

PROGRAM FOR ALL INCLUSIVE CARE OF THE ELDERLY (PACE)
MODEL CONTRACT

STATE AGENCY (Name and Address):

NYS Department of Health
Office Health Insurance Programs
Division of Managed Care
and Program Evaluation
Corning Tower
Empire State Plaza
Albany, New York 12237

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE: 12000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S)

Managed Long Term Care Plan

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

FROM: January 1, 2007

TO: December 31, 2009

MUNICIPALITY NO. (if applicable):

FUNDING AMOUNT FOR CONTRACT TERM
N/A

STATUS:

CONTRACTOR IS IS NOT A
SECTARIAN ENTITY
CONTRACTOR IS IS NOT A
NOT-FOR-PROFIT ORGANIZATION
CONTRACTOR IS IS NOT A
NY STATE BUSINESS ENTERPRISE.

(x) IF MARKED HERE, THIS CONTRACT IS
RENEWABLE FOR 2 ADDITIONAL
ONE-YEAR PERIOD(S) AT THE SOLE
OPTION OF THE STATE AND SUBJECT TO
APPROVAL OF THE OFFICE OF THE
STATE COMPTROLLER.

BID OPENING DATE: N/A Contractor is legislatively named in accordance with 4403-f.

APPENDICES ATTACHED AND PART OF THIS CONTRACT

<u>X</u>	APPENDIX A-1	PACE Program Agreement
<u>X</u>	APPENDIX A	Standard Clauses for all New York State Contracts
<u> </u>	APPENDIX B	Reserved
<u>X</u>	APPENDIX C	Certification Regarding Lobbying
<u>X</u>	APPENDIX D	Standard Form LLL Disclosure of Lobbying Activities
<u>X</u>	APPENDIX E-1	Proof of Workers' Compensation Coverage
<u>X</u>	APPENDIX E-2	Proof of Disability Insurance Coverage
<u>X</u>	APPENDIX F	Definitions
<u>X</u>	APPENDIX G	Regulatory Agreement
<u>X</u>	APPENDIX X	Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods.)

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

CONTRACTOR SIGNATURE

STATE AGENCY SIGNATURE

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

State Agency Certification:

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

STATE OF NEW YORK)

County of _____) SS:

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

(Notary) _____

ATTORNEY GENERAL’S SIGNATURE

STATE COMPTROLLER’S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

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APPENDICES

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CONTRACT REGARDING PACE

This CONTRACT is hereby made by and between the State of New York Department of Health, hereinafter called the “Department” and the (*name of contractor, with d/b/a as necessary*) hereinafter called the “Contractor” identified on the face page hereof.

WHEREAS, the Department is the single State agency charged with the responsibility for administration of the New York State Medical Assistance Program (Medicaid), Title 11 of Article 5 of the Social Services Law;

WHEREAS, the Contractor has been certified as a managed long term care plan pursuant to section 4403-f of the Public Health Law;

WHEREAS, the Contractor, the Centers for Medicare & Medicaid Services (CMS) and the Department have entered into a Program Agreement for a Program of All Inclusive Care for the Elderly (PACE) conformance with PACE legislation pursuant to Section 1934 of the Social Security Act and implementing regulations at 42 CFR 460; and

WHEREAS, the Contractor represents that the Contractor is able and willing to administer a PACE and the Department is desirous of having the Contractor administer a PACE.

WHEREAS, the Contractor has entered into a *Regulatory Agreement* with the Superintendent of Insurance regarding certain statutory and regulatory requirements set forth in Section 4403-f of Article 44 of the Public Health Law and stating the terms and conditions under which the Contractor may operate a managed long-term care plan and

WHEREAS, such *Regulatory Agreement* between the Contractor and the Superintendent of Insurance is *incorporated in* and made part of this Contract;

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements hereinafter set forth, the Parties hereto agree as follows:

ARTICLE I

TERM OF CONTRACT

Term: The Contract shall begin on and end on the dates identified on the face page hereof. The Contract shall be renewed or terminated as provided in Article VII.

ARTICLE II

APPROVED PACE

The Contractor agrees to operate in compliance with this Contract and with State law and regulation to the extent they are consistent with federal PACE law and regulation and the PACE Program Agreement attached hereto as Appendix A-1 or as it may be amended. The Contractor agrees to abide by the instructions of the Department regarding the applicability of Article 44 of Public Health Law, and implementing Regulations.

ARTICLE III

OBLIGATIONS OF THE CONTRACTOR

A. Enrollment

1. The Contractor shall accept applications for enrollment from eligible Applicants in the order they are received without selecting among applications and without regard to the rate the Contractor will receive for such eligible person.
2. Upon prior written notice to the Department, the Contractor may suspend enrollment of Applicants when the Contractor determines it has insufficient or inadequate resources to provide or arrange for the safety and effective delivery of Covered Services to additional Enrollees.
3. The Department shall have the right, upon notice to the LDSS, to limit, suspend, or terminate enrollment activities by the Contractor and/or enrollment into the managed long term care plan upon 15 days written notice to the Contractor. The written notice shall specify the action(s) contemplated and the reason(s) for such action(s) and shall provide the Contractor with an opportunity to submit additional information that would support the conclusion that limitation, suspension or termination of enrollment activities or enrollment in the Contractor's managed long term care plan is unnecessary. Such reasons may include, but are not limited to substantial breach of a material provision of the Contract, the PACE Program Agreement, provider network insufficiency, financial distress of the Contractor and violation of federal or State laws governing delivery of services under the PACE Program Agreement, this Contract by the Contractor or its

subcontractor network providers. The Contractor shall have an opportunity to cure within the 15-day notice period. The Department reserves the right to suspend enrollment immediately in situations involving imminent danger to the health and safety of Enrollees. Nothing in this paragraph limits other remedies available to the Department under this Agreement.

B. Continuation of Enrollment

The Contractor shall conduct an annual reassessment in accordance with 42 CFR Section 460.104(c)(2), which shall include the completion of the patient assessment tool specified by the Department. This assessment must be conducted at least annually, no earlier than 30 days prior to the anniversary date of the Participant's enrollment into the PACE program.

The contractor will provide the Local Department of Social Services with the patient assessment tool specified by the Department completed at the time of the annual reassessment, the results of the assessment and recommendations regarding continued eligibility for enrollment. This information will be provided within 5 business days of the completion of the annual reassessment. Pursuant to the annual recertification requirement at 42 CFR Section 460.160(b) the LDSS will certify continued need for nursing facility level of care using the patient assessment tool and any additional information required to make the determination.

If an Enrollee is no longer eligible for nursing home level of care using the assessment tool prescribed by the Department, in accordance with 42 CFR Section 460.160(b)(2) , the LDSS will determine continued eligibility using the criteria articulated in Appendix E of the PACE Program Agreement.

Disagreements between the Contractor and the LDSS regarding either the eligibility for nursing home level of care or the continued eligibility criteria shall be resolved in accordance with the dispute resolution process mutually agreed upon between the Contractor and the LDSS.

C. Marketing and Enrollee Information

1. The Contractor shall submit for approval to the Department, in consultation with the State Office for Aging and the State Insurance Department, all marketing information and materials and its marketing plan including revisions and updates prior to implementation or distribution.
2. The Contractor shall comply with all requests from the Department for periodic reports on the performance of its responsibilities pursuant to this section. The Contractor shall submit these reports within thirty (30) days of receiving the requests from the Department.
3. The Contractor shall provide the State Consumer guide to all potential Enrollees.

D. Quality Assurance and Performance Improvement Program

The Contractor must have a Department approved quality assurance program. The Contractor agrees to submit any proposed material revisions to the approved quality plan for Department approval prior to implementation of the revised plan.

ARTICLE IV PAYMENT

A. Capitation Payments

Compensation to the Contractor shall consist of a monthly capitation payment for each Enrollee.

1. Rates shall be determined in compliance with 42 CFR 460.182 (b) (1), and section 4403-f of New York Public Health Law.
2. The monthly Capitation Rates are set forth in the PACE Program Agreement that is attached hereto as Appendix A-1 and is incorporated herein.
3. The monthly capitation payment to the Contractor shall constitute full and complete payments to the Contractor for all services that the Contractor provides pursuant to this Contract.
4. Capitation Rates shall remain in effect until such time as modifications are made pursuant to Sections B and C of this Article.

B. Modification of Rates during Contract Period

1. Any technical modification to Capitation Rates, during the term of the Contract as agreed to by the Contractor, including but not limited to changes in premium groups, shall be deemed incorporated into this Contract without further action by the parties upon approval of such modifications by the Department.
2. Any other modification to Capitation Rates, as agreed to by the Department, and the Contractor during the term of the Agreement shall be deemed incorporated into this Contract without further action by the parties upon approval of such modifications by the Department and the State Division of the Budget.
3. In the event that the Department and the Contractor fail to reach agreement on modifications to the monthly Capitation Rates, the Department will provide formal written notice to the Contractor of the amount and effective date of the modified Capitation Rates approved by the State Division of the Budget. The Contractor shall have the option of terminating this Contract, if such approved modified Capitation Rates are not acceptable. In such case, the Contractor shall give written notice to the Department and the Local Department of Social Services within thirty (30) days of

the date of the formal written notice of the modified Capitation Rates from the Department specifying the reasons for and effective date of termination. The effective date of termination shall be ninety (90) days from the date of the Contractor's written notice, unless the Department determines that an orderly disenrollment to Medicaid fee-for-service or transfer to another managed long-term care plan can be accomplished in fewer days. The terms and conditions in the Contractor's phase-out plan specified in Article IV must be accomplished prior to termination. During the period commencing with the effective date of the Department's modified Capitation Rates through the effective date of termination of the Contract, the Contractor shall have the option of continuing to receive capitation payments at the expired Capitation Rates or at the modified Capitation Rates approved by the Department and the State Division of the Budget for the rate period.

4. If the Contractor fails to exercise its right to terminate in accordance with this Section, then the modified Capitation Rates, approved by the Department and the State Division of the Budget, shall be deemed incorporated into this Contract without further action by the parties as of the effective date of the modified Capitation Rates as established by the Department, and approved by the State Division of the Budget.

C. Rate-Setting Methodology

1. Capitation Rates are determined using a prospective methodology whereby cost, utilization and other rate-setting data available for the time period prior to the time period covered by the rates are used to establish premiums. Capitation Rates will not be retroactively adjusted to reflect actual fee-for-service data or plan experience for the time period covered by the rates.

2. Notwithstanding the provisions set forth in Section C (1.) above, the Department reserves the right to terminate this Agreement, in its entirety pursuant to Article VII. Section B. of this Contract, upon determination by the Department that the aggregate monthly Capitation Rates are not cost effective pursuant to subsection 4403-f of Public Health Law.

D. Payment of Capitation

1. The monthly capitation payment for each Enrollee is due to the Contractor from the Effective Date of Enrollment until the Effective Date of Disenrollment of the Enrollee or termination of this Contract, whichever occurs first. The Contractor shall receive a full month's capitation payment for the month in which disenrollment occurs. The Roster generated by the Department, along with any modification communicated electronically or in writing by the Department or the LDSS prior to the end of the month in which the Roster is generated, shall be the enrollment list for purposes of eMedNY premium billing and payment. The Contractor and the LDSS may develop protocols for the purpose of resolving Roster discrepancies that remain unresolved beyond the end of the month.
2. Upon receipt by the Fiscal Agent of a properly completed claim for monthly capitation payments submitted by the Contractor pursuant to this Contract, the Fiscal Agent will promptly process such

claim for payment through eMedNY and use its best efforts to complete such processing within thirty (30) business days from date of receipt of the claim by the Fiscal Agent. Processing of Contractor claims shall be in compliance with the requirements of 42 CFR 447.45. The Fiscal Agent will also use its best efforts to resolve any billing problem relating to the Contractor's claims as soon as possible. In accordance with Section 41 of the State Finance Law, the State and LDSS shall have no liability under this Contract to the Contractor or anyone else beyond funds appropriated and available for payment of Medical Assistance care, services and supplies.

