

**APPENDIX C
PAYMENT AND REPORTING TERMS AND CONDITIONS**

Line Item Budget

Revised December 2012

- This Contract is funded with non-Federal funds only
- This contract is funded in whole or in part with Federal funds (see Appendix A3, Paragraph 14, for federal audit information)
- OCFS has determined that the Contractor IS NOT a Subrecipient
- OCFS has determined that the Contractor IS a Subrecipient
- The Federal funds for this contract are from Catalog of Federal Domestic Assistance (CFDA Number(s): see App A2

I. EXECUTIVE ORDER NUMBER 38

Executive Order Number 38 sets Limits on State-Funded Administrative Costs & Executive Compensation. Contracts, payment requests and reporting must comply with this Executive Order. The Order is printed at the end of this document, and can be found at the following website address: <https://www.governor.ny.gov/executiveorder/38>

II. PAYMENT TERMS AND CONDITIONS

In consideration of the services to be performed by the Contractor pursuant to this AGREEMENT, the Office of Children and Family Services (OCFS) agrees to pay and the Contractor agrees to accept a sum not to exceed the amount specified on the face page of this AGREEMENT for the Initial AGREEMENT period and, for subsequent periods, the amount specified in Appendix X for that period. All payments shall be in accordance with the budget contained in Appendix B for the applicable period. Payment under this AGREEMENT is conditional upon the continued availability of funds. Should funds become unavailable, the Contractor shall be relieved of any obligation to continue this project beyond the period for which funds were available. Payments and future funding are contingent on the availability of funding for the activities to be conducted in accordance with this AGREEMENT.

Funds cannot be expended until the contract is approved by the Office of the State Comptroller (OSC). Expenditures cannot precede the contract start date. If the Contractor makes expenditures subsequent to the contract start date, but prior to OSC approval of the contract, they do so at their own risk. In the event that OSC does not approve the contract, OCFS shall have no obligation to pay the Contractor for any such expenditures made subsequent to the proposed contract start date.

See Appendix A-2 for any additional program-specific Payment Terms and Conditions applicable to this AGREEMENT. To the extent that there is a conflict between any Payment Terms and Conditions set forth in this Appendix and in Appendix A-2, the Payment Terms and Conditions in Appendix A-2 will supersede the Payment Terms and Conditions in Appendix C.

Contractor shall provide complete and accurate billing invoices to OCFS in order to receive payment. Billing invoices submitted to OCFS must contain all information and supporting documentation required by this AGREEMENT, OCFS and OSC. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner of OCFS, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with OSC's procedures to authorize electronic payments. Authorization forms are available at OSC's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this AGREEMENT if it does not comply with OSC's electronic payment procedures, except where the Commissioner of OCFS has expressly authorized payment by paper check as set forth above.

III. ADVANCE PAYMENT AND RECOUPMENT

- a. To the extent permitted by applicable laws and regulations, OCFS may, at its own discretion, make advance payment(s) to the Contractor, up to **25%** of the annual period amount, upon the submission by the Contractor of sufficient justification therefor. Any advance may be eligible for payment only upon approval of this AGREEMENT by the Attorney General and by OSC and upon the submission to OCFS by the Contractor of a properly executed State of New York Claim for Payment (Ac3253-S), or on-line claim submitted through the OCFS Contract Management System (CMS), in a form acceptable to OCFS and to OSC.
- b. Recoupment of any advance payment(s) shall be recovered by crediting **16.6% of the advance amount each month for the first 6 months** or as otherwise specified in Appendix A-2. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims will be reduced until the advance is fully recovered. Any unexpended advance balance at the end of the AGREEMENT period will be refunded by the Contractor to OCFS. In the event either party terminates the AGREEMENT prior to its expiration, the Contractor agrees to refund to OCFS immediately any advance balance then outstanding.
- c. An initial advance, if determined to be payable to the contractor, shall be payable thirty days from the start date of services within the contract period or thirty days from the submission of a properly executed State of New York Claim for Payment, or on-line claim submitted through CMS, in a form acceptable to OCFS and OSC, whichever is later.
- d. For purposes of interest determinations pursuant to Article XI-B of the State Finance Law, claims for payment of advances are payable 30 days from the start date of services within the contract period if deemed acceptable by OCFS and OSC. If the Contractor's claim or on-line claim submitted through CMS is not received within 30 calendar days of the contract becoming fully executed no additional interest shall accrue after such thirtieth day.

