



STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229-0001
(518) 473-1997 • TDD (518) 474-3694
www.omr.state.ny.us

MEMORANDUM

TO: DDSO Directors
Deputy Directors for Community Services
Kathy Broderick, Associate Commissioner, NYCRO

FROM: Alden B. Kaplan
Deputy Commissioner
Administration and Revenue Support

DATE: November 21, 2002

SUBJECT: Revised Applications for Interim Habilitation Payment
and Repayment Agreement

As of July 1, 2002 the unit of service for Individualized Residential Alternatives (IRAs) changed from a per diem to a monthly fee. With this change in the unit of service, a change to the Application for Interim Habilitation Payment and Repayment Agreement issued by memorandum of December 4, 2001 was necessary. Since In-Home Residential Habilitation, Agency-Sponsored Family Care (ASFC) Residential Habilitation and Day Habilitation reimbursement currently remain per diems, we have developed two separate Application forms (see attached).

- The Application for Interim Individualized Residential Habilitation Payment and Repayment Agreement should be used for interim payments associated with new IRAs.
- The Application for Interim In-home or Day Habilitation Payment and Repayment Agreement should be used for interim payments for new In-Home Residential Habilitation or Day Habilitation services. This Application should also be used for ASFC Residential Habilitation.

The Repayment Schedule in the Application must be completed since OMRDD is now required to submit these Applications to the Office of the State Comptroller (OSC) and Attorney General's Office for approval prior to the release of any funds, and the repayment schedules will be tracked by OSC. In addition to the Applications requiring approval by other State entities, OMRDD is not able to post the funds requested by each Application until the specific Application has been fully approved.

Revised Applications for Interim Habilitation
Payment and Repayment Agreement
November 21, 2002
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Each Application set consists of four pages. The first two pages are the initial Application, the third page is for repayment extension requests and the final page will be used to document Application denials.

When a completed Application is submitted to OMRDD for approval, the (a) Appendix A - Standard Clauses for all New York State Contracts [six pages], (b) Appendix A: Supplement [two pages], (c) Addendum to Appendix A: Supplement [two pages] and (d) statement regarding Non-Sectarian purposes [one page] must be attached. Additionally, a short narrative (not to exceed one page), prepared by the Applicant, documenting compliance with the Guiding Principles stated in the December 4, 2001 memorandum (see attached, three pages) must be attached to the completed Application. If the DDSO/NYCRO wishes to submit additional narrative in support of the Application, it may do so.

Each completed Application must be accompanied by a completed Standard Voucher (AC-92). The completed Application, with required attachments, and completed voucher should be submitted to Karla Smith, OMRDD Budget Office, 3rd Floor, 44 Holland Avenue, Albany, NY 12229.

Determination of the need for an interim payment should be made early in the development of the new service. For IRAs and some Day Habilitation services, a prior property approval (PPA) must be processed to establish the property costs included in the price, the operating price must be established, the Application and required narrative must be completed and submitted, and approval of the Application must be obtained before funding will be released to the provider.

Questions on Applications for interim payments should be directed to Karla Smith at (518) 474-5425.

Attachments

cc: Ms. DeSanto
HCBS Waiver Liaisons
Mr. Pezzolla
Mr. Lind
Ms. Kagan
Mr. Moran
Mr. Coyner
Mr. Brady
Mr. Coleman
Ms. Smith

**STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

**APPLICATION FOR INTERIM
INDIVIDUALIZED RESIDENTIAL HABILITATION
PAYMENT AND REPAYMENT AGREEMENT WITH REPAYMENT SCHEDULE**

Name of Agency: _____

Federal ID: _____

Address of Agency (P.O. Box not acceptable) _____

City, State and Zip Code: _____

Site Address (include Street and City) associated with Interim Habilitation Payment:

Projected First Date of Habilitation service delivery: _____ OMR Internal ID: _____

Interim Payment Request Calculation:

Monthly	x	# of Months (see note)	x	# of Individuals	= Interim Amt
\$ _____	x	_____	x	_____	=\$ _____

NOTE: Requests exceeding 3 months require DDSO and DARS Deputy Commissioner approval.

