

NEW YORK STATE DEPARTMENT OF HEALTH

A Funding Availability Solicitation (FAS)

For Quality Assurance Services for the

New York State Health Benefit Exchange (NY-HX)

Office of Health Insurance Programs

FAU #1108311202

Schedule of Key Events

Posting Date	September 26, 2011
Questions Due	3:00pm ET on October 7, 2011
Answers Posted	On or About October 20, 2011
Proposal Due Date	3:00pm ET on November 3, 2011
Anticipated Start Date	December 15, 2011

DESIGNATED CONTACTS:

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I. Introduction

In December 2010 the New York State Department of Health (the Department) applied for an Early Innovator (EI) federal grant to support the design, development and implementation (DDI) of the business requirements, processes and Information Technology (IT) infrastructure needed to operate a New York State Health Benefit Exchange and a New York State Small Business Health Option Program (SHOP) Exchange (NY-HX) in accordance with the requirements of the Patient Protection and Affordable Care Act (ACA). In February 2011 the Department was awarded an Early Innovator grant. The purpose of this Funding Availability Solicitation (FAS, Request for Proposals (RFP), solicitation or posting) is to define for potential bidders the requirements of the Quality Assurance (QA) contractor as required by the Early Innovator grant award.

The Department is seeking a QA contractor who has demonstrated QA expertise, or can demonstrate the capability to establish a contractual relationship(s) with a subcontractor(s) who has QA expertise, in:

- Supporting health policy development;
- Supporting public benefit eligibility systems;
- Supporting and advising state governments on maximizing Federal reimbursement; and
- Monitoring operations for a project the size and magnitude of the NY-HX which is built upon a Medicaid Information Technology Architecture (MITA)

The QA Contractor will oversee the work of the primary contractor selected to provide design, development, implementation and operational services for the NY-HX as defined in the FAS for the NY-HX (refer to <http://www.health.ny.gov/funding/rfp/1106211137/index.htm> for the FAS and attachments). The contractor will also be responsible for providing an ongoing critical review and assessment of the performance of the primary contractor for the NY-HX.

By mid-2013 the primary contractor must deliver to the Department a fully functional, “operational ready” NY-HX system (NY-HX Solution) that meets all of the requirements in the FAS for the NY-HX. Due to this compressed timeframe the Department is seeking a QA contractor that can demonstrate immediate readiness to execute the requirements herein, upon the approval as to the form of the contract by the Office of the State Comptroller (OSC).

Major goals for the NY-HX are to:

- 1) Provide immediate support for New York to Design, Develop and deliver to the Department an Operational ready (DDO) NY-HX Solution which meets the needs of the State, New York consumers, and a range of relevant stakeholders (e.g., employers, health plans, citizens, etc.);
- 2) Design and develop modular, reusable, scalable, open standards technology components for advancing NY-HX capabilities, working in collaboration with the U.S. Department of Health and Human Services (HHS) Center for Consumer Information and Insurance Oversight (CCIIO), the Centers for Medicare and Medicaid Services (CMS), the State of New York and other States;

- 3) Further mature and refine the NY-HX IT governance structure, building upon the planning work completed by the New York State Insurance Department (NYSDOI) and the Department as a result of the State's first round planning grant award from CCIIO;
- 4) Refine and evolve the integration strategy of New York's Medicaid and Children's Health Insurance Program (CHIP) into the NY-HX;
- 5) Design the NY-HX such that it will be able to interoperate with other social benefit programs such as the Supplementary Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) and Title IVE of the Social Security Act (Foster Care); and,
- 6) Position New York and other states to deploy successful Health Insurance Exchanges beginning in July 2013 for full implementation by January 1, 2014.

The QA contractor will be required to oversee and review the work necessary to achieve the goals mentioned above.

The contractor selected as a result of the funding availability solicitation for the NYS Health Benefit Exchange (NY-HX), including its parent and/or subsidiaries companies or other companies in which it has a financial or legal interest, or any of its subcontractors or agents, are precluded from participation as a contractor, subcontractor, or agent in the contract awarded in response to this FAS.

This Funding Availability Solicitation (FAS) is being posted by the Department in accordance with Chapter 59 of the Laws of 2011, Section 105 which is set forth below. The Commissioner of the Department is authorized to review all reasonable and responsive proposals submitted in response to this FAS and to select a contractor(s) which in the discretion of the Commissioner is best suited to carry out the purposes set forth in the Early Innovator Grant award to the Department.

§ 105. Notwithstanding any inconsistent provision of sections 112 and 163 of the state finance law, or section 142 of the economic development law, or any other law, the commissioner of health is authorized to enter into a contract without a competitive bid or request for proposal process for the purposes set forth in the Early Innovator federal grant awarded to the department of health by the federal centers for Medicare and Medicaid services pursuant to the Patient Protection and Affordable Care Act (P.L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), provided, however, that:

(i) the department of health shall post on its website, for a period of no less than thirty days:

- (1) a description of the proposed services to be provided pursuant to the contract or contracts;
- (2) the criteria for selection of a contractor or contractors which shall include but not be limited to the ability of the contractor to meet the federal grant requirements;
- (3) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and
- (4) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(ii) all reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner of health;

- (iii) the commissioner of health shall select such contractor or contractors that, in his or her discretion, are best suited to carry out the purposes set forth in the Early Innovator federal grant awarded to the department of health; and
- (iv) prior to the execution of any resulting contract, the commissioner of health shall submit a copy to the office of the state comptroller for review and approval.

II. Background

On March 23 and 30, 2010, President Obama signed into law the Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152. The two laws are collectively referred to as the Affordable Care Act (ACA). ACA creates new competitive health insurance markets, including the establishment of Exchanges, that will provide millions of Americans and small businesses access to affordable coverage. An Exchange must meet federal certification requirements by January 1, 2013 and be capable of providing open enrollment services by mid-2013. Exchanges in each state must be fully operational by January 1, 2014.

On September 29, 2010, New York State received a \$1 million award from HHS/CCIIO through the State Planning and Establishment Grants for the Affordable Care Act's Exchanges, Funding Opportunity Announcement (FOA) No. IE-HBE-10-001 (Planning Grant). The Planning Grant is being used for initial planning activities related to the implementation of the NY-HX Solution. Major goals for the initial planning year include:

- 1) compile and evaluate background research from current research platforms and private funding by January 2011;
- 2) engage stakeholders in the evaluation, planning and development process throughout the one-year planning period;
- 3) evaluate the extent to which New York can integrate and build on existing programs, as appropriate;
- 4) identify and utilize existing resources and capabilities, as appropriate, throughout the one-year planning period and determine need for additional resources;
- 5) design NY-HX governance structure and draft legislation, if required;
- 6) evaluate financial accounting, auditing, and reporting requirements and potential pathways to securing compliance;
- 7) identify existing technical infrastructure resources and needs;
- 8) create a business operations plan and policies for the Exchange; and
- 9) identify legislation and regulations needed to create, promote, and regulate the Exchange.