IV. CLAIMS FOR REIMBURSEMENT

- a. The Contractor shall submit claims for the reimbursement of expenses under this AGREEMENT within fifteen (15) days after the end of each **monthly** claiming period or as otherwise specified in Appendix A-2.
- b. The Contractor shall submit a New York State Claim for Payment or on-line claim submitted through CMS and a New York State Financial Claim Report within fifteen (15) days after the end of each claiming period as identified in Appendix A-2. The Contractor shall also submit the appropriate supporting fiscal documentation for the expenses claimed. The final claim shall be submitted within thirty (30) days after the expiration of each annual contract period or the early termination of this AGREEMENT or as otherwise specified in Appendix A-2.
- c. OCFS agrees to pay the Contractor for expenses incurred in behalf of fulfilling this AGREEMENT, according to the budget contained in Appendix B and upon the submission of a properly executed State of New York Claim for Payment, or on-line claim submitted through CMS, in a form acceptable to OCFS and to OSC and the submission of required Program reports. OCFS agrees to submit each approved claim to OSC for payment, unless it shall have notified the Contractor of its disapproval of payment, in writing, together with a justification therefor.
- d. Claims other than those for payment of advances are payable on the 45th day after the end of the claiming period (monthly or quarterly as defined in this agreement) if deemed acceptable by OCFS and OSC, and if the Contractor's claim or on-line claim submitted through CMS is received within 15 days after the end of said period. If the Contractor's claim or on-line claim submitted through CMS is received later than 15 days after the end of said period, then the claim will be payable 30 days after receipt if deemed acceptable by OCFS and OSC.
- e. For purposes of interest determinations pursuant to Article XI-B of the State Finance Law, claims or on-line claims submitted through CMS other than those for the payment of advances are payable 30

days after the end of the claiming period (monthly or quarterly as defined in this agreement) if deemed acceptable by OCFS and OSC. If the Contractor's claim or on-line claim submitted through CMS is not received within 30 calendar days of the contract becoming fully executed no additional interest shall accrue after such thirtieth day.

- f. OCFS reserves the right to withhold up to ten percent (10%) of the total amount of the contract as security for the faithful completion of services under this AGREEMENT. OCFS will or will not withhold up to 10% of the total amount of this contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under this AGREEMENT. The amount withheld will be paid to the Contractor upon the receipt of all required reports, including the final programmatic and fiscal reports, all products of the project as provided in the AGREEMENT as detailed in Appendix D, a final claim or on-line claim submitted through CMS, the accounting for any advance payment(s) made pursuant to this AGREEMENT, and upon certification by the Contractor that it has completed its obligations and duties under this AGREEMENT.
- g. OCFS will not be liable for payments on any contract, grant or agreement made pursuant to an appropriation if insufficient monies are available.
- h. The Contractor shall require any and all subcontractors to submit all financial claims for services rendered and required supporting documentation and reports necessary to complete the financial claim and expense report as referenced in Section III.a. above in sufficient time for said information to be received by the Contractor no later than ten (10) days following the final day of the claiming period. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information and/or are not received by the Contractor by said due date. Subcontractors shall be paid on a timely basis after submitting the required reports and vouchers for reimbursement of services.
- i. Subcontracts should not be signed by Contractor prior to OCFS approving the subcontract and OSC approving the contract. Subcontracts cannot have start dates prior to the contract start date. If Contractor obtains signature on a subcontract subsequent to the start date, but prior to OSC approval of the contract, they do so at their own risk.
- j. Payment for travel costs and related expenses incurred by the Contractor's staff, employees and consultants shall be made at no greater than the prevailing New York State rates established for travel costs and related expenses for State employees as set by OSC and listed at the following internet website <http://www.osc.state.ny.us/agencies/travel/travel.htm>
- k. OCFS may specifically request the return of any equipment purchased pursuant to this AGREEMENT. At the discretion of OCFS, the Contractor may retain custody of such equipment, provided it continues to be used for the children, family, and youth services outlined in the AGREEMENT. No equipment purchased with OCFS funds may be transferred or disposed of without written permission from OCFS. Equipment items purchased and claimed must be listed in the approved contract budget. Any changes in the equipment listed in the budget must have prior approval by OCFS in writing before implementing the change.
- l. If the Contractor receives funds under this AGREEMENT to construct, renovate or improve the property it occupies, then the improved property will be used for the children, family and youth services outlined in this AGREEMENT for the period set forth in Appendix A-2 of this AGREEMENT
- m. All obligations must be incurred prior to the end date of the contract. The Contractor has up to 90 days after the contract end date to make expenditures as long as the obligation was made prior to the contract end date.
- n. Any goods or services ordered by the Contractor prior to the contract start date must be received and paid for during the contract period in order for the cost of such goods and/or services to be reimbursed to the contractor using funds from this AGREEMENT. Should the contractor order goods and/or services prior to Office of the State Comptroller's approval of the contract, the contractor does so at their own risk and OCFS will not reimburse the contractor for the cost of such goods and/or services if such goods and/or services were received or paid for prior to the commencement of the contract period.