E. Denial of Capitation Payments

In the event that CMS denies payment for new or existing Enrollees under 42 CFR 460.42 or 460.48 or under other applicable federal statutes and regulations, the Department will deny capitation payments to the Contractor for the same Enrollees for the period of time for which CMS denies payment. If the Contractor prevails during an appeal and CMS restores payment for new or existing Enrollees, then the Department will also restore capitation payments to the Contractor.

F. Department Right to Recover Premiums

The parties acknowledge and accept that the Department has a right to recover premiums paid to the Contractor for Enrollees listed on the monthly Roster who are later determined, for the entire applicable payment month, to have been incarcerated; to have moved out of the Contractor's service area; to have been out of the service area for more than 30 consecutive days without approval from the Department; to no longer meet the State Medicaid nursing facility level of care based on the annual recertification requirements in 42 CFR Section 460.160(b) and did not provide the results of the reassessment to the LDSS within five days of completion as stated in Article III, paragraph B; or to have died. In any event, the State may only recover premiums paid for Medicaid Enrollees listed on a Roster if it is determined by the Department that the Contractor was not at risk for provision of medical services for any portion of the payment period.

G. Third Party Health Insurance Determination

The Contractor will make diligent efforts to determine whether Enrollees have third party health insurance (TPHI). The LDSS shall make its best efforts to maintain third party information on the WMS/eMedNY Third Party Resource System. The Contractor shall make good faith efforts to coordinate benefits with and collect TPHI recoveries from other insurers, and must inform the LDSS of any known changes in status of TPHI insurance eligibility within thirty (30) days of learning of a change in TPHI. The Contractor may use the Roster as one method to determine TPHI information. The Contractor will be permitted to retain 100 percent of any reimbursement for Benefit Package services obtained from TPHI. Capitation Rates are net of TPHI recoveries. In no instances may an Enrollee be held responsible for disputes over these recoveries.

H. Contractor Financial Liability

The Contractor shall not be financially liable for any services rendered to an Enrollee prior to his or her Effective Date of Enrollment or subsequent to disenrollment unless the Enrollee is admitted to a hospital prior to the Effective Date of Disenrollment and is not discharged from the hospital until after the Effective Date of Disenrollment, in which case the Contractor is responsible for the entire hospital claim.

I. Spenddown and Net Available Monthly Income

Capitation rates are adjusted to exclude Enrollee Spenddown and NAMI as determined by the Local Department of Social Services. The surplus amount (spend down or NAMI amount) to be billed to an Enrollee by the Contractor must be the amount for which the Enrollee is responsible as determined by the LDSS. The Contractor's inability to collect funds from Enrollees will not change the plan's Spenddown or NAMI adjustment. The Contractor shall report the gross amount of Spenddown and NAMI for each Enrollee in accordance with the timeframes and in the format prescribed by the Department.

J. No Recourse Against Enrollees.

Except for the rates and payments provided for in this Contract, the Contractor hereby agrees that in no event, including but not limited to nonpayment by the Medicaid agency, insolvency of the Contractor, loss of funding for this program, or breach of this Contract, shall the Contractor or a Subcontractor bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against any Enrollee or person acting on his behalf for Covered Services furnished in accordance with this Contract.

This Section J. shall not prohibit the Contractor or the Subcontractors as specified in their agreements from billing for and collecting any applicable surplus amounts, Net Available Monthly Income (NAMI), commercial insurance, worker's compensation benefits, no-fault insurance, and coordination of benefit amounts. This Section J. supersedes any oral or written contrary agreement now existing or hereinafter entered into between the Contractor and any Enrollee or persons acting on his behalf. This provision shall survive termination of this Contract for any reason.

K. Notification Requirements to LDSS Regarding Enrollees.

The Contractor agrees to notify the LDSS in writing prior to admission of an Enrollee to a nursing facility, to allow Medicaid eligibility to be redetermined using institutional eligibility rules. The notification will include the Enrollee's name, Medicaid number, nursing facility name and other information as directed by the Department. If such an Enrollee is determined by the LDSS to be ineligible for Medicaid nursing facility services, the LDSS shall notify the Contractor of such determination.

L. Contractor's Fiscal Solvency Requirements

The Contractor shall comply with all applicable solvency requirements; including but not limited to NYS Public Health Law Article 44, Part 98 of the Commissioner's Rules and Regulations, and the fiscal solvency requirements contained in Appendix G., Regulatory Agreement. In addition, any changes made to Appendix G. Regulatory Agreement will be incorporated into the Contract without further action by the parties. In the event of any inconsistency between said Regulatory Agreement and said Part 98 Regulations, the said Part 98 Regulations shall super cede the Regulatory Agreement.

ARTICLE V

CONTRACTOR RELATIONSHIP WITH SUBCONTRACTORS

A. Subcontractor/Provider Relations.

The Contractor is responsible to provide the following provider Services:

- (i). assisting providers with prior authorization and referral protocols;
- (ii). assisting providers with claims payment procedures;
- (iii). fielding and responding to provider questions and complaints;
- (iv). orientation of providers and subcontractors to program goals, and
- (v). provider training to improve integrations and coordination of care.

B. Full responsibility retained.

1. Notwithstanding any relationship(s) that the Contractor may have with Subcontractors, the Contractor maintains full responsibility for adhering to and otherwise fully complying with all applicable laws, regulations and implementing guidelines, this Contract, the PACE Program Agreement, 42 CFR 460 and the instructions of the Department.
2. The Contractor oversees and is accountable to the Department for all functions and responsibilities that are described in this Contract and the PACE Program Agreement.
3. The Contractor may only delegate activities or functions to a Subcontractor in a manner consistent with requirements set forth in this Contract, the PACE Program Agreement and 42 CFR 460.
4. The Contractor may only delegate management responsibilities as defined by State regulation by means of a Department approved management services agreement. Both the proposed management services agreement and the proposed management entity must be approved by the Department pursuant to the provisions of 10 NYCRR 98-1.11 before any such agreement may be implemented.

C. Certification regarding Subcontractors.

The Contractor shall certify to the Department annually, at a date to be specified by the Department, and/or upon the Department's request, that the Contractor has not entered into a relationship, agreement, or Subcontract for any activity or function under this Contract with a person, provider or entity who has been debarred or suspended from participation by either the federal or State governments in programs administered pursuant to Titles XVIII and XIX of the Social Security Act.

D. Required provisions.

1. The Contractor shall enter into Subcontracts only with Subcontractors who are in compliance with all applicable State and federal licensing, certification, and other requirements, who are generally regarded as having a good reputation and who have demonstrated capacity to perform the needed contracted services. All Subcontracts must meet the requirements of this Contract and applicable State and federal laws and regulations.
2. Subcontracts shall require the approval of the Department as set forth in PHL 4402 and in 10 NYCRR Part 98.
3. All Subcontracts must meet applicable requirements, including but not limited to, 42 CFR 460, the PACE Program Agreement, 10 NYCRR Part 98 and this Contract.
4. All Subcontracts with providers of covered services(including management agreements, if applicable) shall include the following provisions:
 - (a). Any services or other activities performed by a Subcontractor in accordance with a contract or written agreement between Subcontractor and the Contractor will be consistent and comply with the Contractor's contractual obligations under this Contract and the PACE Program Agreement.
 - (b). A provision that the Contractor will provide, no less than thirty (30) days prior to implementation, any new rules or policies and procedures regarding quality improvement, member appeals and grievances and provider credentialing, or any changed thereto, to a provider of covered services.
 - (c). No provision of the Subcontract is to be construed as contrary to the provisions of Article 44 of Public Health Law and implementing regulations to the extent that it does not conflict with 42 CFR 460.
 - (d). Specific delegated activities and reporting responsibilities, including the amount, duration and scope of services to be provided, and reasonable timeframes for submission of claims to the Contractor.
 - (e). Satisfactory remedies, including termination of a Subcontract when the Department or the

Contractor determines that such parties have not performed adequately which includes but is not limited to egregious patient harm, significant substantiated complaints, submitting claims to the plan for services not delivered, and refusal to participate in the plan's quality improvement program.

(f). Provision for ongoing monitoring of the Subcontractor's compliance with the Subcontract by the Contractor. Such monitoring shall specify requirements for corrective action, revocation of the Subcontract or imposing sanctions if the Subcontractor's performance is inadequate.

(g). Specification that either:

- (i.) the credentials of affiliated professionals or other health care providers will be reviewed directly by the Contractor; or
- (ii.) the credentialing process of the Subcontractor will be reviewed and approved by the Contractor and the Contractor must audit the credentialing process on an ongoing basis.

(h). A procedure for the resolution of disputes between the Contractor and its Subcontractors, providers or related entities. Any and all such disputes shall be resolved using the Department's interpretation of the terms and provisions of this Contract, and portions of Subcontracts executed hereunder that relate to services pursuant to this Contract. If a Subcontract or written agreement provides for arbitration or mediation, it shall expressly acknowledge that the Commissioner of the Department of Health is not bound by arbitration or mediation decisions. Arbitration or mediation must occur within New York State, and the Subcontract or written agreement shall provide that the Commissioner will be given notice of all issues going to arbitration or mediation, and copies of all decisions.

(i). A provision specifying how the Subcontractor shall participate in and comply with the Contractor's quality assurance and utilization review programs, the Contractor's Enrollee grievance and appeals procedures, and the monitoring and evaluation of the Contractor's PACE Program.

(j). A provision specifying how the Subcontractor will insure that pertinent contracts, books, documents, papers and records of their operations are available, to the Department, HHS, Comptroller of the State of New York, Comptroller General of the United States and/or their respective designated representatives, for inspection, evaluation and audit, through six years from the final date of the Subcontract, or from the date of completion of any audit, or pursuant to the timeframes established in 42 CFR 460, whichever is later.

5. The Contractor agrees to comply with Section 3224-a of State Insurance Law pertaining to prompt payment to providers of covered services.

E. List of Covered Services and Subcontractors.

1. The Department may request additional information about providers, related entities or

Subcontractors in the network, as required.

2. Provider services Subcontracts and material amendments thereto shall require the approval of the Department as set forth in Public Health Law 4402 and 10 NYCRR Part 98.
3. Any addition to or deletion from the network of providers, related entities, or Subcontractors shall be promptly communicated in writing to the Department by the Contractor, on a quarterly basis.

F. Provider Termination.

1. The Contractor shall comply with the requirements of Section 4406-d of Public Health Law regarding health care professional terminations.
2. The Contractor shall provide the Department at least sixty (60) days notice prior to termination of any Subcontract, the termination of which would preclude an Enrollee's access to a Covered Service by provider type under this Contract, and specify how services previously furnished by the Subcontractor will be provided. In the event a Subcontract is terminated on less than sixty (60) days notice, the Contractor shall notify the Department immediately but in no event more than seventy-two (72) hours after notice of termination is issued.

G. Recovery of Overpayments to Providers

Consistent with the exception language in Section 3324-b of the Insurance Law, the Contractor shall retain the right to audit participating providers' claims for a six year period from the date the care, services or supplies were provided or billed, whichever is later, and to recoup any overpayments discovered as a result of the audit. This six year limitation does not apply to situations in which fraud may be involved or in which the provider or an agent of the provider prevents or obstructs the Contractor's auditing.

ARTICLE VI

RECORDS AND REPORTING REQUIREMENTS

A. Maintenance of Contractor Performance Records

1. The Contractor shall maintain a health information system that collects, analyzes, integrates and reports data that meets the requirements of 42 CFR 460 Subpart L and Article 44 of the Public Health Law.