The State's planning activities are being augmented by an information technology (IT) gap analysis project funded by the New York State Health Foundation. The work product of this engagement has

produced a report (refer to <http://www.health.ny.gov/funding/rfp/1106211137/index.htm> Attachment 13) that recommends the direction New York should take to develop a “consumer-centric” ACA compliant exchange leveraging existing technology assets.

In December 2010 the Department applied for an Early Innovator federal grant to support the DDO of the NY-HX (refer to <http://www.health.ny.gov/funding/rfp/1106211137/index.htm> Attachment 4). On February 16, 2011 New York was chosen as one of seven EI states. The State received a grant award to design and implement the IT infrastructure needed to operate the NY-HX Solution, including NY-HX application software and eligibility and enrollment functionality. As an EI state, New York and the selected contractor must share components it develops with other states for reuse in their Exchanges. As an EI state, the target date for “Operational Readiness” of the NY-HX Solution is October 10, 2012, to facilitate re-use by other states.

On January 20, 2011, the U.S. Department of Health and Human Services (HHS), Office of Consumer Information and Insurance Oversight (OCIO subsequently renamed CCIIO) released the Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges, FOA No. IE-HBE-11-004 (Establishment Grant). This funding opportunity provides funding to support ongoing State efforts to implement Exchanges. It also specifies required core areas, functionality, milestones and benchmarks states must address to meet ACA standards and timeframes, and to qualify for ongoing federal Establishment Grant support. New York intends to apply for Establishment Grant funding.

III. Quality Assurance (QA) Project Purpose

The purpose of this procurement is to obtain the services of a qualified QA contractor to provide in-depth support the Department in the design, development, implementation and the operation of the NY-HX. Additionally, on an annual basis the Department may require additional assistance on related, emergent activities limited to 16,000 hours per year in accordance with the hourly rates set forth in Pricing Schedule B.

IV. Scope of Work

The selected QA contractor will contract with the Department to provide QA services that include but are not limited to the review and assessment of the primary contractor’s work products including but not limited to the requirements of gathering, system design, system construction and test, user acceptance testing and the CMS operational review of the operational ready (DDO) NY-HX Solution based upon the requirements defined in the ACA, the FAS for the NY-HX (refer to <http://www.health.ny.gov/funding/rfp/1106211137/index.htm>) and the requirements set forth herein.

The QA contractor must ensure that the operational ready NY-HX Solution delivered by the primary contractor meets all the requirements within the FAS, the requirements of the federal Early Innovator grant award for the NY-HX, the requirements in the ACA, all current federal rules and regulations governing exchanges as well as complying with all federal FOAs, guidance and framework documents pertaining to exchanges.

Since federal rules and regulations governing the DDO of Exchanges have not been finalized, the Department is seeking fixed price proposals from the QA contractor for the oversight, review and

assessment of the NY-HX Solution provided by the primary contractor as defined in FAS for the NY-HX (refer to <http://www.health.ny.gov/funding/rfp/1106211137/index.htm>), the requirements of the federal Early Innovator grant award for the NY-HX , the requirements in the ACA, all current federal rules and regulations governing exchanges as well as complying with all federal FOAs, guidance and framework documents pertaining to exchanges. This fixed price is to include but not be limited to all QA tasks defined in Section V herein.

As additional requirements become known and additional funding becomes available the Department will amend the QA contract for the additional work based upon the labor rates supplied in the contractor's proposal for the labor categories identified in *Staffing* section of this FAS.

The QA contractor will also be required to provide QA services to the full range of deliverables provided by the primary contractor, including assessments, analyses, recommendations, options, and other work products necessary to design and develop a NY-HX Solution, and enable the Department to achieve all requirements defined herein. The QA contractor will also be required to provide QA services to the Department with regard to the procedures and standards necessary for successful implementation and operation of the NY-HX.

V. Quality Assurance Tasks

This Section defines the tasks that must be performed by the QA contractor. The tasks in this Section of the FAS are not all inclusive. These tasks must be performed for each of the six (6) design and development phases executed by the primary contractor for the NY-HX Solution. At a high level, the NY-HX Solution must support six (6) core business areas set forth in the federal definition of the Exchange Business Architecture, including:

1. Eligibility Determination & Enrollment,
2. Plan Management,
3. Financial Management,
4. Customer Service,
5. Communications, and
6. Oversight.

Detail of each of these phases can be found in the FAS for the NY-HX (refer to <http://www.health.ny.gov/funding/rfp/1106211137/index.htm>).

As additional requirements become known and additional funding becomes available the Department will amend the contract for the additional work based upon the labor rates supplied in the QA contractor's proposal for the labor categories identified in Attachment 2, *Pricing Schedule*. The hourly rate must be a fully loaded rate and include all personnel, overhead, indirect, travel, profit, equipment usage, and other miscellaneous costs.

The offeror should provide in its proposal a detailed description of its Quality Assurance Methodology and how that methodology will be applied to the activities in this FAS.

The offeror should also provide in its proposal a Preliminary QA Plan. The QA Plan shall be based upon the Quality Assurance Methodology described in the proposal.

The QA Plan must provide a detailed project work plan to include, but not be limited to, separate tasks for each QA activity and checkpoint; logical sequence and interdependencies including Department and primary contractor tasks; resource requirements for all parties; target completion dates for each task; identification of and compliance with deadlines and milestones; methodology for issue/problem tracking and resolution; and identification of risks and strategies for managing Quality Assurance Tasks and Deliverables.

1. Develop a Detailed QA Plan

The QA contractor, within thirty (30) calendar days from execution of the contract, must develop and deliver to the Department for approval a detailed QA Plan that is based upon the Quality Management Methodology and the preliminary plan provided in the proposal. The detailed QA Plan will be used to evaluate and control the quality of all the primary contractors' project deliverables.

This detailed plan must include, but is not limited to, methods to identify, address and resolve various issues and problems that may arise during the DDO of the project and which could affect the quality of the product or timely completion of the project.