The Applicant hereby agrees that it will repay to the Office of Mental Retardation and Developmental Disabilities (OMRDD) the total amount of the Interim Payment received pursuant to this Application and Repayment Agreement.

The Applicant acknowledges and agrees that OMRDD shall be repaid in installments over a period of _____ months ("the repayment period"), beginning the _____ month of operation (estimated to be on or about _____).

This repayment period will occur in each successive operating months thereafter continuing for _____ months. If repayment has not been completed by the _____ month, the then current outstanding balance shall be immediately repaid to OMRDD.

During the repayment period and continuing thereafter, if repayment has not been completed, New York State may, at its option withhold from the payments of Medicaid reimbursement due to the Applicant a sum equal to the total operating funds advanced, and not repaid, or the Commissioner of OMRDD may obtain repayment from any other source of funds due to the Applicant and available to OMRDD.

Any request for an extension of the period of repayment beyond the term herein set forth must be submitted using the "Interim Habilitation Repayment Extension" form. Repayment beyond the 18th operating month requires the approval of the Commissioner of OMRDD.

Signature of Authorized Representative of Agency

Date

Printed Name of Authorized Representative

Title of Authorized Representative

CORPORATE ACKNOWLEDGEMENT:

State of _____)

Country of _____) SS

On this _____ day of _____, 20____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the corporation described herein which executed the foregoing instrument and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary) _____

Please affix stamp

Signature of DDSO/NYCRO Representative

Printed Name DDSO/NYCRO Representative

DDSO Contact Person: _____

Phone #: _____

Submit Application, Appendix A, documentation supporting need for Interim Payment and Standard Voucher (AC-92) to: Ms. Karla Smith, Budget Service, 44 Holland Avenue, Albany, NY 12229
[Provider ID: _____]

**STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES
INTERIM INDIVIDUALIZED RESIDENTIAL HABILITATION
REPAYMENT EXTENSION REQUEST FORM**

Name of Agency: _____ Federal ID: _____

Address of Agency (P.O. Box not acceptable) _____

City, State and Zip Code of Agency: _____

Site Address (include Street and City) associated with Interim Habilitation Payment: _____

ATTACH written explanation justifying need for extension of repayment.

Provider ID assigned: _____ Initial Operating Date: _____

Interim Payment: \$ _____

Repayment terms requested: _____ Start month: _____ Stop month: _____

Signature of Authorized Representative of Agency

Date

Printed Name of Authorized Representative

Title of Authorized Representative

CORPORATE ACKNOWLEDGEMENT:

State of _____)

Country of _____) SS

On this _____ day of _____, 20____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the corporation described herein which executed the foregoing instrument and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary) _____

Please affix stamp

Signature of DDSO/NYCRO Representative

Printed Name DDSO/NYCRO Representative

DDSO Contact Person:

Phone #:

Terms approved by OMRDD: Start month: _____ Stop month: _____ Provider ID: _____

Commissioner/Deputy Commissioner approval: _____ Date: _____

Repayment beyond the 18th month of operation requires Commissioner of OMRDD approval.

Submit Extension Request to: Ms. Karla Smith, Budget Service, 44 Holland Ave., Albany, NY 12229

**STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES
INTERIM INDIVIDUALIZED RESIDENTIAL HABILITATION PAYMENT DENIAL**

Name of Agency: _____

Site Address (include Street and City) associated with Interim Habilitation denial:

Provider ID assigned: _____ Proposed/Actual Operating Date: _____

Date Provider Advised of Denial: _____ (attach copy of correspondence advising of denial)