The Contractor agrees to maintain for each Enrollee a comprehensive medical record. The Contractor shall maintain, and shall require its Subcontractors to maintain:

- (a) Appropriate records related to services provided to Enrollees;

- (b) all financial records and statistical data that the LDSS, the Department and any other authorized governmental agency may require including books, accounts, journals, ledgers, and all financial records relating to capitation payments, third party health insurance recovery, and other revenue received and expenses incurred under this Contract; and
 - (c) appropriate financial records to document fiscal activities and expenditures, including records relating to the sources and application of funds and to the capacity of the Contractor or its Subcontractors, including its participating providers, if relevant, to bear the risk of potential financial losses.
2. Credentials for Subcontractors and providers used by Subcontractors shall be maintained on file by or in a manner accessible to the Contractor and furnished to the Department, upon request.

B. Maintenance of Financial Records and Statistical Data

The Contractor shall maintain all financial records and statistical data according to generally accepted accounting principles and/or statutory accounting principles where applicable.

C. Access to Contractor Records

The Contractor shall provide the LDSS, SDOH, the Comptroller of the State of New York, the Attorney General of the State of New York, DHHS, the Comptroller General of the United States, and their authorized representatives with access to all records relating to Contractor performance under this Contract for the purposes of examination, audit, and copying (at reasonable cost to the requesting party) of such records. The Contractor shall give access to such records on two (2) business days prior written notice, during normal business hours, unless otherwise provided or permitted by applicable laws, rules, or regulations.

D. Retention Periods

The Contractor shall preserve and retain all records relating to Contractor performance under this Contract in readily accessible form during the term of this Contract and for a period of six (6) years thereafter. All provisions of this Contract relating to record maintenance and audit access shall survive the termination of this Contract and shall bind the Contractor until the expiration of a period of six (6) years commencing with termination of this Contract or if an audit is commenced, until the completion of the audit, whichever occurs later.

E. Reporting Requirements

1. The Contractor shall be responsible for fulfilling the reporting requirements of this Contract, Reports shall be filed in a format specified by the Department and according to the time schedules required by the Department.
2. The Contractor shall furnish all information necessary for the Department to assure adequate capacity and access for the enrolled population and to demonstrate administrative and management arrangements satisfactory to the Department. The Contractor shall submit periodic

reports to the Department in a data format and according to a time schedule required by the Department to fulfill the Department's administrative responsibilities under Section 4403-f of Article 44 of Public Health law and other applicable State and federal laws or regulations. Reports may include but are not limited to information on: availability, accessibility and acceptability of services; enrollment; Enrollee demographics; disenrollment; Enrollee health and functional status (including the Semi-Annual Assessment of Members {SAAM} or any other such instrument the Department may request); service utilization; encounter data, Enrollee satisfaction; marketing; grievance and appeals; and fiscal data. The Contractor shall promptly notify the Department of any request by a governmental entity or an organization working on behalf of a governmental entity for access to any records maintained by the Contractor or a subcontractor pursuant to this Contract.

3. The Contractor shall submit the following specific reports to the Department.

(a) Annual Financial Statements:

In accordance with Part 98-1.16, the Contractor shall file in duplicate with both the Commissioner and the Superintendent of the Department of Insurance (SID) a financial statement each year in the form prescribed by the Commissioner known as the Medicaid Managed Care Operating Report (MMCOR). The MMCOR shows the condition at last year-end and contains the information required by section 4408 of the Public Health Law. The due date for annual statements shall be April 1 following the report closing date.

(b) Quarterly Financial Statements:

The Contractor shall submit quarterly financial statements to the Department and SID. The due date for quarterly reports shall be forty-five (45) days after the end of the calendar quarter.

(c) Other Financial Reports:

Contractor shall submit financial reports, including certified annual financial statements, and make available documents relevant to its financial condition to the Department and SID in a timely manner as required by State laws and regulations including but not limited to PHL§ 4403-f, 4404 and 4409, Title 10 NYCRR § 98-1.11, 98-1.16, and 98-1.17 and any applicable Insurance Law 304, 305, 306, and 310.

(d) Encounter Data:

The Contractor shall prepare and submit encounter data on a monthly basis to Department through its designated Fiscal Agent. Each provider is required to have a unique identifier. Submissions shall be comprised of encounter records or adjustments to previously submitted records which the Contractor has received and processed from provider encounter or claim records of any contracted or directly provided services rendered to the Enrollee in the current or any preceding months. Monthly submissions must be received by the Fiscal Agent in accordance with the time frames specified in the MEDS II data dictionary on the Health Provider Network (HPN) to assure the submission is included in the Fiscal Agent's monthly production processing.

(e) Fraud and Abuse Reporting Requirements:

- (i) The Contractor shall submit reports specifying the number of complaints of fraud and abuse made to the Contractor that warrant preliminary investigation by the Contractor. Such reports must be submitted quarterly, within fifteen (15) business days of the close of the quarter, in a format specified by the Department.
- (ii) The Contractor must also submit to the Department the following on an ongoing basis for each confirmed case of fraud and abuse identified through complaints, organizational monitoring, Subcontractors, providers, beneficiaries, Enrollees, etc.:
 - 1. The name of the individual or entity that committed the fraud or abuse;
 - 2. The source that identified the fraud or abuse;
 - 3. The type of provider, entity or organization that committed the fraud or abuse;
 - 4. A description of the fraud or abuse;
 - 5. The approximate range of dollars involved;
 - 6. The legal and administrative disposition of the case including actions taken by law enforcement officials to whom the case has been referred; and
 - 7. Other data/information as prescribed by the Department.
- (iii) Such report shall be submitted when cases of fraud and abuse are confirmed, and be reviewed and signed by an executive officer of the Contractor.

(f) Performance Improvement Projects :

The Contractor will be required to conduct at least one (1) performance improvement project each year, in a priority topic selected by the plan and approved by the Department. The purpose of these studies will be to promote quality improvement within the managed long-term care demonstration. Results of these annual studies will be provided to the Department in a required format. Results of other performance improvement projects will be included in the minutes of the quality committee and reported to the Department upon request.

(g) Enrollee Health and Functional Status

The Contractor shall submit Enrollee health and functional status data for each of their Enrollees in the format and according to the timeframes specified by the Department. The data shall consist of the Semi-Annual Assessment of Members (SAAM) or any other such instrument the Department may request. The data shall be submitted at least semi-annually or on a more frequent basis if requested by the Department.

(h) Additional Reports:

Upon request by the Department, the Contractor shall prepare and submit other operational data reports. Such requests will be limited to situations in which the desired data is considered essential and cannot be obtained through existing Contractor reports. Whenever possible, the Contractor will be provided with ninety (90) days notice and the opportunity to discuss and comment on the proposed requirements before work is begun. However, the Department reserves the right to give thirty (30) days notice in circumstances where time is of the essence.

F. Data Certification

The Contractor shall comply with the Department's data certification requirements.

1. The types of data subject to certification include, but are not limited to, enrollment information, encounter data, the premium proposal, contracts and all other financial data. The certification shall be in a format prescribed by the Department and must be sent at the time the report or data are submitted.
2. The certification shall be signed by the plan's Chief Executive Officer and/or the Chief Financial Officer; and, the certification shall attest to the accuracy, completeness and truthfulness of the data.

G. Notification of Changes in Report Due Dates Requirements or Formats

The Department may extend due dates, or modify report requirements or formats upon a written request by the Contractor to the Department, where the contractor has demonstrated a good and compelling reason for the extension or modification. The Department will issue a written response to the request for a modification or extension of due date.

H. Ownership and Related Information Disclosure

The Contractor shall report ownership and related information to the Department, and upon request to the Secretary of Department of Health and Human Services and the Inspector General of Health and Human Services, in accordance with 42 U.S.C. (Section 1320a-3 and 1396b(m) (4) Sections 1124 and 1903(m)(4) of the Federal Social Security Act).

I. Public Access to Reports

Any data, information, or reports collected and prepared by the Contractor and submitted to New York State authorities in the course of performing their duties and obligations under this Contract may be disclosed subject to and consistent with the requirements of Freedom of Information Law.

J. Professional Discipline

1. Pursuant to P.H.L. Section 4405-b, the Contractor shall have in place policies and procedures to report to the appropriate professional disciplinary agency within thirty (30) days of occurrence, any of the following:
 - (a) the termination of a health care provider contract pursuant to Section 4406-d of the Public Health Law for reasons relating to alleged mental and physical impairment, misconduct or impairment of patient safety or welfare;
 - (b) the voluntary or involuntary termination of a contract or employment or other affiliation with such contractor to avoid the imposition of disciplinary measures; or
 - (c) the termination of a health care provider contract in the case of a determination of fraud or in a case of imminent harm to patient health.
2. The Contractor shall make a report to the appropriate professional disciplinary agency within thirty (30) days of obtaining knowledge of any information that reasonably appears to show that a health professional is guilty of professional misconduct as defined in Articles 130 and 131 (a) of the State Education Law.

K. Certification Regarding Individuals Who Have Been Debarred or Suspended By Federal or State Government.

Contractor will certify to the Department initially and immediately upon changed circumstances from the last such certification that it does not knowingly have an individual who has been debarred or suspended by the federal or state government, or otherwise excluded from participating in procurement activities:

1. as a director, officer, partner or person with beneficial ownership of more than 5% of the Contractor's equity; or
2. as a party to an employment, consulting or other agreement with the Contractor for the provision of items and services that are significant and material to the Contractors obligations in the managed long term care plan, consistent with requirements of SSA §1932 (d)(1).

L. Conflict of Interest Disclosure

The Contractor shall report to the Department in a format specified by the Department documentation, including but not limited to the identity of and financial statements of person(s) or corporation(s) with an ownership or contract interest in the managed long-term care plan, or with any Subcontract(s) in which the managed long-term care plan has a 5% or more ownership and interest, consistent with requirements of SSA § 1903 (m)(2)(a)(viii) and 42 CFR§ §455.100 and 455.104.

ARTICLE VII

RENEWAL OR TERMINATION OF THE CONTRACT

A. Renewal

1. The Department, with the approval of the State Comptroller or his designee, may extend the term of the Contract for up to two (2) additional one (1) year terms. Standard Appendix X is the form to be used in extension of this Contract. The Department will provide written notice to the Contractor of extension of the term of the Contract at least 90 days prior to the end of the term.
2. If the Department intends to let the Contract expire, the Department will notify the Contractor in writing at least 90 days in advance of the termination of the Contract. This notice shall have the same effect on the Contractor as a notice of termination, including but not limited to provisions of this Contract with respect to Phase Out and Transition.

B. Termination of the Contract by the Department:

1. The Department shall have the right to terminate this Contract at any time, if the Contractor, in the Department's determination:
 - (a) Takes any action that threatens the health, safety, or welfare of any Enrollee;
 - (b) Has engaged in an unacceptable practice under 18 NYCRR PART 515;
 - (c) Has failed to substantially comply with applicable standards of the Public Health Law and regulations or has had its certificate of authority suspended, limited, or revoked;
 - (d) Materially breaches the Contract, including the PACE Program Agreement, and such breach or failure is not cured within thirty (30) days of the date of the Department's notice of breach or noncompliance, or such longer period as the Department may allow;
 - (e) Becomes unable to meet its obligations in the normal course of business including but not limited to circumstances beyond control and changes to the provider network affecting

Enrollee access; or

(f) Brings a proceeding voluntarily, or has a proceeding brought against it involuntarily, under Title 11 of the U.S. Code (the Bankruptcy Code) and the petition is not vacated within thirty (30) days of its filing.

2. This Contract shall terminate immediately: if the Contractor's authority to operate a PACE expires under Section 4403-f of Public Health Law; Section 1934 of the Social Security Act; any other applicable state or federal law; or upon termination or non-renewal of the PACE Program Agreement.
3. This Contract shall terminate immediately if federal financial participation in the costs hereof become unavailable or if State funds sufficient to fulfill the obligation of the Department hereunder are not appropriated by the State Legislature.
4. The New York State Department of Health reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete. Upon such finding, the New York State Department of Health may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.
5. Notice of termination by the Department. The Department shall give the Contractor prompt written notice of termination of this Contract, specifying the applicable termination provision(s) and the effective date of termination.