- a. To avert crisis decision making, the QA Plan must provide a detailed approach for:
 1. Conflict resolution for various scenarios that might arise in the DDO phase.
 2. Reviewing and monitoring all project status reports, and investigating and reporting on items that could result in increased risk to the project.
 3. Evaluating the impact and probable causes of missed deadlines, identifying corrective actions, developing plans to minimize the impact of missed deadlines, and monitoring the progress of corrective actions.
 4. Identifying potential risk indicators; i.e., project activities or events that are likely to cause significant levels of risk to the functioning of the system and all its components.
 5. Providing detailed descriptions of proactive steps that the Department can implement to prevent and/or reduce risks.
 6. Identifying risk trigger points based on risk indicators that have been identified. In the event a risk trigger point is encountered, the QA contractor shall identify and recommend in writing appropriate intervention strategies.
 7. Updating status reports.

- b. The QA plan shall present detailed approaches for:
 1. Updating the QA work plan from phase to phase, if needed;
 2. Monitoring and evaluating the primary contractor's activities and deliverables phase by phase, adherence to schedules, attainment of milestones, and quality of design, development, and technical work;
 3. Managing QA reviews, and recommendations for interdependencies between Department, primary contractor and other contractors;
 4. Managing the completion of each phase and the acceptance or rejection of deliverables;
 5. Tracking project change requests, decision requests, and informational items;

6. Identifying quality checkpoints through all phases of the project to ensure that the Department is advised of deliverables that do not meet or exceed all requirements and specifications;
7. Developing assessment procedures to evaluate that project objectives are met and that the expected benefits are derived;
8. Designing sign-off procedures for decision making points throughout the project, including reviews and approvals of primary contractor's work plans, schedules and deliverables;
9. Establishing monitoring mechanisms for critical deadlines for the Department and primary contractor;
10. Reviewing and monitoring the primary contractor's adherence to programming standards;
11. Identifying and recognizing successful completion of project phases, deadlines, milestones, quality of workmanship;
12. Recommending improvements in quality, efficiency, lines of communication, and project partnership during all phases and for all parties to the project;
13. Monitoring change management issues with respect to technical changes such as versions of software, error detection and corrections, movement of modules into production; and
14. Monitoring adherence to system development methodology.

2. Develop Review and Evaluation Criteria for the Primary Contractor's Deliverables

QA procedures shall be developed by the QA contractor and approved by the Department as the means to monitor, evaluate, and report on project status, progress, problems and exceptions.

The QA contractor shall be responsible for developing a complete system of review and compliance procedures which will be implemented by the QA contractor in reviewing the primary contractor's deliverables. The QA contractor is responsible for monitoring the primary contractor's compliance with its approved project work plan. To this end, QA procedures shall be developed by the contractor and approved by the Department as the means to monitor, evaluate, and report on project status, progress, problems and exceptions.

1. Develop Review Procedures

Review procedures must include procedural guidelines, checklists, schedules and turnarounds, standardized reporting forms, identification of deliverables, and any other materials deemed critical or useful for the review process.

2. Develop Evaluation Procedure

The QA contractor shall work with the Department to define appropriate evaluation criteria for each deliverable. Expectations and requirements shall be defined in advance for the primary contractor in order to facilitate the appropriate delivery, timely review and ultimate acceptance of each deliverable. Evaluation criteria shall include required content, format, documentation, and recourse to be utilized in the event of problem identification. The QA contractor shall provide evaluation criteria specific to each deliverable.

3. Review Primary Contractor's Deliverables

The QA contractor shall review in detail all deliverables from the primary contractor and work with the Project Management Team to assess the quality and acceptability of deliverables. The Review Procedures shall be implemented and reports shall be provided to the Department and to the primary contractor regarding the recommended acceptance or rejection of deliverables.

4. Ongoing Consultation and Project Management

The QA contractor must maintain a full time, on-site presence in the primary contractor's primary site, in the role of on-going assistance and support to the Department. The QA contractor shall be an integral, daily and vital member of the total project and is expected to provide ongoing technical advice and to assist in project management decision making and planning efforts. The QA contractor must provide technical and management assistance during the term of the contract.

5. Monitor Project Scope

Project scope will be defined by the approved work plan of the primary contractor. The QA contractor shall be responsible for evaluating and reporting on the adherence of all Department and primary contractor's design plans and deliverables to the scope of the project, by project phase. The QA plan shall provide a means to review and monitor all project activities throughout all phases of the project. The primary contractor's approved work plan will be used as the benchmark for design issues and for deliverables. Any changes to the scope of the project shall be identified and reported on by the QA contractor.

6. Monitor Project Quality

The QA contractor shall provide ongoing, interactive, on-site technical and management project support to the Department. The contractor shall work with Department personnel to develop QA controls that will assure that the Department receives quality deliverables from the primary contractor while achieving all critical project goals and deadlines. Monitoring tasks shall include but not be limited to:

1. Monitoring and evaluating the primary contractors' activities and deliverables phase by phase, adherence to schedules, attainment of milestones, and quality of design, development, and technical work.
2. Managing QA reviews, and recommendations for interdependencies between Department, primary contractors and QA contractor.
3. Managing the completion of each phase and the acceptance or rejection of deliverables.
4. Tracking project changes requests, decision requests, and informational items.
5. Identifying quality checkpoints through all phases of the project to ensure that the Department is advised of deliverables that do not meet or exceed all requirements and specifications.
6. Developing assessment procedures to evaluate that project objectives are met and that the expected benefits are derived.
7. Designing sign-off procedures for decision making points throughout each phase of the project, including reviews and approvals of primary contractors' work plans, schedules

- and deliverables.
8. Establishing monitoring mechanisms for critical deadlines for the Department and primary contractors.
 9. Reviewing and monitoring the primary contractors' adherence to programming standards.
 10. Recommending improvements in quality, efficiency, lines of communication, and project partnership during all phases and for all parties to the project.
 11. Monitoring change management issues with respect to technical changes such as versions of software, error detection and corrections, movement of modules into production.
 12. Monitoring adherence to system development methodology.

7. Develop and Implement QA Controls Procedures

The QA contractor is responsible for monitoring compliance with the primary contractor's approved project work plan. To this end, QA procedures shall be developed by the QA contractor and approved by the Department as the means to monitor, evaluate, and report on project status, progress, problems and exceptions.

8. Monitor Project Schedule

The primary contractor will be required to provide and maintain a *fully loaded* Project Management Plan (PMP). The PMP must be broken down into Work Breakdown Structures (WBS) and include key tasks, resources, milestones, deliverables and task dependencies.

The QA contractor must monitor the primary contractor's performance against the PMP and report to the Department any significant deviation from the schedule by the primary contractor.

9. Monitor Risk Management, Problems and Resolutions

The contractor's proposal shall describe its Risk Management Methodology and Issue/Problem Resolution Methodology upon which the contractor's QA Plan will be developed.

