



George Latimer
County Executive

March 18, 2022

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

Transmitted herewith for your review and approval is an Act which, if adopted, would authorize the County of Westchester (the "County") to enter into an agreement with the Westchester County Health Care Corporation ("WCHCC"), pursuant to which WCHCC will provide community mental health services, including clinic treatment and court-ordered assertive community treatment services to adults with serious mental illness, for a term from January 1, 2022 through December 31, 2026 (the "Agreement"). The prior agreement between the County and WCHCC for similar community mental health services, which was authorized by your Honorable Board by Act No. 2017-49, expired on December 31, 2021.

Under the proposed Agreement, the County will pay WCHCC a total amount not-to-exceed ONE MILLION ONE HUNDRED FORTY TWO THOUSAND NINE HUNDRED NINETY SEVEN DOLLARS (\$1,142,997.00), consisting of yearly amounts not-to-exceed the following:

For services during the period from 1/1/22 through 12/31/22:	\$215,289.00
For services during the period from 1/1/23 through 12/31/23:	\$221,747.00
For services during the period from 1/1/24 through 12/31/24:	\$228,400.00
For services during the period from 1/1/25 through 12/31/25:	\$235,252.00
For services during the period from 1/1/26 through 12/31/26:	\$242,309.00

Section 3307(4) of the New York Public Authorities Law requires the approval of your Honorable Board and the Board of Acquisition and Contract for the proposed Agreement.

The proposed Agreement does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617. No environmental review is required. Please refer to the memorandum from the Department of Planning dated January 14, 2022, which is on file with the Clerk of the Board of Legislators.

I believe it is in the County's best interests to enter into the Agreement. Accordingly, I recommend and urge your Honorable Board to adopt the proposed Act.

Sincerely,



George Latimer
County Executive

GL/MO/TP/bdm/nn
Attachments

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER, NEW YORK**

Your Committee is in receipt of a communication from the County Executive requesting that your Honorable Board authorize the County of Westchester (the "County") to enter into an agreement with the Westchester County Health Care Corporation ("WCHCC"), pursuant to which WCHCC will provide community mental health services, including clinic treatment and court-ordered assertive community treatment services to adults with serious mental illness, for a term from January 1, 2022 through December 31, 2026 (the "Agreement"). Your Committee has been advised that the prior agreement between the County and WCHCC for similar community mental health services, which was authorized by your Honorable Board by Act No. 2017-49, expired on December 31, 2021.

Your Committee has been advised that, under the proposed Agreement, the County will pay WCHCC a total amount not-to-exceed ONE MILLION ONE HUNDRED FORTY TWO THOUSAND NINE HUNDRED NINETY SEVEN DOLLARS (\$1,142,997.00), consisting of yearly amounts not-to-exceed the following:

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Your Committee has been advised that Section 3307(4) of the New York Public Authorities Law requires the approval of your Honorable Board and the Board of Acquisition and Contract for the proposed Agreement. Pursuant to that section, said approval of your Honorable Board must be by an affirmative vote of not less than a majority of the voting strength

of the Board.

Your Committee concurs with the conclusion that the proposed Agreement does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617. Accordingly, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 14, 2022, which is on file with the Clerk of the Board of Legislators.

After due consideration, your Committee recommends the adoption of the proposed Act.

Date: _____, 2022

White Plains, New York

COMMITTEE ON

FISCAL IMPACT STATEMENT

SUBJECT: Unified Services Contract with WCHCC

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 215,289

Total Current Year Revenue \$ 215,289

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: This is a contract for State Aid Pass through

in the amount of \$1,142,997 for 5 yrs(T177: 263-26-177X, 177Y, 177Z, 177A & 177B-4380 Rev Source: 9854)

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four years: _____

Prepared by: Thomas S. Poovappallil

Title: Director of Mental Health Services

Department: Community Mental Health

Reviewed By: 



Budget Director

3/17/22

If you need more space, please attach additional sheets.

ACT NO. 2022-_____

An Act authorizing the County of Westchester to enter into an agreement with the Westchester County Health Care Corporation for a term from January 1, 2022 through December 31, 2026, pursuant to which it will provide community mental health services, including clinic treatment and court-ordered assertive community treatment services to adults with serious mental illness.

BE IT ENACTED by the County Board of the County of Westchester, as follows:

Section 1. The County of Westchester (the “County”) is hereby authorized to enter into an agreement with the Westchester County Health Care Corporation (“WCHCC”), pursuant to which WCHCC will provide community mental health services, including clinic treatment and court-ordered assertive community treatment services to adults with serious mental illness, for a term from January 1, 2022 through December 31, 2026, for a total amount not-to-exceed ONE MILLION ONE HUNDRED FORTY TWO THOUSAND NINE HUNDRED NINETY SEVEN DOLLARS (\$1,142,997.00), consisting of yearly amounts not-to-exceed the following:

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For services during the period from 1/1/26 through 12/31/26:	\$242,309.00

§2. The County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to carry out the purposes of this Act.

§3. This Act shall take effect immediately.

THIS AGREEMENT made the ____ day of _____, 2022, by and between:

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (hereinafter referred to as the "County"),

acting by and through its Department of Community Mental Health (hereinafter referred to as the "Department"),

and

WESTCHESTER COUNTY HEALTH CARE CORPORATION, a public benefit corporation of the State of New York, having an office and place of business at Executive Offices at Taylor Care Center, C-2, 100 Woods Road, Valhalla, New York 10595 (hereinafter referred to as the "Agency" or the "Contractor")

WITNESSETH:

WHEREAS, the County, acting by and through the Department, and the Agency desire to enter into an agreement pursuant to which the Agency will provide the County with certain community mental health services, on the terms specified herein.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. **Services to be Performed:** The Agency will perform all of the services specified in Schedule "A", which is attached hereto and made a part hereof (the "Work").

2. **Term:** The term of this Agreement shall commence on January 1, 2022 and shall continue through December 31, 2026, unless terminated earlier pursuant to the provisions of this Agreement.

The Agency shall report to the County on its progress in performing the Work, as the Commissioner of the Department or his duly authorized designee (the

"Commissioner") may request, and shall immediately inform the Commissioner in writing of any cause for delay in the performance of its obligations under this Agreement.

3. Payment: For the services to be provided pursuant to Paragraph "1", the Agency shall be paid an amount not-to-exceed ONE MILLION ONE HUNDRED FORTY TWO THOUSAND NINE HUNDRED NINETY SEVEN DOLLARS (\$1,142,997.00), reimbursable in accordance with the budget in Schedule "B" (the "Budget") that is either, a.) attached hereto, and made a part hereof, or b.) a Repository Document (as defined below), and hereby incorporated by reference. In no event shall total payment to the Agency under this Agreement exceed the not-to-exceed amount set forth above.

The County and the Agency understand and acknowledge that the Agency may, during the term of this Agreement, wish to seek a modification to the Budget. The County and the Agency agree that the Agency may seek a Budget modification by submitting a request either, a.) in writing, if the Budget is attached to this Agreement, or b.) through the Vendor Portal's Budget Module, if the Budget is a Repository Document. The Agency understands, acknowledges, and agrees that no Budget modification shall take effect unless and until the Commissioner has consented to that Budget modification request; that the Commissioner shall not be required to consent to any Budget modification request; and that all decisions by the Commissioner regarding Budget modification requests are final.

The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to the County's receipt of funds from the State of New York ("State Aid") and/or the United States, through the State of New York, ("Federal Funds") for the purpose of providing the Work, and that no liability shall be incurred by the County beyond the State Aid and/or Federal Funds made available to the County for this Agreement. The Agency agrees that the County shall not be liable for any of the payments hereunder unless and until the County Commissioner of Finance has received said State Aid and/or Federal Funds, or the State Aid and/or Federal Funds have otherwise been made available to said commissioner.

If, for any reason, the full amount of the said State Aid and/or Federal Funds is not paid over or made available to the County, the County may terminate this Agreement immediately or reduce the amount payable to the Agency, in the discretion of the County. The County shall give prompt notice of any such termination or reduction to the Agency. If the County subsequently offers to pay a reduced amount to the Agency, then the Agency shall have the right to terminate this Agreement upon reasonable prior written notice.

Without limiting the foregoing, in the event the County makes any payment(s) hereunder in advance of receiving all or part of the State Aid and/or Federal Funds, if the State Aid and/or Federal Funds for such payment(s) is(/are) not subsequently received by the County Commissioner of Finance, the Agency shall repay to the County such payment(s).

In addition, the parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by its Board of Legislators during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such

County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Agency, then the Agency shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Agency, then the Agency shall have the right to terminate this Agreement upon reasonable prior written notice.

The Agency represents and warrants that the costs specified in Schedule "B" to be paid by the County represent the current amount of allowable expenditures reimbursable under this Agreement for the Work, as specified by the County, the State of New York, and/or the United States pursuant to law, regulation, rule, or by other proper exercise of authority.

The Agency understands and acknowledges that costs for which it seeks reimbursement, for rendering the Work, under this Agreement must be in full compliance with the applicable Aid to Localities Spending Plan Allocation Guidelines, which can be found at <https://www.omh.ny.gov/omhweb/spguidelines/> (the "SPAG"), if and to the extent that the SPAG are applicable to the Agency as a service-provider in the context of this Agreement. The Agency represents and warrants that, at the time of execution of this Agreement, it has a complete understanding of the applicable SPAG and can and will comply therewith. The Agency agrees to complete, and provide to the

County, any and all forms that it is required to complete and provide to the County according to the terms of the SPAG. The Agency understands and acknowledges that the applicable SPAG may vary from time to time, in the sole discretion of State of New York (and the entities that provide funds to the State of New York, to the extent that the State of New York may be obligated by such entities to impose terms on the County and/or its service-providers), and that the Agency must, therefore, keep abreast of the terms of the applicable SPAG, such as by accessing it via the website specified above.

The Agency understands and acknowledges that the maximum total amount subject to reimbursement under this Agreement shall in no event exceed the amount specified in this Paragraph "3", above, and that the maximum line-item amounts subject to reimbursement shall in no event exceed the amounts specified in the Budget included in Schedule "B."