C. Termination of the Contract by the Contractor:

1. The Contractor shall have the right to terminate this Contract, if the Department:
 - (a) Fails to make agreed-upon payments in a timely and accurate manner;
 - (b) Materially breaches the Contract or fails to comply with any material term or condition of this Contract.
2. The Contractor shall allow thirty (30) days, or such longer period as the Contractor may permit, from the time of the Contractor's written request for performance, for the Department to cure the identified deficiency.
3. The effective date of such termination shall be at least 90 days from the date of the notice of the alleged breach and intent to terminate for cause.
4. Notice by the Contractor. The Contractor shall give the Department written notice of termination of this Contract, specifying the provision(s) breached and the effective date of termination.

D. Phase out; Transition:

1. This Contract shall be terminated in accordance with the approved termination phase-down plan in the PACE Program Agreement.
2. The Contractor agrees to provide all information and assistance to the Department that the Department deems necessary to complete an orderly transition. This includes but is not limited to: transfer of financial and medical records, completion of final reports and audits and cooperation with the LDSS in the transfer of Enrollees to alternative care.
3. This provision shall survive the termination of this Contract.

ARTICLE VIII

**INTERMEDIATE SANCTIONS AND REQUIREMENTS OF
OTHER LAWS AND REGULATIONS**

- A. The Contractor is subject to the imposition of sanctions as authorized by State law and regulation including the Department's right to impose sanctions for unacceptable practices as set forth in Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) Part 515 and civil and monetary penalties pursuant to 18 NYCRR Part 516 and 42 CFR 460_ and such other sanctions and penalties as are authorized by local laws and ordinances and resultant administrative codes, rules and regulations related to the Medical Assistance Program or to the delivery of the contracted for services.
- B. Unacceptable practices for which the Contractor may be sanctioned include but are not limited to:
1. Failing to provide medically necessary services that the Contractor is required to provide under its contract with the State.
 2. Imposing premiums or charges on Enrollees.
 3. Discriminating among Enrollees on the basis of their health status or need for health care services.
 4. Misrepresenting or falsifying information that it furnishes to an Enrollee, Applicant, potential Enrollee, health care provider, the State or to CMS.
 5. Distributing directly or through any agent or independent contractor, marketing materials that have not been approved by the State and CMS or that contain false or materially misleading information.
 6. Violating any other applicable requirements of SSA 1903(m) or 1932 and any implementing regulations.

7. Violating any other applicable requirements of 18 NYCRR or 10 NYCRR Part 98.

8. Failing to comply with the terms of this Agreement.

C. Intermediate Sanctions may include but are not limited to:

1. Civil monetary penalties
2. Suspension of all new enrollment, after effective date of the sanction.
3. Termination of the contract, pursuant to Article VII of the Agreement.

D. The Department shall have the right, upon notice to the LDSS, to limit, suspend or terminate enrollment activities by the Contractor and/or enrollment into the PACE Program upon ten (10) days written notice to the Contractor. The written notice shall specify the action(s) contemplated and the reason(s) for such action(s) and shall provide the Contractor with an opportunity to submit additional information that would support the conclusion that limitation, suspension or termination of enrollment activities or Enrollment in the Contractor's PACE Program is unnecessary. Nothing in this paragraph limits other remedies available to the SDOH or the LDSS under this Agreement.

E. The Contractor will be afforded due process pursuant to State Law and Regulations 18 NYCRR Part 516 and Article 44 of the PHL.

The Contractor is receiving federal payments under this Contract. The Contractor, and Subcontractors paid by the Contractor to fulfill its obligations under this Contract, are subject to certain laws that are applicable to individuals and entities receiving federal funds. The Contractor agrees to inform all Subcontractors that payment that they receive are, in whole or in part, from federal funds.

In the event that any provision of this Contract conflicts with the provisions of any statute or regulations applicable to a Contractor, the provisions of the statute or regulations shall have control.

ARTICLE IX

GENERAL PROVISIONS

A. Confidentiality

1. All individually identifiable information relating to Enrollees that is obtained by the Contractor shall be confidential pursuant to the State Public Health Law, the provisions of Section 369 of the State Social Services Law, 42 U.S.C. Section 1396a(a)(7) (Section 1902(a)(7) of the Federal Social Security Act), and regulations promulgated thereunder and shall be used or disclosed by the Contractor pursuant to applicable law.

2. Medical records of Enrollees shall be confidential and shall be disclosed to and by other persons within the Contractor's organization, including Subcontractors, only as necessary to provide health care and quality, peer, or complaint and appeal review of health care under the terms of this Contract, or otherwise in accordance with applicable law.
3. The provisions of this Section shall survive the termination of this Contract and shall bind the Contractor so long as the Contractor maintains any individually identifiable information relating to Enrollees.

B. Relationship of the Parties, Status of the Contractor

The Parties agree that the relationship of Contractor to the Department will be that of an independent contractor. The Parties also agree and acknowledge that Contractor is authorized to operate and to perform its obligations under this Contract pursuant to the provisions of Section 4403-f of New York State Public Health Law, Article 43 of State Insurance Law, and 42 CFR 460. The Parties further agree and acknowledge that Contractor will not, by virtue of its operation, performance of its obligations hereunder, compensation hereunder, or of any other provisions of this Contract be deemed: (1) an agent or instrumentality of the State of New York, the United States, or any agency of either, or (2) a preferred provider organization, third party administrator, or an independent practice association.

C. Employment Practices

1. The Contractor shall comply with the nondiscrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relating to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, the implementing rules and regulations prescribed by the Secretary of Labor at 41 CFR Part 60 and with the Executive Law of the State of New York, Section 291-299 thereof and any rules or regulations promulgated in accordance therewith. The Contractor shall likewise be responsible for compliance with the above-mentioned standards by Subcontractors with whom the Contractor enters into a contractual relationship in furtherance of this Contract.
2. The Contractor shall comply with regulations issued by the Secretary of Labor of the United States in 20 Code of Federal Regulations, Part 741, pursuant to the provisions of Executive Order 11758, and with the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. The Contractor shall likewise be responsible for compliance with the above-mentioned standards by Subcontractors with whom the Contractor enters into a contractual relationship in furtherance of this Contract.

D. Dispute Resolution

The Contractor and the LDSS shall jointly develop and use a process for resolving disputes with regard to the accuracy of assessments performed for enrollment, involuntary disenrollments and for continued stay decisions when the Enrollee no longer meets the Nursing facility level of care as determined in the annual reassessment review.

E. Assignment

This Contract shall not be assignable by the Contractor without the prior written consent of the Commissioner.

F. Binding Effect

Subject to any provisions hereof restricting assignment, this Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assignees.

G. Limitation on Benefits of this Contract

It is the explicit intention of the Parties that no Enrollee, person or other entity, other than the Parties, is or shall be entitled to bring any action to enforce any provision of this Contract against the other Party, and that the covenants, undertakings, and agreements set forth in this Contract shall be solely for the benefit of, and shall be enforceable only by, the Parties or their respective successors and assignees as permitted hereunder; provided, however, that the covenants, undertakings, and agreements set forth in Article IV, Section J hereof shall be construed for the benefit of the Enrollees.

H. Entire Contract

This Contract (including the Regulatory Agreement between the Contractor and the Superintendent of Insurance, Schedules and Appendices hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof, and it supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein. This Contract shall not be deemed to apply to individuals who are not Enrollees.

I. Conflicting Provisions

The PACE Program Agreement will be controlling to the extent there are any inconsistencies between it and the main body of the contract or any of the other appendices. The Standard Contract Clauses for All New York State Contracts attached hereto as Appendix A will be controlling over the main body of the contract and its appendices except for the PACE Program Agreement. The main body of the contract will be controlling over all appendices except the PACE Program Agreement and Appendix A.

J. Modification

This Contract is subject to amendment or modification only upon mutual consent of the Parties reduced to writing. Attached Appendix X is the form to be used in modification of this Agreement. Any such amendment or modification is not binding on the Parties unless and until approved by the Comptroller of the State of New York.

K. Headings

Article and Section headings contained in this Contract are inserted for convenience of reference only, shall not be deemed to be a part of this Contract for any purpose, and shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

L. Pronouns

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or entity may require.

M. Notices

All notices, demands, requests, reports, or other communications which may be or are required to be given, served or sent by either Party to the other Party pursuant to this Contract shall be in writing and shall be mailed by first-class registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, or telegram, overnight package delivery, addressed as follows:

- (1) If to the Department:
Division of Managed Care and Program Evaluation
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

With a copy (which shall not constitute notice) to:

Director
Bureau of Continuing Care Initiatives
Division of Managed Care and Program Evaluation
New York State Department of Health
Room 2084
Corning Tower
Empire State Plaza
Albany, New York 12237

(2) If to State Insurance Department:

Co-Chief
Health Bureau
New York State Insurance Department
One Commerce Plaza
Albany, New York 12257

(3) If to Contractor:

Each Party may designate by notice in writing a new address to which any notice, demand, request, report, or communication may be thereafter so given, served, or sent. Each notice, demand, request, report, or communication which shall be mailed, delivered, or transmitted in the manner described above shall be deemed sufficiently given, served, sent, and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of the messenger or the answer back or confirmation being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

N. Partial Invalidity

Should any provision of this Contract be declared or found to be illegal, invalid, ineffective, unenforceable or void, then each Party shall be relieved of any obligation arising from such provision; the balance of this Contract, if capable of performance, shall remain in full force and effect.

O. Force Majeure

Each Party shall use all efforts to perform its obligations under this Contract but shall be excused for failure to perform or for delay in performance hereunder due to unforeseeable circumstances beyond its reasonable control or which could not have been prevented by it, including but not limited to, acts of God, floods, hurricanes, earthquakes, acts of war, civil unrest, or embargoes; provided, that acts of any governmental body shall be deemed not to be a force majeure.

P. Survival

The termination or expiration of this Contract shall not affect vested or accrued rights or obligations of the Parties existing as of the date of such termination or expiration or other obligations expressly intended to survive the termination or expiration hereof. Without limiting the generality of the

foregoing, the following provisions of this Contract shall survive any expiration or termination of this Contract: entire Article IV, Article VIA, Article VIID, Article IXA and all definitional provisions of this Contract to the extent that they pertain to any other surviving provisions or obligations.

Q. State Standard Appendix A

The Parties agree to be bound by the terms and conditions of "Standard Clauses for All New York State Contracts June 2006" attached hereto and incorporated herein as Appendix A.

R. Indemnification of the Department

1. The Contractor shall indemnify, defend and hold harmless the Department, the State, its officers, agents and employees and all their eligible dependents from:
 - (a) any and all claims and losses accruing or resulting from the acts or omissions of the Contractor, Contractor's employees, Subcontractors, material persons, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract;
 - (b) any and all claims and losses incurred by any person, firm or corporation that may be injured or damaged by the acts or omissions of the Contractor, its officers, agents and employees or Subcontractors including the participating providers, in connection with the performance of this contract;
 - (c) and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished by the Contractor under this Contract or based on any libelous or otherwise unlawful matter contained in such data.
2. The Department shall provide the Contractor with prompt written notice of any claim made against the Department, and the Contractor, at its sole option, shall defend or settle said claim. The Department shall cooperate with the Contractor, to the extent necessary for the Contractor to discharge its obligations hereunder.
3. The Contractor shall have no obligation hereunder with respect to any claim or cause of action for damages to persons or property to the extent caused by the Department, its employees or agents.

S. Environmental Compliance

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor shall report violations to the Department, Department of Health and Human Services (DHHS) and to the appropriate Regional Office of the Environmental Protection Agency.

T. Energy Conservation

The Contractor shall comply with any applicable mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act of 1975, Pub. L.94-163 42 U.S.C. 6321 et seq., and any amendment thereto.