The contractor's QA Plan shall include methods to identify, address and resolve various issues and problems that may arise during Phase III of the project and which could affect the quality of the product or timely completion of the project. To avert crisis decision making, the QA plan must provide a detailed approach for:

- a. Conflict resolution for various scenarios that might arise in the implementation and post-implementation support phases.
- b. Reviewing and monitoring all project status reports, and investigating and reporting on items that could result in increased risk to the project.
- c. Evaluating the impact and probable causes of missed deadlines, identifying corrective action and develop plans to minimize the impact of missed deadlines, and monitoring the progress of corrective actions.
- d. Identifying potential risk indicators; i.e., project activities or events that are likely to cause significant levels of risk to the functioning and timely completion of the project.

- e. Providing detailed descriptions of proactive steps that the Department can implement to prevent and/or reduce risks.
- f. Identifying risk trigger points based on risk indicators that have been identified.
- g. In the event a risk trigger point is encountered, the contractor shall identify and recommend in writing appropriate intervention strategies.

10. Monitor Technical Compliance

The QA contractor shall assist the Department in developing a methodology to evaluate the technical aspects of the project. Technical compliance reviews will be required in the areas of: systems designs, structure and organization; quality, workmanship and efficiency of code; adequate storage capacities and response times; and all other technically relevant system functionality. The QA contractor will be responsible for conducting those reviews.

11. Review Primary Contractor's Work Plans, Designs and Reports

The QA contractor shall be responsible for developing a complete system of review and compliance procedures which will be implemented by the QA contractor in reviewing the primary contractor's deliverables including work plans, systems designs and deliverables for compliance, efficiency, functionality and all project requirements.

- a. Develop Review Procedures;
- b. Review procedures must include procedural guidelines, checklists, schedules and turnarounds, standardized reporting forms, and any other materials deemed critical or useful for the review process;
- c. Deliverable: Forms and Written Procedures for Review Process;
- d. Develop Evaluation Procedure;
- e. Define Requirements for Deliverables; and
- f. The contractor shall develop and make available to the primary contractor the required form and presentation for deliverables to the Department. The intent shall be to clarify the expectations of the Department in areas such as consistent manner of delivery including authorized receivers, required signatures, and verified dates, and required allotted response time on the part of the Department.

12. Define Evaluation Criteria for Each Specific Deliverable.

The contractor shall work with the Department to define appropriate evaluation criteria for each deliverable specified in the primary contractor's work plan. Deliverables will be considered for overall quality, completeness, timeliness and adherence to project plan and scope. Expectations and requirements shall be defined in advance for the primary contractor in order to facilitate the appropriate delivery, timely review and ultimate acceptance of each deliverable. Evaluation criteria shall include required content, format, documentation, the method of system acceptance testing that will be applied, and recourse to be utilized in the event of problem identification.

13. Administrative Requirements

As a critical and full time member of the Project Management Team, the contractor is required to be present at all project management meetings, project status meetings, steering committee meetings (if so advised), and to be accessible, and available for, frequent ad hoc meetings that will arise during contract term.

a. Project Management Meetings

The contractor shall attend weekly project management meetings with team management at a location to be determined by the Department. These weekly meetings shall follow a pre-set agenda developed by the primary contractor with input from the Department but shall also allow the team to discuss other issues of concern. The contractor shall prepare minutes of each meeting to document the highlights and issues discussed follow-up tasks, and responsible individuals.

b. Status Reporting Meetings

The QA contractor shall attend biweekly (every other week) Project Status Reporting meetings with Executive and Project Management, monthly Steering Committee meetings, and other scheduled and ad hoc meetings as determined by the Department and by the QA Work Plan. The QA contractor shall prepare minutes to track highlights and issues discussed.

c. Prepare Weekly QA and Project Status Reports

Project QA Status Reports shall be required weekly and will cover the status of QA tasks and the review and monitoring of primary contractor's tasks and Department tasks.

Status reports on QA tasks shall include, but are not limited to:

- Project status and stage of completion;
- Accomplishments during the reporting period;
- Problems that were identified, and corresponding resolutions;
- Immediate goals for the next reporting period;
- Issues that need to be addressed;
- Identification for schedule slippages and recommendations for resolution; and
- Current QA contractor staff assignments and schedules.

Status reports on Department and primary contractor tasks shall include, but are not limited to, reviews of the following:

- Operational issues that need to be addressed;
- Identification of any schedule slippage and strategy for resolution;
- Corrective action status;
- Risk indicators that are likely to cause significant levels of risk to the functioning of the project (late deliverables, cost overruns, unanticipated events, etc.); and
- Deviations from the APD, ACA federal guidelines and/or FAS requirements.

14. Additional Activities Undertaken Within the Scope of the NY-HX

The Department recognizes that changes in Federal legislation or regulations might significantly impact the emphasis on particular activities for the NY-HX and therefore expand the QA staffing activities described in this FAS. The Department requires the contractor to have the capacity to support up to 16,000 additional hours per calendar year that might be needed to provide QA services for this increased level of activity.

Any work undertaken utilizing any of the 16,000 hours shall be based upon a specific project request from the Department. Prior to commencing work, the contractor will develop and submit for Department approval a work plan including but not limited to estimated hours, staffing titles and current staff resumes. Upon approval of the work plan by the Department, the contractor may begin work on the project.

Payment will be based on the actual hours worked on each approved project at the blended hourly rate as presented in Schedule B Pricing Schedule. The allotment of 16,000 annual hours is to be used only for the time spent directly on Department approved projects. Any funds not expended in a contract year will be available in the succeeding years(s) using the blended hourly rate for the corresponding year.

15. Required QA Contractor Methodologies and Deliverables

Offerors must provide quality management, project management, issue/problem tracking/resolution and risk management methodologies listed in Exhibit 1 below as part of their proposals. Exhibit 2 provides a listing of deliverables the QA contractor must provide the Department during the term of the NY-HX contract. These deliverables are primarily an ongoing review and evaluation of the primary contractor’s deliverables.