The Agency further understands and acknowledges that, notwithstanding any other provision in this Agreement, that if, for any reason whatsoever, the Agency shall spend, during the term of this Agreement, for the purposes set forth herein, an amount less than the maximum total amount agreed to be spent by the Agency, as specified in this Paragraph "3", above, and/or an amount less than the maximum line-item amounts to be spent by the Agency, as specified in the Budget included in Schedule "B", the Agency shall not be entitled to payment by the County of any amounts beyond the amount of actual Agency expenditures made for the purposes set forth herein, as approved by the Department and County.

Any and all requests for payment to be made, including any request for partial payment made in proportion to the work completed, shall be submitted by the Agency on properly executed payment vouchers of the County and paid only after approval by the Commissioner. All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. Payment vouchers and related documentation shall be submitted by the Agency at the end of such payment period as may be specified by the Department (i.e., at the end of each year, each quarter, or each

month). All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating. In no event shall final payment be made to the Agency prior to the completion of all professional services, the submission of all required reports and statistics and the approval of same by the Commissioner.

4. Agency Representation and Audit of Payments: The Agency expressly represents, warrants and agrees that the Budget attached hereto as part of Schedule "B" and made a part of this Agreement, lists anticipated true and correct costs of personnel and other costs of the Work. The Agency shall advise the County in advance of any changes in services to be provided and no modification that results in a diminishment, increment, or addition of any services, or in the costs of rendering such services, shall be made without the consent of the County.

Payments by the County shall be subject to adjustment after audit and approval by the Department, and shall be subject to further adjustment after audit by the County Commissioner of Finance. The Agency shall reimburse the County for any sums provided by the County that are found by the County to be in excess of the actual Agency expenditures or in excess of the authorized amounts specified in Paragraph "3" of this Agreement or Schedule "B" to this Agreement.

5. Collection of Fees & Other Aid: The Agency shall administer the program(s) specified in this Agreement in such a manner as to maximize the receipt of Federal and State reimbursement for services provided under such program(s) to persons or groups of individuals who are or may become eligible for aid, benefits or payment, pursuant to Titles IV, XVI, XIX of the Social Security Act of 1935, as amended, or any other available governmental or private grants, benefits, or aid, and the Agency shall comply with any and all standards, criteria, and regulations pertinent thereto.

The Agency shall make every effort to collect fees from patients or clients, or their guardians, who are financially able to pay such fees, or where indicated, from the Federal Medicaid and/or Medicare Programs, or from the State under Sub-Chapter A, or

from purchase of services agreements, vocational rehabilitation and any other program for which clients of the Agency are eligible, or from other agencies, third parties, or insurance companies providing health insurance for the patients or clients, to the extent that they are applicable to the services conducted under this Agreement.

Notwithstanding the foregoing, the Agency represents that services shall not be refused to any person because of inability to pay such fee.

6. Personnel, Licensure, Children, & Operating Certificates: The Agency agrees to furnish a sufficient number of qualified and trained personnel, as well as the required space, materials, goods, equipment, and any other things necessary, to perform the Work.

The Agency agrees that if the performance of the Work requires the provision of any person(s) who, in order to legally perform their function, must be licensed by the State of New York or any other proper licensing authority (each a "Licensed Person"), the Agency shall, a.) provide such Licensed Person(s), and b.) ensure that such Licensed Person(s) is(/are) properly licensed. The involvement of each Licensed Person in the performance of the Work shall be subject to the approval of the Commissioner. However, the Agency shall take full legal responsibility for the performance of all portions of the Work performed by a Licensed Person, and provide the County with indemnification and defense for such performance, as specified in Paragraph "12".

In the event the Agency provides services to children as part of the Work, the Agency agrees to comply with New York Social Service Law Section 424-a (Child Abuse Registry Clearance), and New York Social Service Law Section 413 (Required Reporting of Cases of Suspected Child Abuse or Maltreatment), including, without limitation, subdivision 4 thereof (Unlawful Methamphetamine Laboratories). The Agency agrees, in compliance with applicable laws, to obtain mandatory and discretionary clearance for all persons who have regular and substantial contact with children.

The Agency shall maintain a valid operating certificate for any program(s) specified in Schedule "A" for which a license to operate is required by the New York State Department of Mental Hygiene, the New York State Department of Health, and/or any other department or agency of the County, the State of New York, and/or the United States.

7. Records and Reports: The Agency agrees to maintain individual records on each case/patient/client, which will include all diagnostic evaluations, studies, and records of treatment provided by the Agency. Such records, as well as any and all records or reports required by the Department, the New York State Department of Mental Hygiene, and/or any other State or Federal entity with jurisdiction, will be kept and made available for audit and inspection by the Department, the Westchester County Department of Finance, or be obtainable from the offices of the New York State Department of Mental Hygiene and/or New York State Comptroller. The Agency agrees to participate in patient or client tracking and registry systems required by the Department and/or any other County, State, or Federal entity with jurisdiction. The Agency will provide client-specific information to the Department for this purpose.

In addition to the foregoing, the Agency agrees to provide the Department with descriptive and statistical reports on forms approved by the Department. The Agency further agrees to provide the Department with any other descriptive statistical reports that the Department may require in the future.

The Agency shall keep accurate books and records of its operations in accordance with generally accepted accounting principles.

The Agency agrees to furnish all reports and materials necessary to permit the County to fulfill its reporting requirements to State and Federal authorities. The Agency further agrees to keep its facilities and its financial and other statistical records available for access and inspection by appropriate personnel of the Department, the County,

and/or the State during normal working hours. The right of access and inspection shall include, but not be limited to, the right to enter upon and inspect each and every facility, interview personnel, and interview those served by the program(s) provided by the Agency under this Agreement.

The Commissioner, authorized State and Federal personnel, or their duly authorized representatives may, at reasonable times, perform a program and facility review, which shall include review of program records, service policy, procedural issuances, staffing ratios, and job descriptions.

8. Confidentiality of Records: The Agency shall observe and require the observance of applicable Federal and State requirements relating to confidentiality of records and information. The Agency agrees not to allow examination of records or the disclosure of information except as set forth herein and as permitted by applicable law.

9. Audit of Records: Prior to the making of any payments hereunder, the County may, at its option, audit such books and records of the Agency as are reasonably pertinent to this Agreement to substantiate the basis for payment. The County will not withhold payment pursuant to this paragraph for more than thirty (30) days after payment would otherwise be due pursuant to the provisions of this Agreement, unless the County shall find cause to withhold payment in the course of such audit or the Agency fails to cooperate with such audit. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement. Post-payment audits are described in Paragraph "4" of this Agreement.

It is recognized and understood by the Agency that as part of the County's right to audit the Agency to substantiate the basis for payment, the County has the right to audit the performance of the terms of this contract by the Agency. Towards this end, the County may request documentation from the Agency to verify performance of the terms of this Agreement, which the Agency shall provide. The County may also make

site visits to the location(s) where the Work is being performed to both review the Agency's' records and observe the performance of this Agreement.

In addition to any other remedies it may have, the County shall have the right to deduct from future Contract payments under any contracts the County may have with the Agency any funds the County may determine are owed to the County under this Agreement.

The Agency agrees to maintain records and worksheets, including the necessary summaries of payrolls and time records, and abstracts from ledgers, registers or other expense records and all income from fees, all payments by other State or Federal agencies and any other income, to be recorded, included and summarized in support of future claims. All allocations of expense or income are to be fully documented by detailed worksheets showing the basis for the allocation. All such documentation including but not limited to such documentation of independent accountants retained by the Agency to perform such services shall be kept on file at one location and available for audit.

In addition, in accordance with New York State Department of Mental Hygiene requirements, a completed Consolidated Fiscal Report (CFR) must be submitted annually for the term of this Agreement to the appropriate office of the New York State Department of Mental Hygiene no later than one hundred twenty (120) days from the close of the calendar year and, if required, such report shall be certified by an independent licensed or certified public accountant. All such documentation, including but not limited to worksheets relative to the certification of this report of the independent licensed or certified public accountant retained by the Agency, shall be made available to the Department and/or County Commissioner of Finance upon request.

The Agency shall, within one hundred twenty (120) days of each fiscal year which includes any part of the term of this Agreement, submit to the Department its annual certified audit including the management letter for the prior calendar year or

other annual fiscal period. Submission of the audited statement shall not limit the County's right to inspect and audit the Agency's records and books of account. Such statement shall comply with all applicable State compliance requirements and governmental auditing standards applicable to the program and shall be prepared by a public accountant meeting the independence standards included in generally accepted government auditing standards. The Agency further agrees to furnish all reports and materials necessary to permit the County to fulfill its reporting requirements to State and Federal authorities. The Agency shall include, in its agreement with an independent auditor selected to perform the audits required hereunder, a provision providing the County, State, and Federal authorities with access to the auditor's work papers.

10. Property, furniture, equipment, materials & supplies: The Agency shall keep any and all property, furniture, equipment, materials, or supplies purchased with funds received hereunder in good working order and condition and shall not remove such property, furniture, equipment, materials, or supplies from the Agency's program(s) or facility(/ies) without prior written consent of the Commissioner unless the Agency replaces such property, furniture, equipment, materials, or supplies in kind with property, furniture, equipment, materials, or supplies of at least equal value.

Any property, furniture, equipment, materials, or supplies reimbursed through this Agreement, having a useful life beyond the term of this Agreement, shall be the property of the County on loan to the Agency and shall be turned over to the County upon termination of this Agreement. The Commissioner reserves the right to determine the disposition of such property, furniture, equipment, materials, or supplies.

Should the Agency dispose of said property, furniture, equipment, materials, or supplies with or without the consent of the Commissioner, and fail to replace them as required herein, the Commissioner shall have the right to deduct an amount equal to the present value of said property, furniture, equipment, materials, or supplies from the moneys due the Agency hereunder.

Further, should the Agency use any service, property, furniture, equipment, materials, or supplies purchased or contracted for by it pursuant to this Agreement for purposes other than those authorized herein, the costs of such services, property, furniture, equipment, materials, or supplies shall be pro-rated and only that part attributable to the performance of functions authorized by this Agreement shall be considered as reasonable and necessary costs for the purposes of this Agreement.