V. BUDGET REVISIONS

- a. The Contractor may make revisions to the budget contained in Appendix B up to ten percent (10%) of the total contract value without prior approval of OCFS except that any budget revisions that affect changes in the workplan contained in Appendix D shall require prior written approval of OCFS unless otherwise specified in Appendix A-2. The Contractor agrees to submit any and all revisions made pursuant to this subparagraph to the Designated Payment Office identified in Appendix A-2 within ten (10) days of implementing such revisions or as an attachment to any claims for reimbursement that may be associated with such revisions, whichever is the earlier date.
- b. Budget revisions in excess of ten percent (10%) of the total contract value or which affect changes in the workplan as contained in Appendix D shall be submitted in writing to the Designated Payment Office identified in Appendix A-2 for approval, accompanied by justification therefor. The OCFS Project Officer shall notify the Contractor, in writing, of OCFS' approval of such budget revisions, or shall, in writing, notify the Contractor of OCFS' disapproval and identify the reasons for such disapproval.
- c. Any proposed modification to the contract that will result in a transfer of funds among program activities or budget cost categories, but does not affect the amount, consideration, scope or other terms of the contract must be submitted to the Office of the State Comptroller for approval when: 1) The amount of the modification is equal to or greater than ten percent of the total value of the contract for contracts of less than five million dollars; OR, 2) The amount of the modification is equal to or greater than five percent of the total value of the contract for contracts equal to or greater than five million dollars.

VI. AUDIT AND RECORDS RETENTION

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this AGREEMENT (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. OSC, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this AGREEMENT, 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; (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. If the Records are in any way relevant to audit findings, litigation or claims and the audit findings, litigation, or claims are not resolved within a period of six (6) years after the end or termination of this AGREEMENT, the Contractor will retain such records until notified in writing by OCFS to dispose of them.

VII. REFUNDS

In the event that the contractor must make a refund to OCFS for contract related activities (repayment of an advance, an audit disallowance, or for any other reason), payment must be made in the form of a check or money order payable to "New York State Office of Children and Family Services". The contractor must include with the payment a brief explanation of why the refund is being made and reference the contract number. Refund payments must be submitted to:

NYS Office of Children and Family Services
Attention: Contract Cash Receipts
Bureau of Contract Management
Capital View Office Park
52 Washington Street
South Building, Room 202
Rensselaer, NY 12144

VIII. PROGRAM REPORTING REQUIREMENTS

- a. The Contractor shall submit a Program Report on the schedule stated in Appendix A-2 and in the format specified by OCFS.
- b. In addition to the periodic reports stated above, the Contractor shall, prior to receipt of final payment under this AGREEMENT, submit a final program report satisfactory to OCFS no later than thirty (30) days following the termination of this contract or the completion of expenditures, whichever is sooner or as otherwise specified in Appendix A-2.