Exhibit 1: QA Contractor Methodology Included As Part of Proposal Requirements

Deliverables		Due Date
<u>Ongoing Consultation and Project Management Support Services</u>		
Quality Management Methodology		Proposal due date
Issue/Problem Tracking/Resolution Methodology		Proposal due date
Risk Management Methodology		Proposal due date

Exhibit 2: QA Contractor Deliverable Requirements by Project Phase

Deliverables	Due Date
III. <u>Quality Assurance Plan</u>	
Quality Assurance Plan	30 business days after the approval as to the form of the contract by the Office of the State

Deliverables	Due Date
	Comptroller (OSC).
Quality Assurance Plan Updates	As required by the Department
IV. <u>Develop Review and Evaluation Criteria for Primary Contractor Deliverables</u>	
Develop Deliverable Review and Evaluation Criteria (required for each deliverable)	Set by NY-HX project schedule
3. <u>Ongoing Risk Management</u>	
Provide Ongoing Risk Management Services	Set by NY-HX project schedule
4. <u>Ongoing Consultation and Project Management Support Services</u>	
Provide Consultation and Project Management Support Services	Set by NY-HX project schedule
5. <u>Review and Evaluation of Primary Contractor Deliverables</u>	
Review NY-HX Project Deliverables and Provide Written QA Analysis Reports for each deliverable listed, below.	
Project Initiation and Planning Project Plan and Project Schedule Staffing Plan Configuration Management Plan Document Management Plan Issue/Resolution Plan Quality Management Plan Risk Management Plan Security, Privacy and Confidentiality Plan Facility Management Plan Physical Security Plan Training Plan Business Continuity Plan	Set by NY-HX project schedule Set by NY-HX project schedule
Requirements Definition and Analysis NY-HX Requirements Definition Document (RDD) NY-HX Conceptual Data Model Requirements Traceability Matrix	Set by NY-HX project schedule Set by NY-HX project schedule Set by NY-HX project schedule
Design NY-HX Logical/Physical Data Model NY-HX Technical Design Document (TDD)	Set by NY-HX project schedule Set by NY-HX project schedule
Construction NY-HX Unit Tested Code and Associated Documentation	Set by NY-HX project schedule
Testing NY-HX Development Test Plan NY-HX User Acceptance Test Plan	Set by NY-HX project schedule Set by NY-HX project schedule

Deliverables	Due Date
NY-HX Test Scripts, Cases and Results	Set by NY-HX project schedule
Implementation NY-HX Training Plan (including training curriculum and materials) NY-HX User Documentation NY-HX Operations Manual NY-HX As-Delivered System Documentation	Set by NY-HX project schedule Set by NY-HX project schedule Set by NY-HX project schedule Set by NY-HX project schedule
Monthly and Quarterly QA Status Reporting	
Monthly Status Reporting w/ Risk Assessment	Within two business days of the close of each month period
Quarterly Status Reporting w/ Risk Assessment	Tenth business day of the month following the end of each contract year quarter
Systems Change Management Project QA Monitoring	
Review NY-HX System Change Management Project Deliverables	Set by NY-HX project schedule

VI. Location Requirements

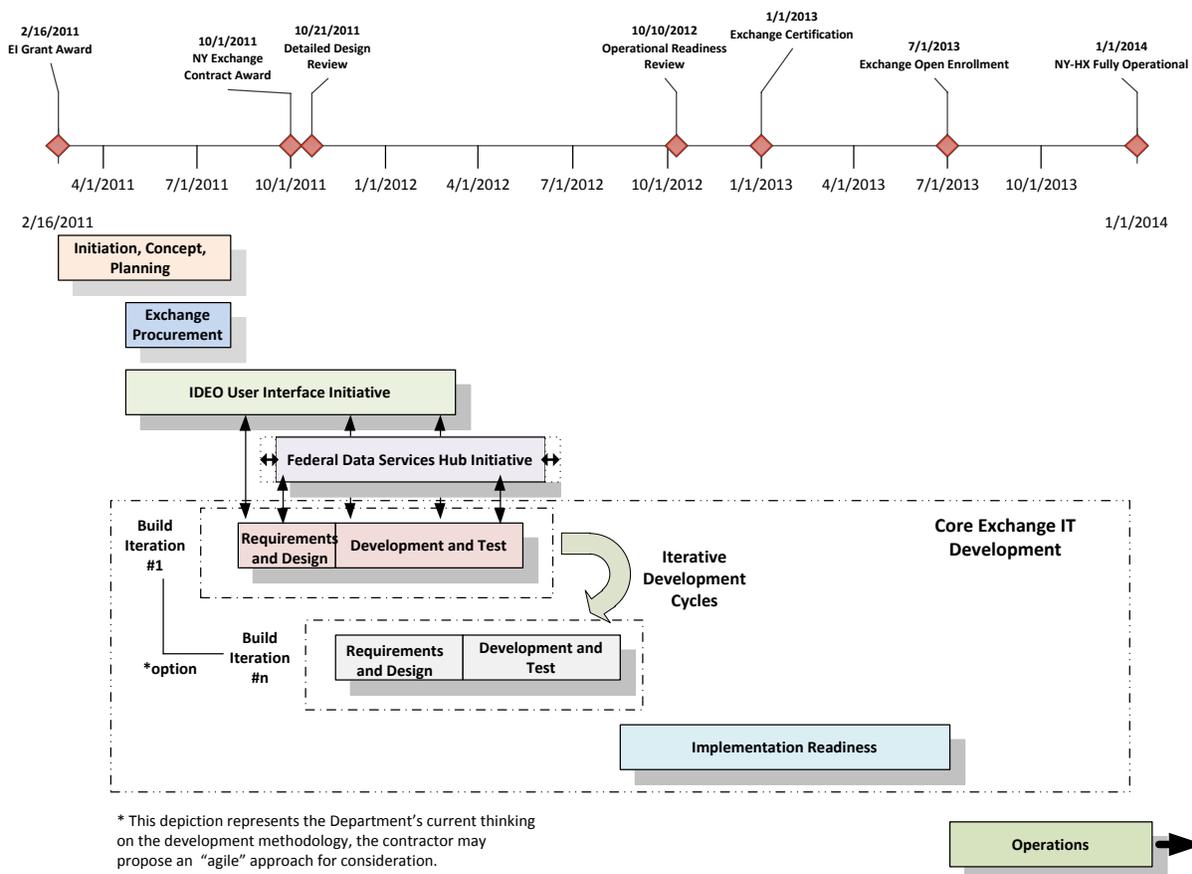
All QA contractor staff assigned to this contract must maintain a full time, on-site presence in the primary contractor’s primary facility which will be within ten (10) miles of the New York State Capitol building in Albany, New York.

VII. Schedule

The selected QA contractor must oversee the design, develop and implementation of the NY-HX on the timeline specified in Exhibit 3, to enable anticipated open Exchange enrollment starting in July, 2013.

Because of the compressed schedule required as a result of the EI grant, offeror responses must demonstrate experience with the QA tasks associated with health policy, public benefit eligibility systems, federal reimbursement, monitoring operations, MITA, the readiness to commence work immediately, and the capability to meet the aggressive schedule shown in Exhibit 1. Since Federal and State rules and guidelines are still emerging, timelines may change based on subsequent determinations by CMS.

