential program admissions be provided to individuals discharged from state hospitals as well as those referred through community referrals. The CONTRACTOR and the OMH State-operated Psychiatric Center have utilized good faith efforts towards entering into Affiliation Agreements, stipulating policy and procedures essential to the accomplishment of the residential program admission goals, and shall continue to utilize such efforts to revise and refine such existing agreements.

Provider agrees to participate in the Single Point of Access established by the county(ies) in which the provider operates residential programs, according to terms established by such county(ies).

- The single point of access process is designed to assist counties in managing their most intensive mental health services, primarily housing, assertive community treatment and case management, to facilitate better coordination of services and to provide opportunities for the county to add wraparound services in support of more difficult or tenuous residential placements.
- The single point of access process for housing is intended to be a collaborative one in which the county and service providers share responsibility for ensuring that individuals with the greatest need are given priority access to the most appropriate available placements.
- Providers have the right to make an admissions decision on each referral, based on the clinical appropriateness of their service for the individual and an assessment of current conditions that might make the placement unsuitable. In turn, counties have the right to monitor admissions by provider, and to take action should a provider show a pattern of inappropriate admissions decisions. Inappropriate decisions would include rejection of entire categories of individuals, and determinations based solely on an individual's history without consideration of current clinical condition and additional supports that the county can make available.

Residential Program Rider Residential Capacity

The funding provided in this State Aid Allocation is intended for the operation of adult and children's residential programs in the community, as they are defined in OMH regulation and Guidelines. The county/direct contractor is funded to operate the following beds:

_____ Family-Based Treatment homes

_____ Total Beds - All programs

Single Point of Access Admissions

It is the general policy of the OMH that, statewide, equal access to voluntary-operated residential program admissions be provided to individuals discharged from state hospitals as well as those referred through community referrals. The CONTRACTOR and the OMH State-operated Psychiatric Center have utilized good faith efforts towards entering into Affiliation Agreements, stipulating policy and procedures essential to the accomplishment of the residential program admission goals, and shall continue to utilize such efforts to revise and refine such existing agreements.

Provider agrees to participate in the Single Point of Access established by the county(ies) in which the provider operates residential programs, according to terms established by such county(ies).

- The single point of access process is designed to assist counties in managing their most intensive mental health services, primarily housing, assertive community treatment and case management, to facilitate better coordination of services and to provide opportunities for the county to add wraparound services in support of more difficult or tenuous residential placements.
- The single point of access process for housing is intended to be a collaborative one in which the county and service providers share responsibility for ensuring that individuals with the greatest need are given priority access to the most appropriate available placements.
- Providers have the right to make an admissions decision on each referral, based on the clinical appropriateness of their service for the individual and an assessment of current conditions that might make the placement unsuitable. In turn, counties have the right to monitor admissions by provider, and to take action should a provider show a pattern of inappropriate admissions decisions. Inappropriate decisions would include rejection of entire categories of individuals, and determinations based solely on an individual's history without consideration of current clinical condition and additional supports that the county can make available.

Assisted Outpatient Treatment Rider

The CONTRACTOR shall establish mechanisms to ensure priority access by individuals referred to the CONTRACTOR who are enrolled in an assisted outpatient treatment program established pursuant to section 9.60 of the Mental Hygiene Law. The CONTRACTOR shall cooperate with the local governmental unit or the commissioner, or their authorized representatives, in ensuring priority access to such individuals, and in the development, review and implementation of treatment plans for such individuals. Any and all related information, reports and data which may be requested by the commissioner or the local governmental unit shall be furnished by the CONTRACTOR. Any requests for clinical records, from persons or entities authorized pursuant to section 33.13 [or 33.16] of the Mental Hygiene law, regarding individuals who are the subject of, or under consideration for, a petition for any order authorizing assisted outpatient treatment shall be given priority attention and responded to without delay.

Community Projects Fund Rider

This rider modifies the Agreement to which it has been affixed.

This Agreement may be made pursuant to an appropriation in an account of the Community Projects Fund (007) established by Section 99-d of the State Finance Law, as added by Section 261 of Chapter 474 of the Laws of 1996. CONTRACTOR understands and agrees that the state will not be liable for payments pursuant to any contract, grant or agreement made pursuant to an appropriation in any account of this fund if insufficient monies are available for transfer to such account of this fund after required transfers pursuant to Section 99-d(3) of the State Finance Law.