Additional explanation of reason(s) for denial: _____

Signature of DDSO/NYCRO Representative

Printed Name of DDSO/NYCRO Representative

DDSO Contact Person: _____

Phone #: _____

Submit Denial to Ms. Karla Smith, Budget Service, 44 Holland Avenue, Albany, NY 12229

**STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

Name of Developmental Disabilities Service Office

**APPLICATION FOR INTERIM
IN-HOME or DAY HABILITATION
PAYMENT AND REPAYMENT AGREEMENT WITH REPAYMENT SCHEDULE**

Name of Agency: _____

Federal ID: _____

Address of Agency (P.O. Box not acceptable) _____

City, State and Zip Code: _____

Site Address (include Street and City) associated with Interim Habilitation Payment: _____

Projected First Date of Habilitation service delivery: _____ Assigned Price ID: _____

Interim Payment Request Calculation:

Per Diem x # of Days (see note) x # of Individuals = Interim Amt

\$ _____ x _____ x _____ = \$ _____

NOTE: Requests exceeding 90 days require DDSO and DARS Deputy Commissioner approval.

The Applicant hereby agrees that it will repay to the Office of Mental Retardation and Developmental Disabilities (OMRDD) the total amount of the Interim Payment received pursuant to this Application and Repayment Agreement.

The Applicant acknowledges and agrees that OMRDD shall be repaid in installments over a period of _____ months ("the repayment period"), beginning the _____ month of operation (estimated to be on or about _____).

This repayment period will occur in each successive operating months thereafter continuing for _____ months. If repayment has not been completed by the _____ month, the then current outstanding balance shall be immediately repaid to OMRDD.

During the repayment period and continuing thereafter, if repayment has not been completed, New York State may, at its option withhold from the payments of Medicaid reimbursement due to the Applicant a sum equal to the total operating funds advanced, and not repaid, or the Commissioner of OMRDD may obtain repayment from any other source of funds due to the Applicant and available to OMRDD.

Any request for an extension of the period of repayment beyond the term herein set forth must be submitted using the "Interim Habilitation Repayment Extension" form. Repayment beyond the 18th operating month requires the approval of the Commissioner of OMRDD.

Signature of Authorized Representative of Agency

Date

Printed Name of Authorized Representative

Title of Authorized Representative

CORPORATE ACKNOWLEDGEMENT:

State of _____)

Country of _____) SS

On this _____ day of _____, 20____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the corporation described herein which executed the foregoing instrument and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary) _____

Please affix stamp

Signature of DDSO/NYCRO Representative

Printed Name DDSO/NYCRO Representative

DDSO Contact Person: _____

Phone #: _____

Submit Application, Appendix A, documentation supporting need for Interim Payment and Standard Voucher (AC-92) to: Ms. Karla Smith, Budget Service, 44 Holland Avenue, Albany, NY 12229
[Provider ID: _____]

**STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES
INTERIM IN-HOME or DAY HABILITATION
REPAYMENT EXTENSION REQUEST FORM**

Name of Agency: _____ Federal ID: _____

Address of Agency (P.O. Box not acceptable) _____

City, State and Zip Code of Agency: _____

Site Address (include Street and City) associated with Interim Habilitation Payment: _____

ATTACH written explanation justifying need for extension of repayment.

Price ID assigned: _____ Initial Operating Date: _____

Interim Payment: \$ _____

Repayment terms requested: _____ Start month: _____ Stop month: _____

Signature of Authorized Representative of Agency

Date

Printed Name of Authorized Representative

Title of Authorized Representative

CORPORATE ACKNOWLEDGEMENT:

State of _____)

Country of _____) SS

On this _____ day of _____, 20____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the corporation described herein which executed the foregoing instrument and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary) _____

Please affix stamp

Signature of DDSO/NYCRO Representative

Printed Name DDSO/NYCRO Representative

DDSO Contact Person:

Phone #:

Terms approved by OMRDD: Start month: _____ Stop month: _____ Provider ID: _____

Commissioner/Deputy Commissioner approval: _____ Date: _____

Repayment beyond the 18th month of operation requires Commissioner of OMRDD approval.

