

**RIDER**  
**Provisions for Contractors Receiving Aid-to-Localities Funding**

**A. General Provisions**

1. Mental Health Regulations

- a. 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).
- b. Limits on Administrative Expenses and Executive Compensation (14 NYCRR Part 513, incorporated herein by reference) –
  - i. If CONTRACTOR is a “covered provider” within the meaning of 14 NYCRR Part 513.3(d) at any time during the life of this Agreement, then during the period when CONTRACTOR is such a “covered provider”:
    - a) CONTRACTOR shall comply with the requirements set forth in 14 NYCRR Part 513, as amended; and
    - b) CONTRACTOR’s failure to comply with any applicable requirement of 14 NYCRR Part 513, as amended, including but not limited to the restrictions on allowable administrative expenses, the limits on executive compensation, and the reporting requirements, may be deemed a material breach of this Agreement and constitute a sufficient basis for, in the discretion of the Office, termination for cause, suspension for cause, or the reduction of funding provided pursuant to this Agreement.
  - ii. CONTRACTOR shall include the following provision in any agreement with a subcontractor or agent to provide program or administrative services under this CONTRACT:

[Name of subcontractor/agent] acknowledges that it is receiving “State funds” or “State-authorized payments” originating with, passed through or approved by the New York State Office of Mental Health in order to provide program or administrative services on behalf of [Name of CONTRACTOR]. If at any time during the life of this Agreement [Name of subcontractor/agency] is a “covered provider” within the meaning of Section 513.3(d) of OMH regulations, [Name of subcontractor/agent] shall comply with the terms of 14 NYCRR Part 513, as amended. A failure to comply with 14 NYCRR Part 513, where applicable, may be deemed a material breach of this Agreement constituting a sufficient basis for suspension or termination for cause. The terms of 14 NYCRR Part 513, as amended, are incorporated herein by reference.

## B. Program Specific Terms and Conditions for Recipients of OMH Aid-to-Localities Funding

### 1. General

- a. OMH requires CONTRACTOR to comply with specific instructions applicable to the conduct of the program or programs funded under this Agreement, including requirements and limitations applicable by virtue of the funding source for this Agreement. Such instructions are referred to herein collectively as “Guidelines” and shall be deemed incorporated by reference and a binding part of this Agreement. CONTRACTOR shall adhere to all provisions contained in the applicable Guidelines, all of which are available in PDF format at <http://www.omh.ny.gov/omhweb/spguidelines>. In the event that a conflict exists between the Guidelines and this Agreement, the provisions of this Agreement shall govern.
- b. In addition, CONTRACTOR is required to comply with all OMH fiscal and program reporting requirements, including, but not limited to completion and submission of the following: Consolidated Fiscal Report (CFR), including Consolidated Budget Report (CBR) and Consolidated Claim Report (CCR); Patient Characteristics Survey (PCS); New York State Department of Labor/Office of Mental Health Employment Support System (replaces NYISER system); Mental Health Provider Data Exchange (MHPD); and Children and Adult Information Reporting System (CAIRS). In addition to any other Deliverables provided for this Agreement, all such fiscal and program reports shall be deemed “Deliverables” as that term is used in Appendix C hereof. Accordingly, as set forth in Appendix C, OMH may, in its sole 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.

### 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. 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.

### **C. 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.

### **D. Required Provider Training**

OMH periodically offers or supports training programs for providers of mental health services. Local Governmental Units (LGUs) 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.

### **E. 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).

### **F. 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).

### **G. 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.