Exhibit 3



VIII. Evaluation, Selection and Award

The Department will perform an evaluation of the proposals received in response to this FAS. Proposals deemed by the Department to be reasonable, responsive and timely to the submission requirements set forth in the FAS will be evaluated by the review team. The reviewers will make a recommendation to the Commissioner for the selection of a contractor(s) who is determined to be best suited, in the discretion of the Commissioner, to carry out the purposes set forth in the FAS and the EI federal grant awarded to the Department and the following requirements of the FAS:

- A clear and concise understanding of applying a Quality Assurance Methodology to a large system development effort and complex System Development Lifecycle (SDLC)
- Experience in monitoring and evaluating a primary contractors' activities and deliverables phase by phase, adherence to schedules, attainment of milestones, and quality of design, development, and technical work.
- Managing QA reviews, and recommendations for interdependencies between Department, primary contractors and QA contractor.
- Immediate readiness and ability to execute the tasks in this FAS
- Ability to meet the aggressive schedule outlined herein

The review team will review both the offeror's technical and price proposals in the process of recommending a contractor. After evaluation and selection of the contractor, all bidders will be notified in writing of the selection or non-selection of their proposals. The name of the winning bidder(s) will be disclosed. Press releases pertaining to this project shall not be made without prior written approval by the State and then only in conjunction with the issuing office.

IX. Staffing

The offeror must name Key staff in its proposal and provide a detailed current resume for each. **Failure to name key staff may result in disqualification of the proposal.** All proposed key staff must be available no later than two (2) weeks following the Commissioner's execution of the contract. Key staff consists of the project's senior leadership. These resources are responsible for providing the overall leadership and management, obtaining necessary corporate resources, and creating standards and processes required for the successful implementation of the NY-HX. All key staff positions must be full-time roles filled by a single, dedicated person.

As additional requirements become known and additional funding becomes available the Department will amend the contract for the additional work based upon the labor rates supplied in the contractor's proposal for the labor categories identified this Section of the FAS. The hourly rate must be a fully loaded rate and include all personnel, overhead, indirect, travel, profit, equipment usage, and other miscellaneous costs.

Upon receipt of an order to supply the staff the contractor must supply the staff as quickly as possible based upon the qualifications / experience defined below.

1. Staffing Plan

Key staff must be named in the Proposal and shall not be changed without prior written approval of the Contract Administrator, which shall not be unreasonably withheld, unless due to the resignation, death, termination, military recall, or extended illness for any named individuals. If the Department gives written approval of the transfer, reassignment or replacement of key staff, such personnel will remain assigned to the performance of duties under this contract until replacement personnel, approved by the Department, are in place performing the key staff functions.

All key replacement personnel not named in the proposal shall be identified, and current resumes and references shall be submitted for Department review and approval prior to the required start date for the position. The contractor will not be paid for unfilled key personnel positions. In the event the Department does not approve the contractor's designee, the contractor shall submit a replacement for Department approval within two (2) weeks.

As part of its proposal the offeror should provide a detailed Staffing and Organizational Plan discussing each phase of the project and the staffing level that is anticipated to accomplish that phase.

This staffing plan should include an organizational chart for each stage of the project depicting the key staff and showing all other proposed staff by title, minimum qualifications for that title and number of positions being proposed. This plan should be detailed and will be used to determine if the offeror has a comprehensive understanding of the breadth and depth of this FAS. The Department will require that the contractor update the Staffing and Organization Plan semi-annually. This plan will be used in the Department's evaluation of the proposal.

2. Removal of Contractor Employee

The Department, at its discretion will notify the contractor that it deems the performance of any employee associated with this engagement as unsatisfactory and will require his/her immediate reassignment. In the event a primary (key) employee of the contractor is removed from the project pursuant to the request of the Contract Administrator, the contractor will have thirty (30) calendar days in which to fill the vacancy with another employee of acceptable technical experience.

3. Key Staff

The chart below identifies the three (3) Key staff that will be assigned to the project. All key staff must be assigned full time and be located in the primary contractor's` facility. The key staff are to be included in the offeror's fixed price and the staffing rate must be a fully loaded rate and includes all personnel, overhead, indirect, travel, profit, equipment usage and any other miscellaneous costs.

The column entitled "Quantity in the Fixed Price" indicates the *minimum* key staff required by title. Current resumes must be provided for these staff. The offeror must determine the staff necessary **above and beyond this minimum** to meet the requirements of the FAS and include those individuals in its Staffing and Organization Plan and in its *fixed price*. The offeror's fixed price must be a fully loaded rate for all proposed staff and includes all personnel, overhead, indirect, travel, profit, equipment usage and any other miscellaneous costs.

Labor Category	General Responsibility	Qualifications / Experience	Minimum Quantity in the Fixed Price
Project Director	<ul style="list-style-type: none"> • Management of all QA functions related to the NY-HX. • Oversees all QA tasks defined in Section V herein • Ensures that all System Design and Development completed by the primary contractor is performed in accordance with the primary contractor’s proposed SDLC • Initiates recommendations to the Department for system application improvements • Oversees processes that accurately estimate design and development efforts • Oversees all work and deliverables performed by the primary contractor 	<ul style="list-style-type: none"> • At least five (5) years’ experience in a Project Management Office (PMO); • At least four (4) years’ experience performing QA activities in a project the size and scope of the NY-HX; • Extensive knowledge of MITA; • Extensive knowledge of public benefit eligibility systems; and • An understanding of Federal Guidance Documents and Regulations governing Exchanges 	1

Labor Category	General Responsibility	Qualifications / Experience	Minimum Quantity in the Fixed Price
Senior Quality Assurance Business Analyst	<ul style="list-style-type: none"> • Conduct independent project QA activities • Provide DOH with project management support • Consult with stakeholders and assess the user involvement and buy-in regarding system functionality and the system's ability to meet program needs • Provide a risk management assessment and capacity planning services • Perform reviews of NY-HX Project deliverables for adherence to contractual and functional requirements 	<ul style="list-style-type: none"> • Minimum of six (6) years' relevant experience with the minimum of four (4) years' experience with the analysis and redesign of business processes • Minimum of four (4) years leading a group of staff in the development of program specifications and the implementation of software solutions. • Minimum of three (3) years' experience performing reviews of project deliverables • Experience with some or all of the following is strongly preferred: <ul style="list-style-type: none"> ○ Functional requirements gathering for health information technology, preferably with Eligibility and/or Enrollment systems. ○ Experience with business process models and/or use cases. ○ Advising state government agencies on health and insurance related matters; and ○ Knowledge of MITA 	2

4. Supplemental Staff

As additional requirements become known and additional funding becomes available the Department will amend the contract for the additional work based upon the labor rates supplied in the offeror's proposal for the labor categories identified below.