Submit Extension Request to: Ms. Karla Smith, Budget Service, 44 Holland Ave., Albany, NY 12229

**STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

INTERIM IN-HOME or DAY HABILITATION PAYMENT DENIAL

Name of Agency: _____

Site Address (include Street and City) associated with Interim Habilitation denial:

Price ID assigned: _____ Proposed/Actual Operating Date: _____

Date Provider Advised of Denial: _____ (attach copy of correspondence advising of denial)

Additional explanation of reason(s) for denial: _____

Signature of DDSO/NYCRO Representative

Printed Name of DDSO/NYCRO Representative

DDSO Contact Person: _____

Phone #: _____

Submit Denial to Ms. Karla Smith, Budget Service, 44 Holland Avenue, Albany, NY 12229

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE 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 \$15,000 (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.
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.** In accordance with 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, age, disability 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 be reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

7. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants 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 contractors 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 purpose 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, AESOB, 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 Division of Minority and Women's Business Development pertaining hereto.

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

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

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-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:

Department of Economic Development
Division for Small Business
30 South Pearl Street
Albany, New York 12245
Tel. 518-292-5220

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

Department of Economic Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, New York 12245
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 state 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 amendments (Chapter 684, Laws of 1994) require that they be denied contracts which they would otherwise obtain. Contact the Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany New York 12245, for a current list of states subject to this provision.

(Revised November, 2000)

APPENDIX A: SUPPLEMENT

The parties to the attached contract agree to be bound by the following, which are hereby made part of said contract:

1. The contractor shall not discriminate against any applicant for services for reasons based upon religion or religious belief. The contractor shall not use any monies received from the State to benefit or inhibit a particular religion or religious belief.
2. The relationship of the contractor to the State is that of an independent contractor and the officers and employees of the contractor shall conduct themselves in a manner consistent with such status, shall neither hold themselves out as nor claim to be officers, employees, or agents of the State by reason thereof, and shall not make any claim, demand or application to or for any right of the State, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit.
3. The contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons or property, including death, arising out of or related to the services to be rendered by the contractor. It shall indemnify and hold harmless the State and its officers and employees from any and all claims, suits, actions, damages and costs of every nature and description arising out of or related to the services to be rendered by the contractor or the violation by the contractor, its employees, servants, agents, or contractors, of any law, ordinance, rule or regulation in connection therewith.
4. Neither party shall be liable for losses, defaults, or damages under this contract which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this contract, due to or because of acts of God, the public enemy, earthquake, floods, typhoons, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
5. If any term or provision of the contract shall be found to be illegal or unenforceable, then, notwithstanding, the contract shall remain in full force and effect and such term or provision shall be deemed stricken from the contract.
6. The contractor shall comply with all statutory requirements relating to the confidentiality of information obtained during the performance of the contract.
7. The contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources.

8. Upon termination of the contract, there shall be a reconciliation based upon the services provided by the contractor and the payments made by the State. The contractor shall refund to the State any overpayments made by the State pursuant to the contract.

9. Unless otherwise provided, the contract may be amended, modified, renewed, and/or renegotiated by written agreement of the parties which shall become effective upon approval by the Office of the State Comptroller.

10. Unless otherwise provided, the OMRDD may cancel the contract without cause upon serving thirty (30) days' written notice on the contractor. Cancellation by mutual agreement of all parties to the contract will be allowed subject to documentation in writing.

11. No part of the contractor's income or resources shall be used directly or indirectly for the benefit of, or payment to, any State employee for services provided under this contract other than employees whose names are furnished to the OMRDD and no employee so identified shall receive any benefit or payment under this contract without prior written approval by the OMRDD.

12. This contract contains all the terms and conditions agreed upon by the parties and no statement or representation, oral or written, express or implied, shall be deemed to exist or to bind either party or to vary any of the terms and conditions of the contract.