U. Prohibition on Use of Federal Funds for Lobbying

1. The Contractor agrees, pursuant to Section 1352, Title 31, United States Code, and 45 CFR Part 93 not to expend federally appropriated funds received under this Contract to pay 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. The Contractor agrees to complete and submit the "Certification Regarding Lobbying", attached hereto as Appendix C and incorporated herein, if this Contract exceeds \$100,000.
2. If any funds other than federally appropriated funds have been paid or will be paid 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 this Contract or the underlying federal grant and the agreement exceeds \$100,000 the Contractor agrees to complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", attached hereto as Appendix D and incorporated herein, in accordance with its instructions.
3. The Contractor shall include the provisions of this Section in all Subcontracts under this Contract and require that all Subcontractors whose contract exceeds \$100,000 certify and disclose accordingly to the Contractor.

V. Waiver of Breach

No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by a Party to, or waiver of, a breach under this Contract shall not constitute consent to, a waiver of, or excuse for any other, different or subsequent breach.

W. Choice of Law

This Contract shall be interpreted according to the laws of the State of New York. The Contractor shall be required to bring any legal proceeding against the Department or the State arising from this Contract in New York State courts.

X. Executory Provision and Federal Funds

The State Finance Law of the State of New York, Section 112, requires that any contract made by a State Department which exceeds fifteen thousand dollars (\$15,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The Parties recognize that this Contract is wholly executory and not binding until and unless approved by the Comptroller of the State of New York. The Parties also agree that the effectiveness of this Contract is conditioned upon receipt of any approval required pursuant to federal law to permit full federal financial participation in the costs hereof. Contractor agrees to comply with all applicable federal audit requirements including but not limited to OMB Circular A-87 and other applicable federal rules and procedures concerning use of federal funds.

Y. Renegotiation

In the event any part of this Contract is found to be invalid or unenforceable under applicable law and alters the general scope of contractual performance or a change occurs in applicable State or federal law, rules or regulations or federal or State interpretations thereof which requires alteration of the general scope of contractual performance to remain in compliance therewith, or the Department obtains a waiver of such applicable federal law, rule or regulation, either Party may initiate re-negotiation of the terms and conditions of this Contract to preserve the benefit bargained for. If the Parties are unable to agree on a revision of contractual terms and conditions consistent with the altered scope of contractual performance, either Party may terminate this Contract as of the last day of the month following the month in which written notice of termination is given.

Z. Affirmative Action

The Contractor agrees to comply with all applicable federal and State nondiscrimination statutes including:

1. The Civil Rights Acts of 1964, as amended; Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulation 41 CFR Part 60; Executive Law of the State of New York, Sections 290-299 thereof, and any rules or regulations promulgated in accordance therewith; Section 504 of the Rehabilitation Act of 1973 and the Regulations issued pursuant thereto contained in 45 CFR Part 84 entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance"; and the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. Section 12116, and regulations issued by the

Equal Employment Opportunity Commission which implement the employment provisions of the ADA, set forth at 29 CFR Part 1630.

2. The Contractor is required to demonstrate effective affirmative action efforts and to ensure employment of protected class members. The Contractor must possess and may upon request be required to submit to the Department a copy of an Affirmative Action Plan which is in full compliance with applicable requirements of federal and State statutes.
3. Contractors and Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, religion, color, national origin, sex, age, disability or marital status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
4. Prior to the award of a State contract, the Contractor shall submit an Equal Employment Opportunity (EEO) Policy Statement to the Department within the time frame established by the Department.
5. The Contractor's EEO Policy Statement shall contain, but not necessarily be limited to, and the Contractor, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
 - (a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, sex, age, sexual orientation, disability or marital status, will undertake or continue existing programs or affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
 - (b) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, religion, color, national origin, sex, age, disability or marital status.
 - (c) At the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, religion, color, national origin, sex, age, sexual orientation, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

- (d) Except for construction contracts, prior to an award of a State contract, the Contractor shall submit to the contracting agency a staffing plan of the anticipated work force to be utilized on the State contract or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the contracting agency. The form of the staffing plan shall be supplied by the contracting agency.
- (e) After an award of a State contract, the Contractor shall submit to the contracting agency a work force utilization report, in a form and manner required by the agency, of the work force actually utilized on the State contract, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the contracting agency. In the event that the Contractor is found through an administrative or legal action, whether brought in conjunction with this Contract or any other activity engaged in by the Contractor, to have violated any of the laws recited herein in relation to the Contractor's duty to ensure equal employment to protected class members, the Department may, in its discretion, determine that the Contractor has breached this Contract.
- (f) Additionally, the Contractor and any of its Subcontractors shall be bound by the applicable provisions of Article 15-A of the Executive Law, including Section 316 thereof, and any rules or regulations adopted pursuant thereto. The Contractor also agrees that any goal percentages contained in this Contract are subject to the requirements of Article 15-A of the Executive Law and regulations adopted pursuant thereto. For purposes of this Contract the goals established for subcontracting/purchasing with Minority and Women-Owned business enterprises are 0% to 5%. The employment goals for the hiring of protected class persons are 5% to 10%.
- (g) The Contractor shall be required to submit reports as required by the Department in a format determined by the Department, concerning the Contractor's compliance with the above provisions, relating to the procurement of services, equipment and or commodities, subcontracting, staffing plans and for achievement or employment goals. The Contractor agrees to make available to the Department, upon request, the information and data used in compiling such reports. It is the policy of the Department to encourage the employment of qualified applicants/recipients of public assistance by both public organizations and private enterprises who are under contractual agreement to the Department for the provision of goods and services. The Department may require the Contractor to demonstrate how the Contractor has complied or will comply with the aforesaid policy.

AA. Omnibus Procurement Act of 1992

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as Contractors, Subcontractors, and suppliers on its procurement contracts.

The Omnibus Procurement Act of 1992 requires that by signing this Contract, the Contractor certifies

that whenever the total contract is greater than \$1 million:

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

BB. Fraud and Abuse

The Contractor shall operate in a manner as to ensure a prompt organizational response to detect offenses and development of corrective action initiatives. The Contractor shall also establish and adhere to a process for reporting to the Department credible information of violations of law by the Contractor, Subcontractors or Enrollees for a determination as to whether criminal, civil or administrative action may be appropriate. With respect to Enrollees, this reporting shall be restricted to credible information on violations of law with respect to enrollment in the plan, or the provision of, or payment for, health services.

CC. Nondiscrimination in Employment in Northern Ireland

In accordance with Chapter 807 of the Laws of 1992, the Contractor agrees that, if it or any individual or legal entity in which the Contractor holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the Contractor, has business operations in Northern Ireland, the Contractor, or such individual or legal entity, shall take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity, and shall permit independent monitoring of its compliance with such Principles.

DD. Contract Insurance Requirements

The Contractor must without expense to the State procure and maintain, for the full term of the Contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this Contract, whether performed by it or by Subcontractors. Before commencing the work, the Contractor shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to said Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to said Department. The kinds and amounts of required insurance are:

1. A policy covering the obligations of the Contractor in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the Contract shall be void and of no effect unless the Contractor procures such policy and maintains it for the full term of the Contract.
2. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
 - (a) Contractor's Liability Insurance issued to and covering the liability of the Contractor with respect to all work performed by it under this proposal and the contract.
 - (b) Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its Subcontractors, including omissions and supervisory acts of the State.
 - (c) Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its Subcontractors, including omissions and supervisory acts of the State.

EE. Minority And Women Owned Business Policy Statement

The Department recognizes the need to take affirmative action to ensure that Minority and Women Owned Business Enterprises are given the opportunity to participate in the performance of the Department's contracting program. This opportunity for full participation in our free enterprise system by traditionally, socially and economically disadvantaged persons is essential to obtain social

and economic equality and improve the functioning of the State economy.

It is the intention of the Department to fully execute the mandate of Executive Order-21 and provide Minority and Women Owned Business Enterprises with equal opportunity to bid on contracts awarded by this agency in accordance with the State Finance Law.

To implement this affirmative action policy statement, the Contractor agrees to file with the Department within 10 days of notice of award, a staffing plan of the anticipated work force to be utilized on this Contract or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Department. The form of the staffing shall be supplied by the Department.

After an award of this Contract, the Contractor agrees to submit to the Department a work force utilization report, in a form and manner required by the Department, of the work force actually utilized on this Contract, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Department.

FF. Provisions Related to New York State Information Security Breach and Notification Act

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act {General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or Subcontractors.

APPENDIX A-1

PACE PROGRAM AGREEMENT

PACE Program Agreement

AGREEMENT No. HXXXX

An Agreement Between

The Secretary of the Department of Health and Human Services, who has delegated authority to the Administrator of the Centers for Medicare and Medicaid Services, hereinafter referred to as CMS, and _____, the State Administering Agency, hereinafter referred to as SAA,

and

_____ hereinafter referred to as the PACE Organization

The Secretary, in finding the PACE Organization to be an eligible organization by the Administrator of CMS and _____ State Agency _____, agrees to the following with the PACE Organization for the purposes of enacting sections 1894 and 1934 of the Social Security Act:

ARTICLE I

TERM OF AGREEMENT

[§460.32(a)(3)] ; [§460.34]

This Agreement is effective for the contract year beginning XXXXXXX through XXXXXXX and may be extended for subsequent contract years in the absence of a notice by a party (CMS, SAA, or the PACE Organization) to terminate the agreement. This agreement supersedes any previous understanding, agreement, arrangement or contract with respect to the provision of and/or the payment for PACE services. This Agreement is subject to termination as contained in Article IV.

The PACE Organization agrees to comply with all regulations or general instructions or other terms and conditions as CMS or the SAA may find necessary and appropriate from time to time for the administration of the PACE program.

ARTICLE II

GENERAL CONDITIONS

A. Governing Body [§460.32(a)(4)] ; [§460.62] ; [§460.60]

- (1).** The name and telephone number of the PACE Organization's program director and the names of all members of the governing body, and the name and phone number of a governing body member who will serve as a liaison between the governing body and CMS and the SAA is contained in **Appendix A.**

- (2). Any changes in names or telephone numbers shall be reported to CMS and to the SAA prior to the effective date of the change(s).

B. PACE Structure [§460.32(a)(4)] ; [§460.60]

- (1). A description of the organizational structure of the PACE Organization, including the relationship to, at a minimum, the governing body, program director, medical director, and to any parent, affiliate or subsidiary entity is shown in **Appendix B**.
- (2). A PACE Organization planning a change in organizational structure shall notify CMS and the SAA, in writing, at least 60 days before the change takes effect.

C. Service Area and PACE Site(s) [§460.32(a)(1)]

- (1). The PACE Organization shall furnish PACE services only to participants who live within the designated service area, approved by the SAA and CMS (except as provided in §460.70(b)(2)), which is identified by zip code, county, perimeter street boundaries, census tract, block, or tribal jurisdictional area (as applicable).
- (2). The PACE Organization shall identify the sites at which it will perform PACE services. Any changes in the designated service area and/or the site(s) identified in this agreement must be approved by CMS and the SAA prior to effecting such changes. The designated service area and site(s) are included in **Appendix C**.

D. Participant Bill of Rights [§460.32(a)(5)]; [§460.110 and §460.112]

The PACE Organization shall make available to all enrollees a list and explanation of the rights to which they are entitled. The PACE Organization shall assure that those rights and protections are provided. The participant Bill of Rights that will be used to satisfy this requirement is included in **Appendix D**.

E. Services [§460.32(a)(8)] ; §460.92 and §460.94]

The PACE Organization agrees to make available comprehensive health care services that include, at a minimum, all services required by 42 CFR §460.92 and 42 CFR §460.94.

F. Eligibility, Enrollment and Disenrollment [§460.32(a)(7) & §460.32(b)(1)]; [§460.150] [§460.160(b)(3)(ii)]; [§460.162]; [§460.164]

- (1). The PACE Organization shall consider for enrollment and enroll only those persons who: are 55 years or older, are determined by the SAA to need the level of care required under the State Medicaid plan for coverage of nursing facility services, are able to live in a community setting without jeopardizing their health or safety, and reside in the organization's approved designated service area.
- (2). The PACE Organization's eligibility and enrollment policies, including the criteria used to determine if persons are able to live in a community setting

without jeopardizing their health or safety, is contained in **Appendix E**.