11. Community Mental Health Services: The Agency agrees to comply with such laws, rules, and regulations pertaining to community mental health and related services as the Department, the County, the State, and the United States may make, from time to time, pursuant to law. The Agency further agrees that it will share responsibility with other appropriate agencies, pursuant to applicable law, for the development of an effective system of integrated community mental health services in Westchester County. In the event the Agency fails to comply with any such laws, rules, and regulations, the effect of which is to result in the failure of the County to obtain State and/or Federal funding, then the Agency shall be responsible and agrees to refund to the County any funds lost by such noncompliance.

12. Indemnification & Defense: The Agency agrees to procure and maintain in continuous effect for the term of this Agreement policies of insurance naming the County as additional insured, as provided and described in Schedule "C", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "C", the Agency agrees:

(a) that except for the amount, if any, of damage contributed to by, caused by, or resulting from the sole negligence of the County, the Agency shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Agency or third parties under

the direction or control of the Agency; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and

(c) in the event the Agency does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Agency shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

13. Non-Discrimination: The Agency expressly agrees that neither it nor any contractor, consultant, subconsultant, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Agency acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

No services to be rendered pursuant to, or in connection with, this Agreement may be refused to any person because of race color, creed, sex, national origin, age, disability, ability to pay, marital status, or genetic predisposition carrier status, and no person shall be denied employment by the Agency in violation of State, Federal or other applicable laws against discrimination in employment. Without limiting the generality of the foregoing, the Agency agrees to comply with 42 USC Sec. 2000e-2, and with Sec. 220-e of the New York Labor Law, as presently in force and as they may from time to

time be amended.

The Agency shall not discriminate in the admission, care, treatment, employment, and confidentiality of persons with AIDS- or HIV-related medical conditions. An Agency found to have discriminated or to have breached the confidentiality of AIDS-related medical records will be required to implement remedial plans, including staff education, to prevent future incidents. In cases of repeated violations or refusals to comply, State funding to the Agency will be terminated and/or administrative fines imposed.

14. No-Assignment or Subcontract: The Agency shall not make any delegation or assignment of, or otherwise transfer or dispose of, all or any part of this Agreement, including any duties or rights hereunder, without the prior express written consent of the County, subject to any necessary legal approvals. The Agency shall not subcontract any part of the Work without the written consent of the County, subject to any necessary legal approvals. Any purported delegation, assignment, subcontracting, or other such action by the Agency regarding this Agreement without the prior express written consent of the County is void.

All subcontracts that have received such prior written consent shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Agency that for the purposes of this Agreement, all portions of the Work performed by a County-approved subcontractor shall be deemed work performed by the Agency and the Agency shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.

All subcontracts for the Work shall expressly reference the subcontractor's duty to comply with the material terms and conditions of this Agreement and shall attach a copy of the County's contract with the Agency. The Agency shall obtain a written acknowledgement from the owner and/or chief executive of the subcontractor or his/her duly authorized representative that the subcontractor has received a copy of the

County's contract, read it and is familiar with the material terms and conditions thereof. The Agency shall include provisions in its subcontracts designed to ensure that the Agency and/or its auditor has the right to examine all relevant books, records, documents or electronic data of the subcontractor necessary to review the subcontractor's compliance with the material terms and conditions of this Agreement. For each and every year for which this Agreement continues, the Agency shall submit to the Commissioner a letter signed by the owner and/or chief executive officer of the Agency or his/her duly authorized representative certifying that each and every approved subcontractor is in compliance with the material terms and conditions of the Agreement.

15. No-Conflicts of Interest: The Agency agrees that it has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services and duties hereunder. The Agency further agrees that, in the performance of this Agreement, no person having any such interest shall be employed by it.

The Agency represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working solely for the Agency, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full time salaried employee working solely for the Agency) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this Agreement without liability.

The Agency shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The Agency shall also use all reasonable means to avoid any appearance of

impropriety.

16. Compliance with Laws, Rules, & Regulations: The Agency shall comply, at its own expense, with the provisions of all applicable local, State, and Federal laws, rules, and, regulations, including, but not limited to, those applicable to the Agency as an employer of labor.

The Agency shall provide the Work in accordance with current industry standards and trade practices, as well as such standards and practices as have been, and may from time to time be, established and/or mandated by the Department or the State of New York, by and through any of its constituent parts, including the Department of Mental Hygiene and its subsidiary offices, including the New York State Office of Mental Health ("OMH"), the New York State Office of Addiction Services and Supports ("OASAS"), and the New York State Office for People With Developmental Disabilities ("OPWDD"). The Agency shall further comply, at its own expense, with all applicable rules, regulations, and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors, and others employed to render the services hereunder. The Agency represents that it has all licenses required to provide the Work that the Agency is required to provide under this Agreement.

The Agency warrants and represents as a material term of this Agreement, in accordance with the Omnibus Transportation Employees Testing Act of 1991, and all applicable Federal regulations, including, but not limited to, those contained in 49 CFR 382, every person and all employers of such persons operating a commercial motor vehicle as set forth in the Federal regulations shall comply with the aforesaid Federal regulations while providing services to the County and shall maintain records evidencing compliance, which records shall be auditable by County personnel or their designee. A copy of the employer's drug and alcohol testing program shall be submitted to the County for review upon execution of this Agreement.

The Agency understands and acknowledges that the County's payment to the

Agency of Federal Funds will make this Agreement subject to various Federal requirements, which are specified in various materials concerning, or otherwise applicable to, the Federal Funds (the "Federal Funds Materials"). All such materials are hereby incorporated by reference into this Agreement. The Agency hereby represents and warrants that it is aware of and/or possesses all such materials that it needs in order to be fully aware of, and fulfill, its obligations, including, but not necessarily limited to, the compliance obligations described in this Paragraph "16".

The Agency agrees that, in its performance of the Work, if Federal Funds are ever provided to the Agency under this Agreement, the Agency will comply, at its own expense, with, a.) all terms contained in the Federal Funds Materials, as such materials may be amended from time to time, and, without limiting the foregoing, b.) the provisions of all applicable Federal laws, regulations, rules, executive orders, policies, orders, notices, and related guidance, as such provisions may be amended from time to time, ('a' and 'b', collectively, the "Federal Requirements"). The Federal Requirements are hereby incorporated into this Agreement by reference. The Agency's failure to comply with the Federal Requirements shall constitute a material breach of this Agreement.

Without limiting any of the foregoing, if Federal Funds are ever provided to the Agency under this Agreement, the Agency specifically agrees to the following:

- (a) Regarding access to records, access to sites where the Work is performed, and retention of records:
 - i.) In compliance with 2 C.F.R. 200.337(a) and 45 C.F.R. 75.364(a), the Agency agrees to provide the County, the United States Department of Health and Human Services ("HHS"), the Comptroller General of the United States, any inspectors general, or any of the duly authorized representatives of any of these listed parties, access to any books, documents, papers, or other records which are pertinent to this Agreement in order to

- make audits, examinations, excerpts, and transcripts, as well as provide timely and reasonable access to the Agency's personnel for the purpose of interview and discussion related to such documents. The Agency agrees to allow the above-listed parties to reproduce, excerpt, and/or transcribe such books, documents, papers, and other records by any means whatsoever. The Agency also agrees to allow the above-listed parties such other access to records as may be necessary for compliance by such parties and/or the Agency with applicable Federal Requirements.
- ii.) In accordance with 2 C.F.R. 200.337(c) and 45 C.F.R. 75.364(c), all of the above-described rights of access to records shall last for as long as the records are retained by the Agency. In compliance with 2 C.F.R. 200.334 and 45 C.F.R. 75.361, the Agency agrees to maintain all of the records described in item 'i', above, for the applicable period of time specified in those regulations or such other regulations as may be applicable.
- iii.) In compliance with 2 C.F.R. 200.329(f) and 45 C.F.R. 75.342(e), the Agency agrees to permit HHS to make site visits as needed.

(b) Regarding recovered materials:

- i.) The Agency agrees to comply with all applicable requirements of 2 C.F.R. 200.323; 45 C.F.R. 75.331; Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and as further amended (42 U.S.C. § 6962); 40 C.F.R. Part 247, the United States Environmental Protection Agency's "Comprehensive Procurement Guideline for Products Containing Recovered Materials"; and Executive Order 12873.

(c) Regarding clean air and clean water, in compliance with Appendix II to 2 C.F.R. Part 200 and Appendix II to 45 C.F.R. Part 75:

- i.) The Agency agrees to comply with all applicable requirements of,

and standards, orders, or regulations issued pursuant to, the following:

- 1.) The Clean Air Act, as amended (42 U.S.C. § 7401 – 7671q); and
 - 2.) The Federal Water Pollution Control Act (also known as the Clean Water Act), as amended (33 U.S.C. § 1251 – 1387).
- ii.) The Agency agrees to report each violation of the provisions specified in item 'i', above, to the County and understands and acknowledges that the County will, in turn, report each violation as required to assure notification to HHS and the appropriate Environmental Protection Agency Regional Office.

(d) Regarding the procurement of subcontracts financed in whole or in part with Federal Funds:

- i.) The Agency agrees to comply with 2 C.F.R. 200.321 and 45 C.F.R. 75.330 in procuring any subcontract financed in whole or in part with Federal Funds.

(e) The Agency agrees to comply with and/or assist the County in complying with any and all Federal Requirements applicable to this Agreement, including, but not limited to, by providing the County with documents, records, and the like that the County may deem necessary and appropriate for such compliance efforts.

The Agency hereby represents and warrants that it has all of the information it needs regarding the Federal Requirements concerning reporting, patent rights, copyrights, and rights in data, and the Agency understands and acknowledges that all such requirements and regulations are hereby incorporated into this Agreement by reference, and shall prevail over any conflicting term(s) of this Agreement.