13. Where applicable, the contractor shall maintain eligibility for reimbursement from any program that provides payment for services and shall apply for and obtain all funds available for the program from any public or private source. Upon request, the OMRDD shall assist in establishing the contractor's eligibility for such funds.

14. General conditions relating to Article 15-A of the Executive Law are set forth in the attached Addendum.

October 2002

**NEW YORK STATE
OFFICE OF MENTAL RETARDATION AND
DEVELOPMENTAL DISABILITIES**

**ADDENDUM TO APPENDIX A: SUPPLEMENT
GENERAL CONDITIONS**

**(Authority: Article 15-A of the Executive Law
and 9 NYCRR Parts 540-545)**

The Contractor and the Office of Mental Retardation and Developmental Disabilities shall be bound by the following clauses, which shall be part of every Request for Proposal, bid specification, and contract:

FIRST: Every written agreement or purchase order instrument providing for a total expenditure in excess of \$25,000.00 for labor, services, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the Office of Mental Retardation and Developmental Disabilities, is a State contract, as defined in Section 310(13)(a) of the Executive Law and 9 NYCRR 540 (r)(1).

SECOND: Every written agreement providing for a total expenditure in excess of \$100,000.00 by the Office of Mental Retardation and Developmental Disabilities for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon is a State contract, as defined in Section 310(13) (b) of the Executive Law and 9 NYCRR 540 (r)(2).

THIRD: A "Subcontract", as defined in Section 310 (14) of the Executive Law and 9 NYCRR 540 (s), is an agreement providing for expenditure in excess of \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of the contractor's obligation under the State contract is undertaken or assumed. It shall not mean any such agreement for the beneficial use of the contractor.

FOURTH: In accordance with its policy of ensuring that minority and women-owned business enterprises participate in the award of State contracts, the Office of Mental Retardation and Developmental Disabilities shall notify contractors listed in the Directory of Certified Minority and Women-Owned Business Enterprises issued by the Governor's Office of Minority and Women's Business Development of contract opportunities. The Contractor may obtain a copy of the Directory and the Regulations from that office or may inspect the Directory and the Regulations free of charge at any OMRDD location where Requests for Proposals may be obtained.

FIFTH: The Contractor shall provide equal employment opportunities for minority group members and women, as required by Section 312 of the Executive Law and Paragraph 12 of Appendix A, standard clauses for New York State contracts.

SIXTH: The Contractor may prepare and submit a Utilization Plan, as defined in Section 310(9) of the Executive Law and 9 NYCRR 543.3, to the Office of Mental Retardation and Developmental Disabilities in connection with a State contract on forms prescribed by the Office of Mental Retardation and Developmental Disabilities.

A. The Utilization Plan shall identify certified minority or women-owned business enterprises, if known, that have committed to perform work in connection with the proposed contract as well as any such enterprises, if known, that the Contractor intends to use in connection with performance of the State contract. It shall contain a list, including the name, address and telephone number of each certified enterprise with which the Contractor intends to subcontract.

B. The separate goal percentages established for participation in this contract by certified minority and women-owned business enterprises, as set forth in the Utilization Plan shall be ___(MBE) and ___(WBE). Such percentages shall be subject to the provisions of Article 15-A of the Executive Law and 9 NYCRR Parts 540-545.

C. The Contractor shall make a good faith effort to solicit active participation in performance of the State contract by enterprises identified in the Directory of Certified Minority and Women-Owned Business Enterprises. A provision to this effect shall be included in every subcontract with respect to work in connection with the State contract.

D. The Contractor shall make prompt payment to every subcontractor performing work in connection with a State contract let by the Office of Mental Retardation and Developmental Disabilities.

E. Review of Utilization Plans, pursuant to the provisions of Article 15-A of the Executive Law and 9 NYCRR Parts 540-545, shall be performed in accordance with procedures established by the Office of Mental Retardation and Developmental Disabilities.

November 2000