- (3). The SAA, in consultation with the PACE Organization, makes a determination of continued eligibility based on a review of the participant's medical record and plan of care. The criteria used to make the determination of continued eligibility are contained in **Appendix E**.
- (4). The PACE Organization may establish other enrollment criteria in addition to that found in Article II F(1) of this Agreement that support decisions to not enroll persons because of certain circumstances. This criteria, however, shall not modify the criteria in Article II F(1) above. All additional enrollment criteria, if any, are specified in **Appendix F**.
- (5). The PACE Organization agrees that any participant, for any reason, may voluntarily disenroll and, upon doing so, is not liable for any additional or penalty payments. The voluntary disenrollment policy is contained in **Appendix G**.
- (6). The PACE Organization may not involuntarily disenroll a participant except for specific causes. The PACE Organization's involuntary disenrollment policy is located in **Appendix H**.

G. Grievance and Appeals [§460.32(a)(6)]; [§460.122]; [§460.124]

- (1). All participants are afforded the right to grieve a PACE Organization's medical and non-medical decisions. They also have the right to appeal the PACE Organization's refusal to provide a particular care-related service or its decision not to pay for a service received by a PACE participant. Internal grievance and appeal procedures for participants are contained in **Appendix I**.
- (2). PACE participants will be informed, in writing, of his or her appeal rights under Medicare or Medicaid managed care, or both. PACE participants will be assisted in choosing which to pursue if both are applicable. The additional appeal rights procedures under Medicare or Medicaid are contained in **Appendix J**.

H. Quality Assessment and Performance Improvement [§460.32(a)(9), (a)(10), (a)(11)]; [§460.130, §460.134(c), §460.136, §460.140]; [§460.202(b)]

- (1). A description of the PACE Organization's quality assessment and performance improvement program is contained in **Appendix K**.
- (2). The PACE organization shall meet or exceed minimum levels of performance on standardized quality measures as established by CMS and the SAA. The minimum level of performance is: The organization will achieve an immunization rate for both influenza and pneumococcal vaccinations of 80% for the participant population that is appropriate. (Rate will exclude those participants who have had prior immunization or the vaccine is medically contraindicated).
- (3). The PACE Organization shall furnish data and information on participant care activities, as established by CMS and the SAA. These data are contained in **Appendix L**.

I. Data Collection and Reporting Requirements [§460.200(a)(b)(c) and §460.204]; [§460.70]

- (1). The PACE Organization shall collect data, maintain records and submit reports as required by CMS and the SAA. The PACE Organization shall allow CMS and the SAA access to data and records including, but not limited to, participant health outcomes data, financial books and records, medical records, personnel records, any aspect of services furnished, reconciliation of participants, benefit liabilities and determination of Medicare and Medicaid amounts payable.
- (2). The PACE Organization agrees to require that all related entities, contractors or subcontractors agree that the SAA, the U.S. Department of Health and Human Services, CMS, or their designee(s) have the right to inspect, evaluate and audit any pertinent contracts, books, documents, papers, and records of any related entity contractor(s) or subcontractor(s) involving transactions related to this Agreement.

**ARTICLE III
PAYMENT
[§460.32(a)(12)]**

For each enrolled participant who is Medicare and/or Medicaid eligible, the PACE Organization will be paid a prospective, monthly capitation amount.

A. For Participants Eligible for Medicare [§460.180]

- (1). Separate rates are established for Part A and Part B. For a participant entitled to Part A benefits and enrolled under Part B, both the Part A and Part B rates are paid. For a participant who is entitled to Part A benefits but not enrolled under Part B, only the Part A rate is paid. For a participant enrolled under Part B but not entitled to Part A benefits, only the Part B rate is paid.
- (2). The Medicare payment amount is described in **Appendix M.**

B. For Participants Eligible for Medicaid [§460.182]

- (1). The monthly capitated Medicaid payment amount is negotiated between the PACE Organization and the SAA. This payment amount is specified in **Appendix M.**
- (2). The SAA shall describe the enrollment/disenrollment reconciliation procedures, to adjust for the difference between the estimated number of participants on which the prospective monthly payment was based and the actual number of participants claimed in that month. The reconciliation method is contained in **Appendix N.**

**ARTICLE IV
TERMINATION OF THE AGREEMENT
[§460.32(a)(13)] [§460.50, §460.52, §460.54]**

- A.** CMS or the SAA may terminate this Agreement at any time for cause, including, but

not limited to: uncorrected deficiencies in the quality of care furnished to participants, the PACE Organization's failure to comply substantially with the conditions for a PACE program, or non-compliance with the terms of this Agreement.

- B.** The PACE organization may terminate this agreement after timely notice to CMS, the SAA and the participants. Notifications shall be made as follows: 90 days before termination to CMS and the SAA and 60 days before termination to the participants.
- C.** The PACE Organization's detailed written plan for phase-down, in the event of termination, is included in **Appendix O**.

**ARTICLE V
REQUIREMENTS OF LAWS AND REGULATION
[§460.32(a)(2)]**

A. The PACE Organization agrees to comply with all applicable Federal, State, and local laws and regulations, including, but not limited to:

- (1).** Sections 1894 and 1934 of the Social Security Act as implemented by regulations at 42 CFR Part 460;
- (2).** Title VI of the Civil Rights Act of 1964 as implemented by regulations at 45 CFR Part 84;
- (3).** The Age Discrimination Act of 1975 as implemented by regulations at 45 CFR Part 91;
- (4).** The Americans with Disabilities Act; and
- (5).** Other laws applicable to the receipt of Federal funds.

**ARTICLE VI
CHANGES TO THE PROGRAM AGREEMENT**

The Parties agree that CMS has the authority to incorporate any additional terms agreed upon by all parties or revise any terms of this agreement and its accompanying appendices that:

- (1).** Are subject to periodic readjustment;
- (2).** Are outmoded as a result of an organizational change made by the PACE Organization;
- (3).** Are outmoded as a result of a contractual modification, initiated by a Party; or
- (4).** Is required by a change in applicable Federal, State, or local laws and regulations.

CMS shall provide the PACE Organization and the SAA with a written notification of any revisions made to the program agreement and/or its appendices, along with the revised program agreement pages. Upon notification, the parties shall notify CMS, in writing, of any disagreement with the terms of the revision(s). Absent written notification to CMS that a party disagrees with the terms contained in CMS's notification, revisions shall become effective thirty (30) days after the date of the initial notification to the parties.

**ARTICLE VII
STATE ADMINISTERING AGENCY REQUIREMENTS**

Compliance and State Monitoring of the PACE Program

The SAA further assures that its responsibilities under section 1934 of the Social Security Act will be met. All relevant provisions are included in the contract with the PACE entities, either as contractor or SAA responsibility. Both scheduled and unscheduled on-site reviews will be conducted by SAA staff.

- A. Readiness Review: The SAA will perform a Readiness Review of the applicant entity that assures the entity has fully developed its policies and procedures, obtained commitments from key staff, developed its solvency plan and has a facility that meets State and Federal requirements at the time of the application, in accordance with Section 460.12(b)(1).
- B. Monitoring During Trial Period: During the trial period, the SAA, in cooperation with CMS, will conduct comprehensive reviews of a PACE organization to ensure compliance with State and Federal requirements.

At the conclusion of the trial period, the SAA, in cooperation with CMS, will continue to conduct reviews of a PACE organization, as appropriate, taking into account the quality of care furnished and the organization's compliance with State and Federal requirements.

- C. Annual Monitoring: The SAA assures that at least annually it will reevaluate whether a participant meets the level of care required under the State Medicaid plan for coverage of nursing facility services. The SAA understands that this determination may be waived if there is no reasonable expectation of improvement or significant change in the participant's conditions because of the severity of a chronic condition or the degree of impairment of functional capacity. The SAA assures that it will make reviews conducted in accordance with Sections 460.190 and 460.192 available to the public upon request.
- D. Monitoring of Corrective Action Plans: The SAA assures it will monitor the effectiveness of corrective actions required to be taken by the PACE organization.

Enrollment and Disenrollment

- A. A description of the SAA's enrollment process, to include the criteria for deemed continued eligibility for PACE, in accordance with Section 460.160 (b)(3), is contained in **Appendix P**.
- B. A description of the SAA's process for overseeing the PACE Organization's administration of the criteria for determining if a potential PACE enrollee is safe to live in the community is contained in **Appendix Q**.
- C. A description of the information to be provided by the SAA to enrollees, to include information on how beneficiaries access the State's Fair Hearings process, is contained in **Appendix R**.

- D. A description of the SAA's disenrollment process is contained in **Appendix S**.
- E. The SAA assures that before an involuntary disenrollment is effective, it will review and determine in a timely manner that the PACE organization has adequately documented grounds for disenrollment.
- F. In the event a PACE participant disenrolls or is disenrolled from a PACE program, the SAA will work with the PACE organization to assure the participant has access to care during the transitional period.
- G. The SAA assures it will facilitate reinstatement in other Medicaid/Medicare programs after a participant disenrolls.
- H. The SAA assures that the State PACE requirements and State procedures will specify the process for how the PACE organization must submit participant information to the SAA.

Marketing

The SAA assures that a process is in place to review PACE marketing materials in compliance with Section 460.82(b)(ii).

Decisions that require joint CMS/SAA Authority

- A. Waivers: The SAA will determine whether regulatory waiver requests submitted by PACE organizations will be considered by CMS and will consult with CMS on those requests. Approved waiver requests are described in **Appendix T**.
- B. Service Area Designations: The SAA will consult with CMS on changes proposed by the PACE organization related to service area designation.
- C. Organizational Structure: The SAA will consult with CMS on changes proposed by the PACE organization related to organizational structure.
- D. Sanctions and Terminations: The SAA will consult with CMS on termination and sanctions of the PACE organization.

State Licensure Requirements

The SAA assures that Life Safety Code requirements are met for facilities in which the PACE organization furnishes services to PACE participants in accordance with Section 460.72(b), unless CMS determines that a fire and safety code imposed by State law adequately protects participants and staff.

**PROGRAM AGREEMENT APPENDICES
APPENDIX A: NAMES AND CONTACT LIST**

1. Name of Program Director:

Telephone Number:

2. Name of Governing body/Board of Director contact person:

Telephone Number:

3. Governing body/Board of Directors:

APPENDIX B: ORGANIZATIONAL STRUCTURE

APPENDIX C: SERVICE AREA AND PACE SITE(S)

- 1. Identify the entire catchment area the PACE program will be covering.**
- 2. Identify the catchment area by zip codes (if the entire county is not included in the service area), and counties or tribal jurisdictional areas (if applicable).**
- 3. LIST THE NAME AND ADDRESS OF EACH PACE SITE(S).**

APPENDIX D: PARTICIPANT BILL OF RIGHTS

**APPENDIX E: ELIGIBILITY AND ENROLLMENT POLICIES; AND CONTINUED
ELIGIBILITY CRITERIA**

APPENDIX F: ADDITIONAL ENROLLMENT CRITERIA

APPENDIX G: VOLUNTARY DISENROLLMENT POLICY

**APPENDIX H: INVOLUNTARY DISENROLLMENT POLICY APPENDIX I: INTERNAL
GRIEVANCE AND APPEAL PROCEDURES**

APPENDIX J: ADDITIONAL APPEAL RIGHTS UNDER MEDICARE OR MEDICAID

APPENDIX K: QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENT PROGRAM

APPENDIX L. PARTICIPANT DATA

These data will be reported electronically into the CMS database, known as "HPMS":

1) Routine Immunizations:

Definition: PACE participants who received routine immunizations during the reporting year.