The contractor will also be required to provide the Department with a range of assistance and deliverables, including assessments, analyses, recommendations, options, development of scope of work for subcontracts and/or solicitations and other work products to achieve all requirements defined herein including any additional requirements that become known. Work related to these activities will also be handled as contract amendments utilizing the labor rates provided for the labor categories below.

Labor Category	General Responsibility	Qualifications / Experience
Senior Quality Assurance Business Analyst	<ul style="list-style-type: none"> • Conduct independent project QA activities • Provide DOH with project management support • Consult with stakeholders and assess the user involvement and buy-in regarding system functionality and the system's ability to meet program needs • Provide a risk management assessment and capacity planning services • Perform reviews of NY-HX Project deliverables for adherence to contractual and functional requirements 	<ul style="list-style-type: none"> • Minimum of four (4) years' experience with the analysis and redesign of business processes • Minimum of four (4) years leading a group of staff in the development of program specifications and the implementation of software solutions. • Minimum of three (3) years' experience performing reviews of project deliverables • Experience with some or all of the following is strongly preferred: <ul style="list-style-type: none"> ○ Functional requirements gathering for health information technology, preferably with Eligibility and/or Enrollment systems. ○ Experience with business process models and/or use cases. ○ Advising state government agencies on health and insurance related matters; and ○ Knowledge of MITA

Labor Category	General Responsibility	Qualifications / Experience
Quality Assurance Business Analyst	<ul style="list-style-type: none"> • Review the process for tracking of business and technical requirements to their source and review the process established during the planning phase for requirements traceability throughout the subsequent development/implementation phase • Assess and recommend improvement, as needed, to assure software testing is being performed adequately through review of test plans or other documentation and through direct observation of testing where appropriate • Assess and recommend improvement, as needed, to assure appropriate user and developer training is planned and carried out. 	<ul style="list-style-type: none"> • Minimum of two (2) years' experience with the analysis and redesign of business processes • Minimum of three (3) years in the development and/or review of test scripts and testing methodologies. • Minimum of two (2) years' experience performing reviews of project deliverables • Experience with some or all of the following is strongly preferred: <ul style="list-style-type: none"> ○ Functional requirements gathering for health information technology, preferably with Eligibility and/or Enrollment systems. ○ Experience with business process models and/or use cases. ○ Advising state government agencies on health and insurance related matters; and ○ Knowledge of MITA

X. Administrative Requirements

1. Issuing Agency

This Request for Proposal (RFP) is a solicitation issued by the New York State Department of Health (the Department). The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

2. Legal Basis

The contractor shall at all times during the term of this Contract strictly adhere to all applicable Federal and State laws and implementing regulations as they currently exist and as may hereafter be amended. This includes protection of the confidentiality of all applicant/recipient records, papers, documents, tapes and any other materials that have been or may hereafter be established which relate to this Contract. The contractor acknowledges that these laws include, but are not limited to, the following:

- The Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152, respectively. The two laws are collectively referred to as the Affordable Care Act (ACA).
- Health Information Technology for Economic and Clinical Health Act of 2009
- The e-Government Act of 2002
- Health Insurance Portability and Accountability Act of 1996
- The Privacy Act of 1974
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000d-1 et seq. and its implementing regulation, 45 CFR Part 80 et seq.
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, and its implementing regulation, 45 CFR Part 84
- Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 CFR Part 91
- Title VII of the Civil Rights Act of 1964
- Age Discrimination in Employment Act of 1967
- Equal Pay Act of 1963
- Education Amendments of 1972
- Immigration Reform and Control Act of 1986, P.L. 99-603
- Americans with Disabilities Act, P.L. 101-336, July 1990
- All regulations applicable to these laws prohibiting discrimination because of race, color, national origin, handicap, age, sex, and religion.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal and/or State funding.

3. Inquiries

All inquiries regarding this proposal may be submitted to the designated contacts listed on page ii of this document. Questions and answers, as well as any FAS updates and/or modifications, will be posted on the Department of Health's website at <http://www.health.ny.gov/funding/>.

4. Submission of Proposals

1. Interested bidders should submit three (3) originals and ten (10) copies of its Proposal. Responses to this FAS should be clearly marked "*Response to the Procurement Opportunity for the New York State Health Benefit Exchange – FAU #1108311202*".
2. The complete, sealed proposal must be received by the Department in Albany, New York, no later than 3:00 pm Eastern Time by the date specified on the cover page of the FAS, and be delivered to:

Joseph Zeccolo
New York State Department of Health
Corning Tower, Room 2019
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12237

3. It is the bidder's responsibility to see that proposals are delivered to the address specified above prior to the date and time of the proposal due date. Late proposals, for whatever reason, including delay by the carrier or not being received in the Department's mail room in time for transmission to the address specified above, will not be considered.
4. All proposal materials should be printed on 8.5" x 11" white paper (two-sided), be clearly page numbered on the bottom of each page with appropriate header and footer information. A type size of eleven (11) points or larger should be used.
5. One (1) separate CD/DVD should accompany the hard copy proposals. The CD/DVD should contain one (1) copy of the total proposal in Adobe PDF format; one (1) copy of the total proposal in MS Word 2003/XP format and one (1) copy of the project plan in MS Project 2003/XP format. All files on the DVD should be individually identified by component name, offeror, proposal part, and version.
6. The proposal should be as specific as possible in its responses to provide the Department with an adequate understanding of the intent of the proposal.
7. The Department discourages overly lengthy proposals. Proposals should be self-contained. No models, videotapes, illustrations, brochures or Web site postings will be accepted.
8. In the event of any discrepancies between the original hard copies and the copies supplied on the CD/DVD, the hardcopy will prevail.

5. Department Reserved Rights

The Department reserves the right to:

1. Reject any or all proposals received in response to the FAS;
2. Withdraw the FAS at any time, at the agency's sole discretion;
3. Make an award under the FAS in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the FAS;

5. Seek clarifications and revisions of proposals;
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the FAS;
7. Prior to the bid opening, amend the FAS specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent FAS amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful bidder within the scope of the FAS in the best interests of the state;
13. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
14. Utilize any and all ideas submitted in the proposals received;
15. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 365 days from the bid opening; and,
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an bidder's proposal and/or to determine an bidder's compliance with the requirements of the solicitation.

6. Proposal Format

Offerors should submit its proposal in the format defined in Attachment 1, Proposal Content.

7. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders should also complete and submit the Vendor Responsibility Attestation (Attachment 5).

8. State Consultant Services Reporting

Chapter 10 of the Laws of 2006 amended certain sections of State Finance Law and Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State.

The winning bidders for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

Winning bidders must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This report must be submitted annually to the Department of Health, the Office of the State Comptroller, and Department of Civil Service.