The Agency understands that the County has relied upon all materials and representations it has provided to the County concerning the Work and this Agreement in, a.) considering, among other things, whether the Agency is capable of successfully performing under the terms and conditions of this Agreement; the Agency's integrity and ethics; whether executing this Agreement with the Agency is in compliance with public policy; the Agency's record of past performance; and the Agency's financial, administrative, and technical resources and capacity, b.) consequently determining that the Agency is a responsible Agency, and c.) awarding this Agreement to the Agency.

It is the intent and understanding of the County and Agency that each and every provision required by law, contract, or other proper authority to be included in this Agreement shall, for all intents and purposes, be considered and deemed included herein. The Agency understands and acknowledges that for each and every such provision that has, through mistake or otherwise, either not been inserted in writing or been inserted in writing in an incorrect form, the Agency hereby consents to amending this agreement in writing, upon receipt of notice from the County, for the purpose of inserting or correcting the provision in question.

17. Additional Compliance Provisions Regarding Smoking: If applicable, the Agency shall comply with Title X, Part C, of Public Law 103-227, also known as the Pro-Children Act of 1994 (the "Act"), which requires that smoking not be permitted in a any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the

provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

The Agency recognizes and accepts that by signing this Agreement the Agency certifies that they will comply with the requirements of the Act, if applicable, and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The Agency agrees that it will require that the language of this requirement, if applicable, be included in any subawards, which contain provisions for children's services and that all subrecipients shall certify accordingly.

The Agency shall also comply with New York State Public Health Law 1399-o, governing smoking in public places and facilities, which is more restrictive than the Federal law. In all instances, if any State or local law, rule or regulation is more restrictive than the applicable Federal law, then all terms of the State or local law, rule or regulation shall apply.

18. Termination: (a) The County, upon ten (10) days notice to the Agency, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Agency shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination, at the rates specified in Schedule "B". Upon receipt of notice that the County is terminating this Agreement in its best interests, the Agency shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner, and the Agency shall direct any approved subcontractors to do the same.

(b) If the Agency fails to perform the Work in the manner called for in this Agreement, or if the Agency otherwise fails to comply with any other provision(s) of this Agreement, the County may terminate this Agreement for cause. Termination shall be effected by sending a notice of termination on the Agency setting forth the manner in

which the Agency is in breach or default. The Agency will only be paid for the Work that the Commissioner has determined that the Agency performed in accordance with the manner of performance set forth in this Agreement.

The County in its sole discretion may, in the case of a termination for breach or default, allow the Agency a specified number of days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If the Agency fails to remedy to the County's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within the specified number of days set forth in the notice of termination after receipt by the Agency of written termination notice from the County setting forth the nature of said breach or default, the County shall have the right to terminate this Agreement without any further obligation to the Agency. Any such termination for default shall not in any way operate to preclude the County from also pursuing all available remedies against the Agency or other appropriate parties for said breach or default. In addition to any other right or remedy it might have, the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Agency.

(c) The Agency understands and acknowledges that, if Federal Funds are ever provided to the Agency under this Agreement, the Federal government may suspend, suspend then terminate, and/or terminate all or any part of such Federal Funds to be used to fund the Work. The Agency agrees that, in such event, the County shall have the right to immediately terminate all or part of the Work provided under this Agreement, upon notice to the Agency.

(d) In the event of a dispute as to the value of the Work rendered by the Agency prior to the date of termination, it is understood and agreed that the Commissioner shall

determine the value of such Work rendered by the Agency. The Agency shall accept such reasonable and good faith determination as final.

(e) In the event that the County exercises its option to terminate this agreement, the Agency, at the sole option of the County, may be required to continue to render services to Agency patients or clients deemed in need of care until a transition plan shall be implemented and effected by the County. The transition plan, the purpose of which would be to assure the patients or clients continued receipt of services, shall be defined, and implemented at the sole discretion of the Commissioner. During the period, that the Agency continues to provide services to such patients or clients the terms and conditions of this Agreement shall apply.

19. Notices: All notices of any nature referred to in this Agreement, or required or permitted to be given hereunder, shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), to the addresses as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County: Commissioner
Westchester County Department of
Community Mental Health
112 East Post Road - Room 219
White Plains, New York 10601

with a copy to: County Attorney
Michaelian Office Building
148 Martine Avenue - Room 600
White Plains, New York 10601

To the Agency: Westchester County Health Care Corporation
Executive Offices at Taylor Care Center, C-2
100 Woods Road
Valhalla, New York 10595

with a copy to: Office of Legal Affairs
 Attn: General Counsel
 Executive Offices at Taylor Pavilion
 100 Woods Road
 Valhalla, New York 10595

20. Non-Waiver for Failure to Enforce Terms: The failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any services or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

21. Independent Contractor: The Agency and the County agree that the Agency and its officers, employees, agents, contractors, consultants, subcontractors and/or subconsultants are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Agency covenants and agrees that neither the Agency nor any of its officers, employees, agents, consultants, subcontractors, and/or subconsultants will hold themselves out as, or claim to be, an agent, partner, or co-venturer of the County, or officers or employees of the County or any department, agency or unit thereof.

22. Entire Agreement and Conflicts: This Agreement and its schedules constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings and no modification or amendment, including, without limitation, modification of the Budget (except as provided under Paragraph "3" of this Agreement), shall be effective unless in writing and duly signed by both parties. This Agreement shall not be released, discharged, changed, or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties, except if and to the extent that the SPAG conflicts with the terms of this Agreement or any schedule thereto, in which case the conflicting terms of the SPAG shall prevail.

23. Counterparts, Choice of Law, Choice of Venue: This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

24. Vendor Document Repository: The Agency understands and acknowledges that the County currently maintains a Vendor Document Repository at <http://www.westchestergov.com/vendorportal> (the "Repository") into which the Agency may upload a scanned image of one or more of the schedules and/or supporting documents that the Agency is required to provide to the County for this Agreement (the "Required Documents").

The Agency further understands and acknowledges that if the Agency chooses to use the Repository to provide to the County one or more of the Required

Documents (each document so provided, a "Repository Document"):

- a.) The Agency is doing so voluntarily, as required by New York State Technology Law Sections 305 and 309;
- b.) The Agency represents and warrants that any and all information in each Repository Document is complete and accurate in all respects;
- c.) In the event that any information in a Repository Document must be changed, the Agency shall upload an updated version of such document for this Agreement within ten (10) business days of the need for such change arising; and
- d.) Notwithstanding any other provision of this Agreement, the Agency must, at a minimum, update each Repository Document at least once per calendar year.

25. MBE/WBE: Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by women or persons of color in contracts and projects funded by all departments of the County. Schedule "D" is a questionnaire entitled, "Business Enterprises Owned and Controlled by Women or Persons of Color." In furtherance of Section 308.01 of the Laws of Westchester County, the Agency shall provide the County with a completed Schedule "D" that is either, a.) attached hereto, and made a part hereof, or b.) a Repository Document, and hereby incorporated by reference.

26. Required Disclosure of Relationships to County: Schedule "E" is a questionnaire entitled, "Required Disclosure of Relationships to County." The Agency shall provide the County with a completed Schedule "E" that is either, a.) attached hereto, and made a part hereof, or b.) a Repository Document, and hereby incorporated by reference.

In the event that any information provided in the Schedule "E" that is part of this Agreement must be changed during the term of this Agreement, Agency agrees to notify County in writing within ten (10) business and either, a.) provide an updated paper version, or b.) provide an updated Repository Document.

The Agency shall also have each approved subcontractor complete a separate Schedule "E" and shall advise the subcontractor of the duty to report any changes to the information contained therein to the Agency within ten (10) business days of such event and such information shall be forwarded by the Agency to the County in the manner described above.

27. Criminal Disclosure: Schedule "F" is a form entitled, "Criminal Background Disclosure." In compliance with Executive Order No. 1-2008, the Agency shall provide the County with a completed Schedule "F" that is either, a.) attached hereto and made a part hereof, or b.) a Repository Document, and hereby incorporated by reference.

28. MacBride Principles: Pursuant to Act No. 56-1999, no County procuring officer may award or recommend for award any contract not subject to competitive bidding to a party that does not execute a certification in substantially the form contained in Schedule "G", which is entitled, "Certification Regarding Business Dealings with Northern Ireland." Therefore, the Agency shall provide the County with a completed Schedule "G" that is either, a.) attached hereto and made a part hereof, or b.) a Repository Document, and hereby incorporated by reference.

29. Vendor Direct Payment: All payments made by the County to the Agency will be made by electronic funds transfer ("EFT") pursuant to the County's Vendor Direct Program. If the Agency is not already enrolled in the Vendor Direct Program, the Agency shall fill out and submit an EFT Authorization Form as part of this Agreement. (In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, the Agency understands that it must contact the County's Finance Department.) The EFT Authorization Form and related information are annexed hereto as Schedule

"I". The Agency shall provide the County with a completed EFT Authorization Form that is either, a.) attached hereto and made a part hereof, or b.) a Repository Document, and hereby incorporated by reference. If the Agency is already enrolled in the Vendor Direct Program, the Agency hereby agrees to immediately notify the County's Finance Department in writing if the EFT Authorization Form on file must be changed, and either a.) provide an updated paper version of the document, or b.) provide an updated Repository Document.

30. Debarment, Suspension, and Drug-Free Workplace: The Agency represents and warrants that it is not currently on any debarment, suspension, or exclusion list of New York State or any political subdivision thereof, and has not been found non-responsible by New York State or any political subdivision thereof. The Agency agrees that it shall immediately notify the County if it is added to any debarment, suspension, or exclusion list of New York State or any political subdivision thereof, or its addition to such lists appears likely. The Agency agrees that it shall immediately notify the County if it is found non-responsible by New York State or any political subdivision thereof, or such a finding of non-responsibility appears likely.

The Agency understands and acknowledges that the County is relying upon the Agency's above-described representation and warranty.

If Federal Funds are ever provided to the Agency under this Agreement, the Agency the terms specified below shall apply to this Agreement. Even if Federal Funds are not presently intended to be provided to the Agency under this Agreement, the Agency nevertheless agrees, as a condition of the execution of this Agreement, to presently make the representations and warranties specified below, provide the notifications required below, and to complete and provide the certifications required below.