IX. REPORTING SCHEDULE

All periodic reports as identified in Appendix A-2 shall be submitted in accordance with the schedule provided unless otherwise designated in writing by the Program Officer. All periodic reports must be submitted no later than fifteen (15) days after the end of the reporting period or as otherwise specified in Appendix A-2.

X. DESIGNATED PAYMENT OFFICE

Designated Payment Office information is contained in Appendix A-2.

EXECUTIVE ORDER NO: 38
LIMITS ON STATE-FUNDED ADMINISTRATIVE COSTS & EXECUTIVE COMPENSATION

Direct link: <https://www.governor.ny.gov/executiveorder/38>

WHEREAS, State Government in New York directly or indirectly funds, or authorizes reimbursements with other taxpayer dollars to, a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need; and

WHEREAS, State Government in New York has an ongoing obligation to ensure that taxpayers' dollars are used properly, efficiently and effectively to improve the lives of New Yorkers and our communities; and

WHEREAS, in certain instances providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs and outsized compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients; and

WHEREAS, such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded; and

WHEREAS, to curb such abuses in executive compensation and administrative costs and ensure that taxpayer dollars are used first and foremost to help New Yorkers in need;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

1. Within ninety days of this Executive Order, the commissioner of each Executive State agency that provides State financial assistance or State-authorized payments to providers of services, including but not limited to the Office for People with Developmental Disabilities, Office of Mental Health, Office of Alcoholism and Substance Abuse Services, Office of Children and Family Services, Office of Temporary and Disability Assistance, Department of Health, Office for the Aging, Division of Criminal Justice Services, and Office of Victim Services shall promulgate regulations; and take any other actions within the agency's authority including amending agreements with such providers to address the extent and nature of a provider's administrative costs and executive compensation that shall be eligible to be reimbursed with State financial assistance or State-authorized payments for operating expenses.
2. Each such agency's regulations shall include but not be limited to requirements that providers of services that receive reimbursements directly or indirectly from such agency must comply with the following restrictions:
 - a. No less than seventy-five percent of the State financial assistance or State-authorized payments to a provider for operating expenses shall be directed to provide direct care or services rather than to support administrative costs, as these terms are defined by the applicable State agency in implementing these requirements. This percentage shall increase by five percent each year until it shall, no later than April 1, 2015, remain at no less than eighty-five percent thereafter.
 - b. To the extent practicable, reimbursement with State financial assistance or State-authorized payments shall not be provided for compensation paid or given to any executive by such provider in an amount greater than \$199,000 per annum, provided, however, that the commissioner of each agency shall have discretion to adjust this figure annually based on appropriate factors and subject to the approval of the Director of the Budget, but in no event shall such figure exceed Level I of the federal government's Rates of Basic Pay for the Executive Schedule promulgated by the United States Office of Personnel Management.
3. A provider's failure to comply with such regulations established by the applicable state agency shall, in the commissioner's sole discretion, form the basis for termination or non-renewal of the agency's contract with or continued support of the provider. Each agency's regulations shall provide that, under appropriate circumstances and upon a showing of good cause, a provider may be granted a waiver from compliance with these or other related requirements in whole or in part subject to the approval of the applicable State agency and the Director of the Budget.
4. The commissioner for each such agency shall regularly obtain the data from providers that is needed to monitor the providers' compliance with these requirements and shall report to the Director of the Budget on an annual basis the impact of these requirements on the use of public funds to support excessive executive compensation and administrative costs among providers.

GIVEN under my hand and the Privy Seal of the
State in the City of Albany this
eighteenth day of January in the year two
thousand twelve.

BY THE GOVERNOR
Secretary to the Governor