What data will be reported:

- 1) Number of participants who received the flu immunization this year;
- 2) Number of participants who have received the pneumococcal immunization in the last ten years;
- 3) Total number of participants at the PACE organization.
- 4a) Number of participants not immunized for flu
- 4b) Number of participants not immunized for pneumococcal
- 5) Reason for not immunizing

Frequency: During the inoculation time period (e.g. Sept. to Jan.)

How to use the measure: Compare the number of PACE participants who were enrolled during the reporting year to the number of participants who received routine immunizations (flu and pneumococcal) during the reporting year.

Minimum levels of Performance: The organization will achieve an immunization rate for both influenza and pneumococcal vaccinations of 80 % for the participant population that is appropriate. (Rate will exclude those participants who have had prior immunization or the vaccine is medically contraindicated).

2) Grievances and Appeals

Definition: Grievances are defined as either a written or oral complaints that expresses dissatisfaction with service delivery or the quality of care provided. Appeals are defined as a written complaint for the noncoverage or nonpayment of a service or item.

What data will be reported:

1. Total number of participants during the quarter;
2. Total number of grievances filed during the quarter;
3. Total number of appeals filed during the quarter;
4. Source of each grievance or appeal (participant, family, caregiver, etc.);
5. Date of initiation of each grievance or appeal; and
6. Date of resolution of each grievance or appeal.

Frequency: Quarterly

How to use the measure: Monitor trends and patterns. The actual

number of grievances and appeals alone should not be viewed as an indicator of a problem. The high number of grievances could mean that participants are encouraged to speak up for themselves and voice their concerns.

3) Enrollments

Definition: Individuals enrolled in the PACE program by month.

What data will be reported: Number of individuals who enrolled in the program.

Frequency: Quarterly

How to use the measure: Monitor trends and patterns to determine if there are any accessibility issues and to determine if the PACE organization has sufficient financial resources to conduct appropriate marketing activities. This information can also be used to evaluate the PACE organization's ability to maintain an appropriate census.

4) Disenrollments

Definition: Participants who disenrolled from the program for reasons other than death.

What data will be reported:

1. Total number of participants;
2. Number of voluntary disenrollments;
3. Number of involuntary disenrollments; and
4. Reason for each disenrollment: leaving the service area, failure to pay premium, disruptive or threatening behavior, no longer meets States level of care, program agreement with CMS terminates or not renewed, organization is unable to offer services due to loss of State license, keep personal physician, wishes to access out of network or other.

Frequency: Quarterly

How to use the measure: Utilize this information to determine if there are any problems with site operations, such as accessibility, provision of services, etc. that are causing voluntary disenrollments. In addition, this information can be used to review the organization's policies on involuntary disenrollments.

5) Prospective Enrollees

Definition: Potential participants who were interviewed, met eligibility requirements but did not enroll in the PACE program.

What data will be reported:

- 1) Number of potential participants who were interviewed but did not enroll in the PACE program by aggregate reason; and
- 2) Indicate the category that explains the reason each potential participant did not enroll, e.g. not safe to remain in the community, mental health concerns, lack of support network, requiring 24-hour care, preference for own physician, preference for other health care provider or institution, financial reason to avoid share of cost, unwilling to comply with treatment plan, or other with explanation.

Frequency: Quarterly

How to use the measure: This information can be utilized to determine if the PACE organization is following the appropriate eligibility criteria and to determine if the organization is conducting appropriate marketing activities.

6) Readmissions

Definition: PACE participants re-admitted to an acute care hospital (excluding hospitalizations for diagnostic tests) in the last 30 days.

What data will be reported:

1. Total number of participants;
2. Total number of participants admitted to the hospital in the last 30 days;
3. Specific reason, including diagnosis, for participant's admission;

Frequency: Quarterly

How to use the measure: Review those with high usage to determine if intervention by the PACE organization could have prevented some of the hospitalizations. Readmission for the same reason in a 30-day period could indicate that the length of stay is too short or there is inadequate follow-up care by the PACE organization. Conduct quarterly comparisons to get a total picture of the care provided by the organization.

7) Emergent (unscheduled) Care

Definition: PACE participants seen in the hospital emergency room (including care from a PACE physician in a hospital emergency department) or an outpatient department/clinic emergency, Surgicenter.

What data will be reported:

1. Total number of participants;
2. Total number of participants by (aggregate) same diagnosis and;
3. Specific reason including diagnosis.

Frequency: Quarterly

How to use the measure: Review those with high usage to determine if intervention by the PACE organization could have prevented some of the visits to the ER.

8) Unusual Incidents for Participants and the PACE site (to include staff if participant was involved)

Definition: Unanticipated circumstances, occurrences or situations which have the potential for serious consequences for the participants.

Examples include, but are not limited to: falls at home or the adult day health center; falls while getting into the van; van accidents other than falls; participant suicide or attempted suicide; staff criminal records; infectious or communicable disease outbreaks; food poisoning; fire or other disasters; participant injury that required follow-up medical treatment; participant injury on equipment; lawsuits; medication errors and any type of restraint use. This is not an inclusive list, so we would expect PACE sites to submit quarterly information on any unanticipated situations that occur.

What data will be reported: Number of unusual incidents aggregated by reason

Frequency: Quarterly

How to use the measure: Analyze categories focusing on whether these incidents were preventable, what steps were taken to resolve the problem, and what changes are being made to improve prevention. Is there a pattern that indicates a need for follow-up to investigate health and safety issues and procedures? Is this a program problem (e.g. negligence by staff) or a participant problem (e.g. verbal outbursts by participant with mental illness or severe dementia)?

9) Deaths

Definition: Death of participants during the given reporting period.

What data will be reported:

1. Number of participants (can be aggregated by reason and setting, if same);
2. Number of deaths;
3. Setting of the participant's death; and
4. Cause of the participant's death.

Frequency: Quarterly

How to use the measure: Analysis to determine if there is a pattern indicating inappropriate setting for the participant or problems with accessibility to 24 hour care. Because of the link between the number of deaths and enrollment, this information may also indicate if the PACE organization is maintaining an appropriate census to remain fiscally viable.

The data submitted must come exclusively from the PACE organization, not the parent organization.

If the PACE organization has more than one site of care/treatment, each site must be identified separately.

Version: December, 2004

APPENDIX M: MEDICARE AND MEDICAID PAYMENT AMOUNTS

Medicare:

Before January 1, 2004, Medicare payment to PACE organizations is based on the Medicare Part A and Part B demographic aged rate for the county in which the participant lives, adjusted by a factor of 2.39. Beginning January 1, 2004, Medicare payment will transition to a risk adjustment approach. Under this methodology, payment will be based on Part A and Part B county rates that have been restandardized so that we can appropriately apply the national risk adjustment and frailty factors relevant to each participant. The risk/frailty score for community-dwelling participants is based on the CMS - Hierarchical Conditions Category (CMS-HCC) community model used in the Medicare+Choice program, which is based on diagnostic information submitted by PACE organizations, plus an organization-specific frailty score described below.

The PACE organization's frailty score will be based on the responses received from community-dwelling participants on the PACE Health Survey, which identifies participant difficulty in performing activities of daily living (ADLs). The total number of respondents with difficulty in each ADL group will be multiplied by a specified factor. The resulting products are summed and divided by the total number of community-dwelling respondents in order to determine the average frailty of the organization's participants. The organization's frailty score is added to each participant's risk score to determine the total risk/frailty score for that individual participant.

For new organizations, we will determine an average frailty score based on the responses we received from existing PACE organizations. The total number of respondents in all active organizations with difficulty in each ADL group will be multiplied by the specified factor. The resulting products are summed and divided by the total number of community-dwelling respondents in all active organizations in order to determine the average frailty score. The average frailty score is used to establish the risk/frailty score for participants in new PACE organizations. Since frailty scores apply only to community-dwellers, the risk/frailty score for institutionalized participants is the risk score under the CMS risk adjustment (CMS-HCC) institutional model.

For PACE participants who have end-stage renal disease (ESRD), the PACE organization will receive the statewide ESRD rate multiplied by the PACE ESRD frailty factors, i.e., 1.46 for Medicare Part A and 1.36 for Medicare Part B.

A notice providing updates to the PACE Medicare payment methodology is published in the Federal Register each year and is effective for the following calendar year. Information about how to access updates to the PACE Medicare payment methodology will be provided through the PACE LISTSERVE.

Medicaid:

**APPENDIX N: STATE ENROLLMENT/DISENROLLMENT RECONCILIATION
METHODOLOGY**

APPENDIX O: TERMINATION PHASE - DOWN PLAN

APPENDIX P: SAA ENROLLMENT PROCESS

APPENDIX Q: SAA OVERSIGHT OF PO ADMINISTRATION OF SAFETY CRITERIA

APPENDIX R: INFORMATION TO BE PROVIDED BY THE SAA TO ENROLLEES

APPENDIX S: SAA DISENROLLMENT PROCESS

APPENDIX T: REGULATORY WAIVERS

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS JUNE, 2006

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

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

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

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

APPENDIX B

RESERVED

APPENDIX C

CERTIFICATION REGARDING LOBBYING

APPENDIX C

CERTIFICATION REGARDING LOBBYING

The undersigned certified, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid to any person by or on behalf of the Contractor for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative.
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, in connection with the award of any Federal contract, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement, and the Agreement exceeds \$100,000, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Contractor shall include the provisions of this section in all provider Agreements under this Agreement and require all Participating Providers whose provider agreements exceed \$100,000 to certify and disclose accordingly to the Contractor.
4. 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 pursuant to U.S.C. 1352 The failure to file the required certification shall subject the violator to a civil penalty of not less than \$10,000 and nor more than \$100,000 for each such failure.

Signature

Name
(Printed)

Organization: _____

APPENDIX D

Standard Form LLL Disclosure of Lobbying Activities

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award	3. Report Type: a. initial filing _____ b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee _____ Tier _____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

APPENDIX E-1

Requirements for Proof of Workers' Compensation Coverage

APPENDIX E-1

Requirements for Proof of Workers' Compensation Coverage

Requirements for Proof of Coverage

Unless the Contractor is a political sub-division of New York State, the Contractor shall provide proof, completed by the Contractor's insurance carrier and/or the Workers' Compensation Board, of coverage for:

1. **Workers' Compensation**, for which one of the following is incorporated into this Agreement herein as an attachment to this Appendix:
 - A) **CERTIFICATE OF WORKERS' COMPENSATION INSURANCE, ON THE WORKERS' COMPENSATION BOARD FORM C-105.2 (NAMING THE NYS DEPARTMENT OF HEALTH, CORNING TOWER, RM. 1325, ALBANY, 12237-0016), OR CERTIFICATE OF WORKERS' COMPENSATION INSURANCE, ON THE STATE INSURANCE FUND FORM U-26.3 (NAMING THE NYS DEPARTMENT OF HEALTH, CORNING TOWER, RM. 1325, ALBANY, 12237-0016); OR**
 - b) Certificate of Workers Compensation Self-Insurance, form SI-12, **or** Certificate of Group Workers' Compensation Self-Insurance, form GSI-105.2; **or**
 - c) Affidavit for New York Entities And Any Out Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Coverage Is Not Required, form WC/DB-100, completed for Workers' Compensation; **or** Affidavit That An OUT-OF-STATE OR FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage, form WC/DB-101, completed for Workers' Compensation; [Affidavits must be notarized and stamped as received by the NYS Workers' Compensation Board].

NOTE: ACORD forms are NOT acceptable proof of coverage.

APPENDIX E-2

Requirements for Proof of Disability Insurance Coverage

APPENDIX E-2

Requirements for Proof of Disability Insurance Coverage

Requirements for Proof of Coverage

Disability Benefits Coverage, for which one of the following is incorporated into this Agreement herein as an attachment to this Appendix:

- a) Certificate of Disability Benefits Insurance, form DB-120.1; **or** Certificate/Cancellation of Insurance, form DB-820/829; **or**
- b) Certificate of Disability Benefits Self-Insurance, form DB-155; **or**
- c) Affidavit for New York Entities And Any Out Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Coverage Is Not Required, form WC/DB-100, completed for Disability Benefits; **or** Affidavit That An OUT-OF-STATE OR FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage, form WC/DB-101, completed for Disability Benefits; [Affidavits must be notarized and stamped as received by the NYS Workers' Compensation Board].