(a) The Agency represents and warrants that it, its principals, and affiliates (as defined in 2 C.F.R. Part 180) are not currently debarred or suspended and the Agency

agrees to complete the "Certification Regarding Debarment and Suspension", which is attached hereto and made a part hereof as Schedule "J".

The Agency agrees that it shall immediately notify the County if it, its principals, and/or affiliates is/are debarred or suspended, or its, its principals', and/or affiliates' debarment or suspension appears likely. The Agency further agrees to comply with the applicable provisions regarding debarment and suspension regulations in 2 C.F.R. Part 376, Federal Executive Order 12549, Federal Executive Order 12689, 48 C.F.R. Subpart 9.4, and 2 C.F.R. Part 180, and to require any approved subcontractors to comply with the same.

The Agency represents and warrants that it is not currently excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits, by virtue of being on the United States General Service Administration's the Excluded Parties List System (EPLS), available at <https://sam.gov> (or any successor website) as part of the System for Awards Management (SAM). The Agency agrees that it shall immediately notify the County if it is so-excluded, or its exclusion appears likely.

The Agency understands and acknowledges that the County is relying upon all of the Agency's above-described representations and warranties.

(b) The Agency agrees to complete the "Certification Regarding Drug-Free Workplace Requirements", which is attached hereto and forms part hereof as Schedule "K", in order to help ensure compliance with 41 U.S.C. § 8101 et seq., 48 C.F.R. Subpart 23.5, and 2 C.F.R. Part 382.

(c) The Agency agrees to complete the "Certification Regarding Lobbying", which is attached hereto and forms part hereof as Schedule "L", in compliance with 45 C.F.R. Part 93, and to otherwise comply with 45 C.F.R. Part 93 and 31 U.S.C. § 1352.

31. **HIPAA:** The Agency agrees to comply with the terms of the Health Insurance Portability and Accountability Act ("HIPAA") as detailed in Schedule "M", which is entitled "HIPAA Business Associate Terms" and is attached hereto and made a part hereof.

32. **Questionnaire Regarding Business Enterprises Owned and Controlled by Service-Disabled Veterans:** The County believes it is a laudable goal to provide business opportunities to veterans who were disabled while serving our country, and wants to encourage the participation in County contracts of certified business enterprises owned and controlled by service-disabled veterans. As part of the County's program to encourage the participation of such business enterprises in County contracts, and in furtherance of Article 17-B of the New York State Executive Law, the Contractor agrees to complete the questionnaire entitled "Questionnaire Regarding Business Enterprises Owned and Controlled by Service-Disabled Veterans" attached hereto as Schedule "O", as part of this Agreement.

33. **Enforceability:** This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

BY: _____
MICHAEL ORTH, M.S.W., COMMISSIONER
DEPARTMENT OF COMMUNITY MENTAL HEALTH

WESTCHESTER COUNTY HEALTH CARE CORPORATION

BY: _____
Name: _____
Title: _____

Authorized by the Westchester County Board of Legislators by Act No. _____, which was adopted on the _____ day of _____, 2022.

Authorized by the Westchester County Board of Acquisition & Contract at a meeting duly held on the _____ day of _____, 2022.

Approved.

Senior Assistant County Attorney
County of Westchester

SCHEDULE "A"
SCOPE OF SERVICES

WESTCHESTER COUNTY HEALTH CARE CORPORATION

Service Locations

100 Woods Road, Valhalla, NY 10595

General Provisions

The Contractor shall provide all of the following as part of its provision of services for the operation and management of the project(s) listed below (the "Project"):

1. Manage all aspects of the day-to-day operations of the Project, adhering to all related State and Federal regulations and including all documentation requirements set forth by DCMH.
2. Ensure that all employees working in the Project have been properly trained and supervised accordingly to conduct the duties assigned and described below. DCMH reserves the right to require Project-specific training, professional credentials or competencies.
3. Ensure that contracted services are provided in accordance with the CDC and SAMHSA's 6 Principles of Trauma-Informed Care [https://www.cdc.gov/cpr/infographics/6_principles_trauma_info.htm], SAMHSA's principles of services for individuals with co-occurring issues (https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/PEP20-02-01-004_Final_508.pdf), and principles of person-centered, recovery-oriented care.
4. Administer or assist DCMH in administering voluntary and anonymous client satisfaction surveys on at least an annual basis or more often as requested by DCMH.
5. Attend DCMH-required trainings/meetings (typically one or two per year, but may vary).
6. Cooperate with all site visits, documentation audits, reviews, surveys, corrective action plans, etc. conducted by DCMH.
7. With DCMH guidance, coordinate with other providers to offer a continuum of services.
8. Report all data and outcomes that are required by DCMH, including an annual CFR report. The data elements and recording methods that are required may change from time to time and will be determined by DCMH.

Specific Provisions

1. The Agency shall provide services for the period 01/01/2022 through 12/31/2026.
2. All program code descriptions are as detailed in the New York State Consolidated Fiscal Reporting and Claiming Manual, July 1, 2020-June 30,2021

0800 – Assertive Community Treatment (ACT) Program (Licensed Program)

ACT Teams provide mobile intensive treatment and support to people with psychiatric disabilities. The focus is on the improvement of an individual's quality of life in the

community and reducing the need for inpatient care, by providing intense community-based treatment services by an interdisciplinary team of mental health professionals. Building on the successful components of the Intensive Case Management (ICM) program, the ACT program has low staff-outpatient ratios; 24-hour-a-day, seven-day-per-week availability; enrollment of consumers, and flexible service dollars. Treatment is focused on individuals who have been unsuccessful in traditional forms of treatment.

Units of Service:

- Intensive Program Full Payment: Six or more face-to-face contacts per individual per month (may include 3 collateral visits) count as one unit.*
- Intensive Program - Partial Payment: Between 2 and 5 face-to-face contacts per individual per month count as one unit.*
- Supportive Program: 2 or more face-to-face contacts per individual per month count as one unit. Total Units of Service: Total the number of contacts.*

The Contractor will provide intensive, comprehensive clinical, case management, vocational and rehabilitative services to adults diagnosed with a serious mental illness and whose needs have not been met effectively by traditional service delivery. Referrals will be received from the Westchester County adult Single Point of Access process (SPOA). Services will be provided in the community by a mobile treatment team and the services will be individually tailored to assist individuals to improve their quality of life and achieve valued life roles. ACT Teams must have a Team Leader, Psychiatrist (.68 FTE), Nurse, Program Assistant, Family Specialist, Employment Specialist, and Substance Abuse Specialist. A Peer is strongly recommended.

ACT teams should serve 66 individuals monthly and deliver at least 430 units of service monthly.

2100 – Clinic Treatment (Licensed Program)

A clinic treatment program shall provide treatment designed to minimize the symptoms and adverse effects of illness, maximize wellness, and promote recovery. A clinic treatment program for adults shall provide the following services: outreach, initial assessment (including health screening), psychiatric assessment, crisis intervention, injectable psychotropic medication administration (for clinics serving adults), psychotropic medication treatment, psychotherapy services, family/collateral psychotherapy, group psychotherapy, and complex care management. The following optional services may also be provided: developmental testing, psychological testing, health physicals, health monitoring, and psychiatric consultation. A clinic treatment program for children shall provide the following services: outreach, initial assessment (including health screening), psychiatric assessment, crisis intervention, psychotropic medication treatment, psychotherapy services, family/collateral psychotherapy, group psychotherapy, and complex care management. The following optional services may also be provided: developmental testing, psychological testing, health physicals, health monitoring, psychiatric consultation, and injectable psychotropic medication administration.

Units of Service: Service days. (Each day that an eligible individual receives a service is counted as a service day, without regard to the length of time or the number of procedures.)

The Contractor will utilize this funding to support the services provided via the WCHC Behavioral Health Clinic. The number of expected service days is 252 days per year.

8810 – Assertive Community Treatment (ACT) Service Dollars (Non-Licensed Program)

All Assertive Community Treatment (ACT) programs have access to “service dollars.” All service dollar programs are for emergency and non-emergency purposes and are to be used as payment of last resort. The purpose of the service dollar is to provide funds for recipients’ immediate and/or emergency needs. The use of service dollars in any of these programs should include participation of the recipient of services, who should play a significant role in the planning for, and the utilization of, service dollars. Also, as the needs of the recipient change, the money can be redirected to purchase the type of service that is currently needed. Services purchased on behalf of a recipient, such as Respite or Crisis Services, should still be reported using the appropriate Service Dollar program code. ACT Service Dollars may only be used on recipients receiving BCM, ICM, SCM or ACT Services and cannot be used for any other purpose. Agency administrative costs allocated to the operating costs of this program via the Ratio Value allocation methodology are redistributed to other OMH programs in the CFR.

Units of Service: Count the number of recipients utilizing these funds.

The use of the client service dollars is a primary component of care management and ACT programs. The purpose of service dollars is to provide funds for immediate or emergency needs of clients. The Contractor is committed to ensuring that the use and documentation of client service dollars complies with all regulatory guidelines set forth by NYS OMH.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "B"
BUDGET

The current amounts of allowable expenditures, for the term from January 1, 2022 through December 31, 2026, shall not exceed the listed amounts, reimbursable as described in this Agreement. Such amounts are subject to the appropriation of funds by the United States, the State of New York, and/or the County for such purposes and subject to local, State, and/or Federal approval. The parties to this Agreement recognize and agree reimbursement of actual expenditures for the activities provided under the terms of this Agreement are subject to the approval of line-item budgets by the Offices of the New York State Department of Mental Hygiene and/or the County of Westchester Department of Community Mental Health. The Agency agrees to provide such line-item budgets for the terms and amounts as may be specified by the County of Westchester Department of Community Mental Health. Notwithstanding the forgoing, it is further understood by the parties to this Agreement in no event shall reimbursement collectively exceed the amount of ONE MILLION ONE HUNDRED FORTY TWO THOUSAND NINE HUNDRED NINETY SEVEN DOLLARS (\$1,142,997.00), as specified in Paragraph "3" of this Agreement, which shall be payable as follows:

	REIMBURSEMENT for the term January 1, 2022 through December 31, 2026
	<u>Not-To-Exceed</u>
Mental Health Services:	
-Assertive Community Treatment (ACT) Program	\$584,464
-Clinic Treatment	\$375,423
-Assertive Community Treatment (ACT) Service Dollars	\$183,110
(Per the Annualized detailed Program Budgets on the next pages)	
TOTAL	\$1,142,997

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "B"
BUDGET (Continued)

Agency: Westchester County Health Care Corporation
Program Name: Assertive Community Treatment (ACT) Program
Program Code: 0800
Funding Code: 034J
Annualized State Aid Amount: \$106,880

Budget Staffing

Title	FTE	Personal Service Cost
Registered Nurse	1	\$134,603
Director / Team Leader	1	\$115,928
Psychiatrist	1	\$184,995
Substance Abuse Specialist	1	\$74,610
Family Specialist	1	\$94,193
Program Assistant	1	\$51,211
Vocational Specialist	1	\$67,305
Wellness Specialist	1	\$91,449
Total	8	\$814,294

Budget Expenses

Personal Services	\$814,294
Vacation Leave Accruals	\$0
Fringe Benefits	\$431,576
OTPS (provide breakdown below)	\$694,899
Equipment	\$0
Property	\$0
Agency Administration @ 15%	\$291,115
Total Expense	\$ 2,231,884

Budget Revenue (total revenue must equal operating cost)

Medicaid	\$1,167,651
Medicare	\$
Third Party Health Ins	\$
Other (provide details) Agency Match/Contribution	\$957,353
State Aid	\$106,880
Total Revenue	\$2,231,884

OTPS Breakdown	Cost
Article 28 Hosp. Stepdown Costs:	
ICR – Stepdown Costs	\$584,923
Contracted Service & Other	\$109,976
Transportation Costs	
Total OTPS	\$694,899

Total State Aid for 5 years after including anticipated COLA increase is \$584,464

SCHEDULE "B"
BUDGET (Continued)
ANNUALIZED DETAILED PROGRAM BUDGET

Agency: Westchester County Health Care Corporation
Program Name: Clinic Treatment
Program Code: 2100
Funding Code: 001A
Annualized State Aid Amount: \$68,653

Budget Staffing

Title	FTE	Personal Service Cost
Behavioral Health Therapist	5	\$370,074
BH Support Specialist	2	\$97,759
Psychiatrist	4.675	\$1,158,466
Psychologist	1.600	\$187,990
Clinic Coordinator	1	\$76,615
Total		\$1,890,904

Budget Expenses

Personal Services	\$1,890,904
Vacation Leave Accruals	\$0
Fringe Benefits	\$756,362
OTPS (provide breakdown below)	\$1,485,433
Equipment	\$0
Property	\$0
Agency Administration	\$619,905
Total Expense	\$4,752,604

Budget Revenue (total revenue must equal operating cost)

Medicaid	\$91,094
Medicaid Managed Care	\$796,612
Medicare	\$361,420
Third Party Health Ins	\$1,085,454
Self-Pay	\$39,406
Other (provide details) Agency Match/Contribution	\$2,309,965
State Aid	\$68,653
Total Revenue	\$4,752,604

OTPS Breakdown	Cost
Article 28 Hosp Stepdown Costs:	
ICR – Stepdown costs	\$1,288,726
Contracted Service and Other Costs	\$196,707
Total OTPS	\$1,485,433

Total State Aid for 5 years after including anticipated COLA increase is \$375,423

SCHEDULE "B"
BUDGET (Continued)
ANNUALIZED DETAILED PROGRAM BUDGET

Agency: Westchester County Health Care Corporation
Program Name: Assertive Community Treatment (ACT) Service Dollars
Program Code: 8810
Funding Code: 034J
Annualized State Aid Amount: \$33,485

Budget Staffing

Title	FTE	Personal Service Cost
Total		

Budget Expenses

Personal Services	
Vacation Leave Accruals	
Fringe Benefits	
OTPS (provide breakdown below)	\$33,485
Equipment	
Property	
Agency Administration	
Total Expense	

Budget Revenue (total revenue must equal operating cost)

Medicaid	
Medicaid Managed Care	
Medicare	
Third Party Health Ins	
Other (provide details)	
State Aid	\$33,485
Total Revenue	\$33,485

OTPS Breakdown	Cost
MTA cards	\$3,300
TD Bank Visa cards	\$30,185
Total OTPS	\$33,485

Total State Aid for 5 years after including anticipated COLA increase is \$183,110

SCHEDULE "C"
STANDARD INSURANCE PROVISIONS

1. Prior to commencing work, and throughout the term of the Agreement, the Contractor shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. The Contractor shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Contractor and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Contractor shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Contractor to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Contractor concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Contractor's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Contractor maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

2. The Contractor shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Agreement):

- (a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Workers' Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

- (b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:
- (i) Premises - Operations.
 - (ii) Broad Form Contractual.
 - (iii) Independent Contractor and Sub-Contractor
 - (iv) Products and Completed Operations.
- (c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

All contracts involving the use of explosives, demolition and/or underground work shall provide proof that XCU is covered.

- (d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:
- (i) Owned automobiles.
 - (ii) Hired automobiles.

(iii) Non-owned automobiles.

3. All policies of the Contractor shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Contractor.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "D"

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability company, or corporation, that either:

- 1.) meets the following requirements:
 - a. is at least 51% owned by one or more persons of color or women;
 - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
 - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
 - d. is an enterprise authorized to do business in this state which is independently owned and operated.
- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

_____ No

_____ Yes

Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____ Women

_____ Persons of Color *(please check off below all that apply)*

_____ Black persons having origins in any of the Black African racial groups

_____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

_____ Native American or Alaskan native persons having origins in any of the original peoples of North America

_____ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: _____

Address: _____

Name and Title of person completing questionnaire: _____

Signature: _____

Notary Public

Date

Contract #: _____
Name of Contractor: _____

SCHEDULE "E"
REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

A potential County contractor must complete this form as part of the proposed County contract.

1.) Are any of the employees that the Contractor will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

2.) Are any of the owners of the Contractor or their spouses a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

3.) Do any County officers or employees have an **interest¹** in the Contractor or in any approved subcontractor that will be used for this contract?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

By signing below, I hereby certify that I am authorized to complete this form for the Contractor.

Signature: _____

Name: _____

Title: _____

Date: _____

¹ "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:

- 1.) His/her spouse, children and dependents, except a contract of employment with the County;
- 2.) A firm, partnership or association of which such officer or employee is a member or employee;
- 3.) A corporation of which such officer or employee is an officer, director or employee; and
- 4.) A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

SCHEDULE "F"

CRIMINAL BACKGROUND DISCLOSURE INSTRUCTIONS

Pursuant to Executive Order 1-2008, the County is required to maintain a record of criminal background disclosure from all persons providing work or services in connection with any County contract, including leases of County-owned real property and licenses:

- a.) If any of the persons providing work or services to the County in relation to a County contract are not subject to constant monitoring by County staff while performing tasks and/or while such persons are present on County property pursuant to the County contract; and
- b.) If any of the persons providing work or services to the County in relation to a County contract may, in the course of providing those services, have access to sensitive data (for example SSNs and other personal/secure data); facilities (secure facilities and/or communication equipment); and/or vulnerable populations (for example, children, seniors, and the infirm).

In those situations, the persons who must provide a criminal background disclosure ("Persons Subject to Disclosure") include the following:

- a.) Consultants, Contractors, Licensees, Lessees of County-owned real property, their principals, agents, employees, volunteers or any other person acting on behalf of said Contractor, Consultant, Licensee, or Lessee who is at least sixteen (16) years old, including but not limited to Subconsultants, Subcontractors, Sublessees, or Sublicensees who are providing services to the County, and
- b.) Any family member or other person, who is at least sixteen (16) years old, residing in the household of a County employee who lives in housing provided by the County located on County property.

Under Executive Order 1-2008, it is the duty of every County Consultant, Contractor, Licensee, or Lessee to inquire of each and every Person Subject to Disclosure and disclose whether they have been convicted of a crime or whether they are subject to pending criminal charges, and to submit this form with that information.¹ Accordingly, you are required to complete the attached Criminal Background Disclosure Form and Certification.

Please note that under no circumstances shall the existence of a language barrier serve as a basis for the waiver of or an exception from the disclosure requirements of Executive Order 1-2008. If translation services are required by the Consultant, Contractor, Licensee, or Lessee to fulfill this obligation, it shall be at the sole cost and expense of the Consultant, Contractor, Licensee, or Lessee.

Please also note that the conviction of a crime(s) and/or being subject to a pending criminal

¹ For these disclosures, a "crime" or "pending criminal charge" includes all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State.

charge(s) will not automatically result in a denial of a person's right to work on a County contract, right to be on County property, or license, but may, if the County determines that the prior conviction(s) or pending criminal charge(s) create an unacceptable risk. However, if a person fails to list or falsifies any part of his/her conviction history or any pending criminal charge(s) for any reason, he/she may be prohibited from working or being on County property without any risk assessment. If it is later determined that a Person Subject to Disclosure failed to disclose a criminal conviction or pending criminal charge for any reason, his/her right to work on a County contract, be on County property, or license may be terminated at any time.

Please further note that, pursuant to Executive Order 1-2008, and subject to the applicable provisions of New York Correction Law §§ 752 and 753, the County has the right to bar a Person Subject to Disclosure from providing work or services to the County or from being on County property if any such person has:

- a.) A conviction of a crime(s);
- b.) A pending criminal proceeding for a crime(s); or
- c.) Refused to answer questions concerning his/her criminal background

Please finally note that any failure by a County Consultant, Contractor, Licensee, or Lessee to comply with the disclosure requirements of Executive Order 1-2008 may be considered by the County to be a material breach and shall be grounds for immediate termination by the County of the related County contract.

Exemptions

Executive Order 1-2008 exempts from the aforementioned disclosure requirements Persons Subject to Disclosure:

- a.) for whom the County has already conducted a background check and issued a security clearance that is in full force and effect; and
- b.) for whom another state or federal agency having appropriate jurisdiction has conducted a security and/or background clearance or has implemented other protocols or criteria for this purpose that apply to the subject matter of a County contract that is in full force and effect.