NOTE: ACORD forms are NOT acceptable proof of coverage.

APPENDIX F
DEFINITIONS

APPENDIX F

DEFINITIONS

Applicant shall mean an individual who has expressed a desire to pursue enrollment in a managed long term care demonstration.

Benefit Package: shall mean those medical and health-related services as defined in 42 CFR Section 460.92. They are also known as the Benefit Package services or Covered Services.

Capitation Rate shall mean the fixed monthly amount that the Contractor receives for an Enrollee to provide that Enrollee with the Benefit Package.

Effective Date of Disenrollment shall mean the date on which an Enrollee may no longer receive services from the Contractor, as determined using the process articulated in Appendix S of the PACE Program Agreement.

Effective Date of Enrollment shall mean the date on which an Enrollee may receive services from the Contractor, as determined using the process articulated in Appendix E of the PACE Program Agreement.

Enrollee shall mean a person enrolled in the plan who is entitled to covered services in accordance with the provisions of the Agreement from the effective date of his/her enrollment until the effective date of his/her disenrollment. An Enrollee is also known as a participant.

Fiscal Agent shall mean the entity that processes or pays vendor claims on behalf of the Medicaid state agency pursuant to an agreement between the entity and such agency.

LDSS shall mean Local Department of Social Services or the Human Resources Administration of the City of New York.

NAMI shall mean the amount of net available monthly income determined by the Department that a nursing home resident must pay monthly to the nursing home (or to the Contractor if stipulated in the Subcontract agreement) in accordance with the requirements of the medical assistance program.

Roster shall mean the enrollment list generated on a monthly basis by SDOH by which LDSS and Contractor are informed of specifically which recipients the Contractor will be serving for the coming month, subject to any revisions communicated in writing or electronically by SDOH or LDSS.

Spenddown shall mean the amount of medical expenses the Department determines a “medically needy” individual must incur in any period in order to be eligible for medical assistance (as currently described in 18 NYCRR 360-4.8). Spenddown amounts are also referred to as surplus.

Subcontract shall mean a written contract with the Contractor pursuant to which a person or entity

provides certain services or items the Contractor deems necessary or advisable to the operation of the Demonstration.

Subcontractor shall mean a person or entity with whom the Contractor has entered into a written subcontract.

APPENDIX G
REGULATORY AGREEMENT

**APPENDIX G
REGULATORY AGREEMENT**

Managed Long Term Care PACE contract
NYS Insurance Department

Preamble:

Whereas, §4403-f of the Public Health Law (PHL) grants the Superintendent of Insurance (Superintendent) specified regulatory responsibilities regarding approved managed long term care demonstrations and managed long term care plans;

Whereas, Contractor is _____ an approved managed long term care demonstration which pursuant to the PHL must enter into a written agreement with the Superintendent;

Whereas, Contractor ultimately seeks to obtain a certificate of authority as a managed long term care plan from the Commissioner of Health (Commissioner);

Whereas, Contractor recognizes that the Superintendent will have specified regulatory responsibilities regarding the managed long term care plans; and

Whereas, the Superintendent is desirous of encouraging the beneficial operation of approved managed long term care demonstrations to facilitate their eventual certification by the Commissioner as managed long term care plans; and

Whereas, Contractor is an entity which is an approved managed long term care demonstration, and the entity which will have the certificate of authority to operate as a managed long term care plan issued to it by the Commissioner.

NOW, therefore, the Superintendent and Contractor hereby agree: 1) as to the terms and conditions under which Contractor shall operate as an approved managed long term care demonstration and managed long term care plan and 2) that the effectiveness and validity of this agreement shall survive the issuance of a certificate of authority to the Contractor and the terms and conditions of this agreement shall be referenced as conditions of the issuance of a certificate of authority to the Contractor.

Enrollee Contracts:

The Superintendent shall be responsible for evaluating, approving and regulating all matters relating to enrollee contracts.

The Contractor shall submit to the Superintendent for prior approval all enrollee contracts or revisions to enrollee contracts as required by the PHL.

The Superintendent agrees to review and approve, if appropriate, these enrollee contracts or revisions to enrollee contracts pursuant to pertinent statutory and regulatory authority as set forth in the PHL.

The Contractor shall not issue enrollee contracts, revised enrollee contracts or provide coverage until the enrollee contracts or revised enrollee contracts are approved or filed by the Superintendent.

The Contractor shall not market specific enrollee contracts or revisions to enrollee contracts until approved by the Superintendent. The Superintendent agrees that Contractor may market the general design and operations of its program, if done without reference to specific enrollee contracts and if the marketing materials have been approved by the Commissioner prior to use.

Premium Rates:

The Superintendent shall be responsible for evaluating, approving and regulating all matters relating to premium rates as charged by the Contractor to, or on behalf of, its enrollees except for enrollees eligible to receive services under Title XIX of the federal Social Security Act. The Contractor shall submit to the Superintendent actuarial information sufficient for the Superintendent to approve premium rates.

Premiums shall be determined in accordance with the Insurance Law of the State of New York and as described in the PHL, and the Superintendent's review of premium rates shall be according to these statutory standards.

The Contractor recognizes the consultative role granted to the Superintendent by the PHL in establishing payment rates for services provided to enrollees eligible under Title XIX of the Federal Social Security Act. The Contractor shall provide the Superintendent with all necessary and pertinent information, as determined necessary by the Superintendent, so the Superintendent may consult with the Commissioner in establishing payment rates for services provided to enrollees eligible under Title XIX of the Federal Social Security Act.

The Contractor shall not quote premium rates until the Superintendent approves the premium rates for the enrollee contracts.

The Contractor shall not market specific premium rates for enrollee contracts until approved by the Superintendent. The Superintendent agrees that Contractor may market the general design and operations of its program, if done without reference to specific premium rates for enrollee contracts and if the marketing materials have been approved by the Commissioner prior to use.

Fiscal Solvency:

The Superintendent shall be responsible for evaluating and regulating all matters relating to fiscal solvency. The Superintendent's authority pertaining to fiscal solvency includes establishing required reserves, surplus and provider contracts (to the extent such contracts may affect fiscal solvency matters).

Implementation by the Superintendent of regulatory responsibility with regard to fiscal solvency shall, as required by the PHL, be in accordance with the nature of the Contractor's operations and, shall be after consultation with the Commissioner.

The Contractor shall comply with and maintain the minimum financial requirements established by the Superintendent before commencing operations.

The Contractor shall comply with requirements for minimum net worth on an ongoing basis as established by the Superintendent.

The Contractor shall maintain the greater of the minimum net worth as set forth in the regulations of the Commissioner relating to Health Maintenance Organizations, 10 NYCRR Part 98-1.11(d) or 98-1.11(e). As authorized by the PHL, premium revenue derived from chronically ill individuals who are in a nursing facility and covered by Title XIX of the Federal Social Security Act may be excluded from the Part 98-1.11(d) calculation. The Superintendent will review the financial condition of the corporate parent and/or affiliates of Contractor, as well as any risk sharing and/or guarantee agreements, and may, after consultation with the Commissioner, reduce the net worth requirements that would otherwise be applicable.

Records and Reporting:

The Contractor shall maintain books, records, documents, and other evidence of accounting procedures and practices so that the Superintendent or his designated representatives may perform comprehensive, periodic auditing of the financial records of the Contractor.

The Superintendent or his designated representatives shall have access to any financial, medical and other records maintained by the Contractor, during normal business hours.

The Contractor shall provide the Superintendent with an annual cost report, including an opinion of a Certified Public Accountant (CPA), no later than June 1st, for the previous calendar year, executed by at least two executive officers of the Contractor. The CPA opinion shall certify that the figures in the annual cost report are presented properly and in accordance with generally accepted accounting principles.

The Contractor shall submit quarterly cost reports to the Superintendent, which will include financial and enrollment data by plan. Quarterly cost reports shall be submitted no later than 45 days after the end of the quarter except that the quarterly cost report for the fourth quarter shall be due no later than April 1.

The Contractor shall submit any special reports to the Superintendent pursuant to §308 of the Insurance Law.

Should the Contractor fail to meet its projected financial results, the Superintendent after consultation with the Commissioner, may direct the plan to be re-capitalized by means of additional cash infusions or other means acceptable to the Superintendent. At such time, the Contractor shall file monthly summary financial reports with the Superintendent and may be placed on priority monitoring.

Impairment and Insolvency:

Upon a determination by the Superintendent, after consultation with the Commissioner, that Contractor has insufficient net worth to fund its statutory requirements, it may be considered Impaired and placed on priority monitoring, until such time as it restores its net worth. Contractor shall take the following, or such other actions as may be required by the Superintendent:

- 1.) Obtain additional funding from the parent, a sponsoring organization or other financial source such as a provider or affiliate; either as a direct cash infusion or other means acceptable to the Superintendent, including an Insurance Law §1307 loan;
- 2.) Provide the Superintendent, for review and approval, a Plan to Restore the financial condition of the Contractor in order to meet the statutory reserve requirements within 1 to 3 years.

If Contractor fails to restore its net worth or meet the projections contained in its Plan to Restore, Contractor is subject to Insurance Law Article 74 and, upon request by the Superintendent, it shall furnish a voluntary consent to rehabilitation or liquidation.

Miscellaneous:

The Superintendent may make an examination into the affairs of the Contractor as often as he deems it expedient for the protection of the interests of the people of this state, in addition to any periodic examinations authorized by statute.

The Contractor shall cooperate with the Superintendent in the resolution of any consumer complaints concerning the Contractor, and, where applicable, according to a time frame required by the Prompt Payment Law (§3224-a of the Insurance Law).

The Contractor shall not use deceptive or coercive marketing methods to encourage participants to enroll. The Contractor shall not distribute marketing materials to potential enrollees until such materials are submitted to the Superintendent and approved by the Superintendent, as

necessary.

The provisions in this agreement may be unilaterally amended by the Superintendent in order to incorporate future revisions of the Insurance Law and/or its implementing Regulations, the PHL and Social Services Laws and their implementing regulations (Titles 10 and 18), and federal law.

No provision of this agreement shall be deemed to preempt, override, or otherwise alter any provision of the agreement entered into between the Contractor and the Department of Health.

This written agreement is effective upon its execution by the parties and shall remain in effect according to the provisions of applicable statute, including the PHL. Upon a finding by the Superintendent, after an opportunity to be heard, that the operation of the Contractor is contrary to law as to matters regulated by the Superintendent, this written agreement shall terminate and the Contractor shall immediately cease issuing enrollee contracts, cease collecting premiums and cease distribution of marketing materials.

This written agreement may be amended at any time by written agreement signed by the parties.

This agreement survives the issuance of a certificate of authority to the Contractor, and the Contractor agrees that the terms and conditions of this agreement shall be conditions to the issuance of a certificate of authority.

IN WITNESS WHEREOF, the parties have executed this written agreement as of the date opposite their signatures, the latest such date being the effective date hereof.

Date:

NEW YORK STATE
INSURANCE DEPARTMENT

By: _____
Title

Date:

CONTRACTOR

By: _____
Title

State of New York)

County of _____) SS:

On the ____ day of _____, 2007,

before me personally appeared _____, to me known, who being by me duly

sworn, did depose and say that he/she resides at _____, that he/she is the

_____ of _____., the corporation described

herein which executed the foregoing instrument; and that he/she signed his/her name thereto by order of

the board of directors of said corporation.

(Notary)

APPENDIX X

MODIFICATION AGREEMENT FORM

**APPENDIX X
MODIFICATION AGREEMENT FORM**

Agency Code _____ Contract No. _____
Period _____ Funding Amount for Period _____

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

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

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

CONTRACTOR SIGNATURE

STATE AGENCY SIGNATURE

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

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