If you are claiming an exemption for one or more Persons Subject to Disclosure, you must notify the Procuring Officer². The Procuring Officer will then determine whether the Person(s) Subject to Disclosure are actually exempt, and provide written notification of his/her determination. If the Procuring Officer determines that a Person Subject to Disclosure is not exempt, the Procuring Officer will notify you of that determination, and you will have to include disclosures for that person on your Criminal Background Disclosure Form and Certification.

² Procuring Officer" shall mean the head of the department or the individual or individuals authorized by the head(s) of the department(s) undertaking the procurement and with respect to those matters delegated to the Bureau of Purchase and Supply pursuant to Section 161.11(1)(a) of the Laws of Westchester County, the Purchasing Agent.

Subconsultants, Subcontractors, Sublessees, or Sublicensees

Under Executive Order 1-2008, it is your duty to ensure that any and all approved subconsultants, subcontractors, sublessees, or sublicensees complete and submit the attached Criminal Background Disclosure Form and Certification for all of their respective Persons Subject to Disclosure. This must be done before such a subconsultant, subcontractor, sublessees, or sublicensees can be approved to perform work on a contract.

New Persons Subject to Disclosure

Under Executive Order 1-2008, you have a **CONTINUING OBLIGATION** to maintain the accuracy of the Criminal Background Disclosure Form and Certification (and any accompanying documentation) for the duration of this contract, including any amendments or extensions thereto. Accordingly, it is your duty to complete and submit an updated Criminal Background Disclosure Form and Certification whenever there is a new Person Subject to Disclosure for this contract. **NO NEW PERSON SUBJECT TO DISCLOSURE SHALL PERFORM WORK OR SERVICES OR ENTER ONTO COUNTY PREMISES UNTIL THE UPDATED CRIMINAL BACKGROUND DISCLOSURE FORM AND CERTIFICATION IS FILED WITH THE PROCURING OFFICER.** You shall also provide the County with any other updates that may be necessary to comply with the disclosures required by Executive Order 1-2008.

*PLEASE CONTINUE TO THE
Criminal Background Disclosure Form and Certification
BEGINNING ON THE NEXT PAGE*

Contract #: _____
Name of Consultant, Contractor, Lessee, or Licensee: _____

CRIMINAL BACKGROUND DISCLOSURE
FORM AND CERTIFICATION

If this form is being completed by a subconsultant, subcontractor, sublessee, or sublicensee, please consider all references in this form to "consultant, contractor, lessee, or licensee" to mean "subconsultant, subcontractor, sublessee, or sublicensee" and check here: _____

I, _____, certify that I am a principal or a
(Name of Person Signing Below)

representative of the Consultant, Contractor, Lessee, or Licensee and I am authorized to complete and execute this Criminal Background Disclosure Form and Certification. I certify that I have asked each Person Subject to Disclosure the following questions:

- **Have you or your company ever been convicted of a crime (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State) including, but not limited to, conviction for commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property?**

- **Are you or your company subject to any pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State)?**

I certify that the names and titles of Persons Subject to Disclosure who refused to answer either of the questions above are:

1. _____
2. _____
3. _____
4. _____
5. _____

(If more space is needed, please attach separate pages labeled "REFUSED to Answer - Continued.")

I certify that the names and titles of Persons Subject to Disclosure who answered “Yes” to either of the questions above are:

1. _____
2. _____
3. _____
4. _____
5. _____

(If more space is needed, please attach separate pages labeled “YES Answers - Continued.”)

Each Person Subject to Disclosure listed above who has either **been convicted of a crime(s)** and/or is **subject to a pending criminal charge(s)** must answer additional questions. Those questions are below.

A Person Subject to Disclosure who has been convicted of a crime(s) must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please list all criminal convictions along with a brief description of the crime(s) (including all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please provide the date and place of each conviction.
- 4.) Please provide your age at the time of each crime for which you were convicted.
- 5.) Please provide the legal disposition of each case.
- 6.) Please provide any information either produced by yourself or someone on your behalf in regards to your rehabilitation and good conduct.

A Person Subject to Disclosure who is subject to a pending criminal charge(s) must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property and if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to

vulnerable populations.

- 2.) Please identify all pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please briefly describe the nature of the pending charges and the date upon which it is alleged that a crime was committed.

I hereby certify that all of the information provided herein (and in any and all attachments) is true and accurate and that all disclosures required by Executive Order 1-2008 and this Criminal Background Disclosure Form and Certification have been completed. By my signature below, I hereby affirm that all of the facts, statements and answers contained herein (and in any and all attachments) are true and correct. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing further consideration of my being utilized under this contract.

It is understood and agreed that no Person Subject to Disclosure shall perform work or services or enter onto County property until this required Criminal Background Disclosure Form and Certification is filed with the Procuring Officer.

It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to perform work or provide services under this contract after filing of this Criminal Background Disclosure Form and Certification with the Procuring Officer, such new Persons Subject to Disclosure shall not perform work or provide services or enter into County property until an updated Criminal Background Disclosure Form and Certification has been filed with the Procuring Officer.

It is further understood and agreed that the consultant, contractor, lessee, or licensee has a continuing obligation to maintain the accuracy of the Criminal Background Disclosure Form and Certification for the duration of this contract, including any amendments or extensions thereto, and shall provide any updates to the information to the County as necessary to comply with the requirements of Executive Order 1-2008.

Signature: _____

Name: _____

Title: _____

Date: _____

Notary Public

Date

SCHEDULE "G"

**CERTIFICATION REGARDING BUSINESS DEALINGS
WITH NORTHERN IRELAND**

A. The Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor (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 Principles.

B. For purposes of this Certification, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

(1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

(2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

(3) ban provocative religious or political emblems from the workplace;

(4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

(5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

(6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;

(7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;

(8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

(9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

C. For purposes of this Certification, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster, and administered from London and/or from Stormont.

D. The Contractor agrees that the warranties and representation in paragraph "A" are material conditions of this Agreement. If the County receives information that the Contractor is in violation of paragraph "A," the County shall review such information and give the Contractor opportunity to respond. If the County finds that such a violation has occurred, the County may declare the Contractor in default, and/or terminate this Agreement. In the event of any such termination, the County may procure the supplies, services or work from another source in accordance with applicable law. The Contractor shall pay to the County the difference between

the contract price for the uncompleted portion of this Agreement and the cost to the County of completing performance of this Agreement either by itself or by engaging another contractor. If this is a contract other than a construction contract, the Contractor shall be liable for the difference in price if the cost of procurement from another source is greater than what the County would have paid the Contractor plus any reasonable costs the County incurs in any new procurement and if this is a construction contract, the County shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Agreement. In addition, the Contractor may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented by counsel. The rights and remedies of the County hereunder shall be in addition to, and not in lieu of, any rights and remedies the County has pursuant to this Agreement or by operation of law or in equity.

Agreed:

Name of Contractor: _____

Signature: (Authorized Representative) _____

Title: _____ Date: _____

DRAFT

SCHEDULE "H"

[INTENTIONALLY OMITTED]

DRAFT

SCHEDULE "I"

Westchester County Vendor Direct Program Frequently Asked Questions

1. WHAT ARE THE BENEFITS OF THE ELECTRONIC FUNDS TRANSFER (EFT) ASSOCIATED WITH THE VENDOR DIRECT PROGRAM?

There are several advantages to having your payments automatically deposited into your designated bank account via EFT:

Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your bank account is more secure.

You save time – Money deposited into your bank account is automatic. You save the time of preparing and delivering the deposit to the bank. Additionally, the funds are immediately available to you.

2. ARE MY PAYMENTS GOING TO BE PROCESSED ON THE SAME SCHEDULE AS THEY WERE BEFORE VENDOR DIRECT?

Yes.

3. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?

Payments are deposited two business days after the voucher/invoice is processed. Saturdays, Sundays, and legal holidays are not considered business days.

4. HOW WILL I KNOW WHEN THE PAYMENT IS IN MY BANK ACCOUNT AND WHAT IT IS FOR?

Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on your check stub, and will contain the date that the funds will be credited to your account.

5. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT RECEIVED?

Please contact your Westchester County representative as you would have in the past if there were a discrepancy on a check received.

6. WHAT IF I DO NOT RECEIVE THE MONEY IN MY DESIGNATED BANK ACCOUNT ON THE DATE INDICATED IN THE E-MAIL?

In the unlikely event that this occurs, please contact the Westchester County Accounts Payable Department at 914-995-4708.

7. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?

Whenever you change any information or close your account a new Vendor Direct Payment Authorization Form must be submitted. Please contact the Westchester County Accounts Payable Department at 914-995-4708 and we will e-mail you a new form.

8. WHEN COMPLETING THE PAYMENT AUTHORIZATION FORM, WHY MUST I HAVE IT SIGNED BY A BANK OFFICIAL IF I DON'T INCLUDE A VOIDED CHECK?

This is to ensure the authenticity of the account being set up to receive your payments.

Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

GENERAL INSTRUCTIONS

Please complete both sections of the Vendor Direct Payment Authorization Form and forward the completed form (along with a voided check for the account to which you want your payments credited) to: Westchester County Department of Finance, 148 Martine Ave, Room 720, White Plains, NY 10601, Attention: Vendor Direct. Please see item 14 below regarding attachment of a voided check.

Section I - VENDOR INFORMATION

1. Provide the name of the vendor as it appears on the W-9 form.
2. Enter the vendor's Taxpayer ID number or Social Security Number as it appears on the W-9 form.
3. Enter the vendor's complete primary address (not a P.O. Box).
4. Provide the name and telephone number of the vendor's contact person.
5. Enter the business e-mail address for the remittance notification. **THIS IS VERY IMPORTANT.** This is the e-mail address that we will use to send you notification and remittance information two days prior to the payment being credited to your bank account. We suggest that you provide a group mailbox (if applicable) for your e-mail address. You may also designate multiple e-mail addresses.
6. Please have an authorized Payee/Company official sign and date the form and include his/her title.

Section II - FINANCIAL INSTITUTION INFORMATION

7. Provide bank's name.
8. Provide the complete address of your bank.
9. Enter your bank's 9 digit routing transit number.
10. Indicate the type of account (check one box only).
11. Enter the vendor's bank account number.
12. Enter the title of the vendor's account.
13. Provide the name and telephone number of your bank contact person.
14. If you are directing your payments to a Savings Account OR you can not attach a voided check for your checking account, this line needs to be completed and signed by an authorized bank official. **IF YOU DO ATTACH A VOIDED CHECK FOR A CHECKING ACCOUNT, YOU MAY LEAVE THIS LINE BLANK.**

SCHEDULE "J"

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

1) In order to assure compliance with 2 C.F.R. Part 180, 2 C.F.R. Part 376, and other applicable law, the Contractor certifies that it, its principals, and affiliates

(a) Are not presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

(b) Have not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, including any violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) above; and

(d) Have not within a 3-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the Contractor is unable to certify to any of the statements in this paragraph, the Contractor shall attach an explanation to this certification.

Contracting Entity's Name

Authorized Signature

Name:
Title:
Date:

SCHEDULE "K"

Certification Regarding Drug-Free Workplace Requirements

The Contractor certifies that it will provide a drug-free workplace, in compliance with 41 U.S.C. 8101 et seq., 48 C.F.R. Subpart 23.5, and 2 C.F.R. Part 382. The Contractor certifies that it will make a good faith effort, on a continuing basis, to maintain a drug-free workplace, including by taking certain specific measures, as follows:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment on any federally-funded contract, the employee will:

- (1) Abide by the terms of the statement; and,
- (2) Notify the employer in writing of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(c) Making it a requirement that each employee to be engaged in the performance of any federally-funded contract be given a copy of the statement required by paragraph (a);

(d) Establishing an ongoing drug-free awareness program to inform employees about:

- (1) the dangers of drug abuse in the workplace;
- (2) the Contractor's policy of maintaining a drug-free workplace;
- (3) any available drug counseling, rehabilitation, and employee assistance programs; and,
- (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(e) Notifying the County and the Federal agency that provided the Funds within ten days after receiving notice under subparagraph (b)(2) from an employee or otherwise receiving actual notice of such conviction, with such notification:

- (1) being in writing;
- (2) including the employee's position title;
- (3) including the identification number(s) of each affected award of Federal funds;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with applicable law; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) The Contractor shall insert in the space provided below, or include as a separate attachment, a listing of the site(s) for the performance of work done in connection with the specific grant:

Place(s) of Performance (Street address, city, county, State, zip code)

Contracting Entity's Name

Authorized Signature

Name:

Title:

Date:

SCHEDULE "L"

Certification Regarding Lobbying
Certification for Contracts, Grants, Loans,
and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contracting Entity's Name

Authorized Signature

Name:
Title:
Date:

NOTE: If Standard Form-LLL, "Disclosure Form to Report Lobbying," is required, it can be obtained from Appendix B to 45 C.F.R. Part 93.

SCHEDULE "M"
HIPAA Business Associate
Terms

Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, Public Law 104-191, as codified at 42 U.S.C. § 1320d, including all pertinent regulations set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (hereinafter the "HIPAA Privacy Rule") 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 of 2009, as codified at 42 U.S.C.A. prec. § 17901 (the "HITECH Act"), part of the American Recovery and Reinvestment Act of 2009 ("ARRA"), 42 U.S.C. §§ 17921, 17931-17932 and 17934 (Dec. 28, 2000), the **COUNTY OF WESTCHESTER** ("Covered Entity") and **WESTCHESTER COUNTY HEALTH CARE CORPORATION**, with an office at Executive Offices at Taylor Care Center, C-2, Valhalla, New York 10595 ("Business Associate") (jointly "the Parties") agree that the following terms address the requirements of the HIPAA Privacy Rule and the HITECH Act with respect to "business associates," as that term is defined in the HIPAA Privacy Rule.

Specifically, the following terms are intended to ensure that the Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) for "Protected Health Information" the Business Associate may create, receive, use, or disclose in connection with certain functions, activities, or services (collectively "services") to be provided by Business Associate to Covered Entity pursuant to this Agreement.

I. Definitions

"Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

"Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

"Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Other terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations, including those at 45 CFR Parts 160 and 164, as amended by the HITECH Act and as otherwise may be amended from time to time.

II. Obligations and Activities of the Business Associate:

(a) The Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Schedule or as required by law.

(b) The Business Associate agrees to use the appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Schedule 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 the Covered Entity pursuant to this Agreement.

(c) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Schedule.

(d) The Business Associate shall be directly responsible for full compliance with the relevant requirements of both the HIPAA Privacy Rule and Security Rule.

(e) The Business Associate shall implement and maintain reasonable and appropriate safeguards as are necessary to prevent the use, disclosure or availability of Protected Health Information or electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity, other than as permitted by this Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Health Information in accordance with 45 C.F.R. §§ 164.308, 164.310 and 164.312. Business Associate shall comply with the policies and procedures and documentations requirements of the HIPAA Security Rule, including but not limited to, 45 C.F.R. § 164.316 and the HITECH Act, 42 U.S.C. § 17931.

(f) The Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. This provision shall not, however, be deemed to provide Business Associate with a right to assign or subcontract its responsibilities, except as specifically provided in the Agreement. In the event Business Associate creates, maintains, receives or transmits electronic Protected Health Information on behalf of Covered Entity, Business Associate shall implement the safeguards required by Section 4.b. above with respect to electronic Protected Health Information.

(g) Duties of Business Associate Involving Breach or Unauthorized Access, Use or Disclosure of Protected Health Information.

(i) A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to the Business Associate, or by exercising reasonable diligence would have been known, to any person, other than the person committing the

breach, who is an employee, officer or other agent of Business Associate (determined in accordance with the federal common law of agency).

(ii) The Business Associate shall notify the Covered Entity within five (5) business days after discovery of any access, use or disclosure of Protected Health Information not permitted by this Agreement, any security incident involving electronic Protected Health Information and any Breach of Unsecured Protected Health Information of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take any prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

(iii) The Business Associate shall provide the following information to Covered Entity within ten (10) business days of discovery of a Breach except when, despite all reasonable efforts of Business Associate to obtain the information required, circumstances beyond the control of the Business Associate necessitate additional time. Under such circumstances, Business Associate shall provide to Covered Entity the following information as soon as possible and without unreasonable delay, but in no event later than forty-five (45) calendar days from the date of discovery of a Breach:

- (A) the date of the breach;
- (B) the date of the discovery of the breach;
- (C) a general description of events leading up to and surrounding the breach;
- (D) a description of the types of unsecured PHI that were involved;
- (E) a listing of the identification of each individual and/or class of individuals whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed; and
- (F) any other details necessary to complete an assessment of the risk of harm to the individual.

(h) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.

(i) The Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524, if the business associate has protected health information in a Designated Record Set.

(j) The Business Associate 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 the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity, if the Business Associate has protected health information in a Designated Record Set.

(k) The Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Entity available to the Covered Entity, or to the Secretary of Health and Human Services, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with the Privacy Rule.

(l) The Business Associate agrees to document such disclosures of Protected Health Information 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.

(m) The Business Associate agrees to provide to the Covered Entity or an Individual, in time and manner designated by the Covered Entity, information collected in accordance with this Agreement, to permit the 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.

III. Permitted Uses and Disclosures by Business Associate

(a) General Use and Disclosure Provisions

Except as otherwise limited in this Schedule, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(b) Specific Use and Disclosure Provisions:

- (i) Except as otherwise limited in this Schedule, the Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (ii) Except as otherwise limited in this Schedule, the Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (iii) Except as otherwise limited in this Schedule, the Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (iv) The Business Associate may use Protected Health Information to report violations of

law to appropriate federal and State authorities, consistent with 45 CFR 164.502(j)(1).

IV. Prohibited Uses and Disclosures by Business Associate.

(a) Business Associate shall not use or disclose Protected Health Information for marketing purposes or any other purpose not permitted by this Agreement or the Privacy Rule or HITECH Act.

(b) Business Associate shall not disclose Protected Health Information to a health plan for payment or health care operations purposes if the individual patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates as required by 42 U.S.C. § 17935(a).

(c) Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, as described in 42 U.S.C. § 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.

V. Obligations of Covered Entity

Provisions for the Covered Entity To Inform the Business Associate of Privacy Practices and Restrictions

(a) The Covered Entity shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information.

(b) The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information.

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

VI. Permissible Requests by Covered Entity

The Covered Entity shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except if the Business Associate will use or disclose protected health information for, and the Agreement includes provisions for, data aggregation or management and administrative activities of Business Associate.

VII. Breach of Provisions

(a) Upon the Covered Entity's knowledge of a material breach by Business Associate of the terms of this Schedule, Covered Entity shall

- (i) provide an opportunity for the Business Associate to cure the breach or end the violation. Covered Entity shall terminate the Agreement if the Business Associate does not cure the breach and end the violation within the time specified by Covered Entity;
- (ii) immediately terminate the Agreement if the Business Associate has breached a material term of this Schedule and cure is not possible; or
- (iii) If neither termination nor cure are feasible, the Covered Entity shall report the violation to the Secretary.

(b) Effect of Termination.

- (i) Except as provided in paragraph (b)(ii) below, upon termination of the Agreement, for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.
- (ii) In the event that the Business Associate determines that returning or destroying the Protected Health Information is infeasible, the Business Associate shall provide to the 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, the Business Associate shall extend the protections of this Schedule 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 Business Associate maintains such Protected Health Information.

VIII. Miscellaneous

(a) Regulatory References. A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(c) Survival. The respective rights and obligations of the Business Associate under Sections II, III, and IV of this Schedule shall survive the termination of the Agreement.

(d) Interpretation. Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits the Covered Entity to comply with the HIPAA Privacy Rule.

(e) If anything in this Schedule conflicts with a provision of any other agreement on this matter, this Schedule is controlling.

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SCHEDULE "N"

[INTENTIONALLY OMITTED]

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