Both of these forms are included as Attachments 8 and 9.

9. Incurred Costs

The State of New York is not liable for any cost incurred by prospective offerors prior to the approval of an executed contract by the Comptroller of the State of New York. Additionally, no cost will be incurred by the State for any activity by the selected contractor prior to the contract award.

10. Payment

In consideration of the contractor's performance of the services described in the contract resulting from successful negotiation of this procurement, the State agrees to pay the contractor based upon the prices contained in the approved contract and pursuant to New York State laws.

The contractor represents and agrees to submit all claims for payment in a form satisfactory to the Department and the Comptroller of the State of New York.

Contractor shall submit invoices to the State's designated payment office:

NYS Department of Health
Office of Health Insurance Programs
Division of Information Technology
11 Corporate Woods Blvd.
Albany, NY 12211
Attn: Dennis Wright

Payment of such invoices by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be as follows.

Payment Terms

Payment will be based upon the QA contractor performing the tasks and providing the deliverables stated in Section V herein and those proposed by the offeror and approved by Department. The contractor will be paid the fixed amount as presented in the contractor's proposal in equal monthly payments.

The contractor shall fully and properly perform the tasks required by this agreement. The Department will pay the contractor the amounts proposed for such full and proper performance. In the event the contractor fails, in the reasonable judgment of the Department, to properly achieve or finish all milestones and deliverables required, the Department may withhold any or

all parts of the contractor billings until such time as all milestones and deliverables are determined by the Department to have been properly achieved or furnished.

At the time of the award, the Department reserves the right to modify the distribution of yearly payments proposed by the offeror to achieve a reasonably equitable deliverable-based distribution by year, based upon proposed staffing levels.

No payment will be made until the Contract has received all required approvals. The Department is not responsible for and will not pay local, State, or Federal taxes. All costs associated with the contract must be stated in U.S. currency.

The contractor will be paid in accordance with the pricing schedules, as presented in Attachment 2, Pricing Schedules.

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, 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 the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by Email at epunit@osc.state.ny.us or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9 must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>.

Completed W-9 forms should be submitted to the following address:

NYS Office of the State Comptroller
Bureau of Accounting Operations
Warrant & Payment Control Unit
110 State Street, 9th Floor
Albany, NY 12236

11. Contract Extension Pricing

Should the Department elect to extend the term of the contract, the pricing for each optional contract extension year will be subject to an annual price increase of the lesser of three percent (3%) or the percent increase in the National Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington, D.C., 2012 for the twelve (12) month period ending three (3) calendar months prior to the end date of the last year of the contract, as may be amended.

12. Contract Term

This agreement shall be effective upon, and work cannot begin, until the Office of the State Comptroller approves the agreement resulting from this FAS process and the contract is executed by the Commissioner of Health.

It is anticipated that the Department will award a contract for a four (4) year period. The Department reserves the right to extend the contract for up to two (2) one (1) year periods for a total of six (6) years. The contract is subject to availability of funds.

This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified, this agreement shall be deemed terminated and canceled.

13. Lobbying Statute

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, provides, among other things, the following as pertains to development of procurement contracts with governmental entities:

1. Makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
2. Requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
3. Requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
4. Authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
5. Directs the Office of General Services to disclose and maintain a list of non-responsible offerors pursuant to this new law and those who have been debarred and publish such list on its website;
6. Requires the timely disclosure of accurate and complete information from offerors with respect to determinations of non-responsibility and debarment;
7. Expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal-State Agreements, and procurement contracts;
8. Modifies the governance of the New York State Commission on Public Integrity
9. Provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
10. Increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and,
11. Establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended: (i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerors. Sections 139-j and 139-k are collectively referred to as “new State Finance Law.”

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York State Commission on Public Integrity regarding procurement lobbying, the Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Commission on Public Integrity.

14. Accessibility of State Agency Web-based Intranet and Internet Information and Applications

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy NYS-P08-005, “Accessibility Web-based Information and Applications”, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and internet information and applications are accessible to persons with disabilities. Web content must conform to New York State Enterprise IT Standard NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by Department of Health, contractor or other, and the results of such testing must be satisfactory to the Department of Health before web content will be considered a qualified deliverable under the contract or procurement.

15. Information Security Breach and Notification Act

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual’s unencrypted personal information plus one or more of the following: social security number, driver’s license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual’s financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach>.

16. Public Information

Disclosure of information related to this procurement and the resulting contract shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Article 6 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are exempt from disclosure. Information constituting trade secrets or critical infrastructure information for purposes of FOIL shall be clearly marked and identified as such by the contractor upon submission. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State.

17. New York State Tax Law Section 5-a

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Tax and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four (4) quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four (4) quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to an offeror meeting the registration requirements but who is not so registered in accordance with the law.

Contractor must complete and submit directly to the New York State Tax and Finance (DTF), Contractor Certification Form ST-220-TD (see Attachment 7). Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

Contractor must also complete and submit to the Department the form Contractor Certification to Covered Agency Form ST-220-CA (see Attachment 7), certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offeror non-responsive and non-responsible. Offerors must take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

18. Piggybacking

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.state.ny.us/procurecounc/pgbguidelines.asp>) allows the Commissioner of the NYS Office of General Services to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

19. M/WBE Utilization Plan for Subcontracting and Purchasing

The Department encourages the use of Minority and/or Women Owned Business Enterprises (M/WBE's) for any subcontracting or purchasing related to this contract. Offerors who are not currently a New York State certified M/WBE must define the portion of all consumable products and personnel required for this proposal that will be sourced from a M/WBE. The amount must be stated in total dollars and as a percent of the total cost necessary to fulfill the RFP requirement. Supportive documentation must include a detail description of work that is required including products and services.

The goal for usage of M/WBE's is at least 20% of monies used for contract activities (Minority-owned – 10%; Women-owned – 10%). In order to assure a good-faith effort to attain this goal, the Department requires that offerors complete the M/WBE Utilization Plan, found in Attachment 6, M/WBE Procurement Forms, and submit this Plan with their price proposal.

Offerors that are New York State certified MBE's or WBE's are not required to complete this form. Instead, such offerors must simply provide evidence of their certified status.

Failure to submit the above referenced Plan (or evidence of certified M/WBE status) may result in disqualification of the vendor from consideration for award.

20. Appendices

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposal will, itself, be referenced as an appendix of the contract.

1. APPENDIX A - Standard Clauses for All New York State Contracts;
2. APPENDIX B – Funding Availability Solicitation (FAS);
3. APPENDIX C - Proposal. The offeror's proposal (if selected for award), including any Bid Forms and all proposal requirements;
4. APPENDIX D General Specifications;
5. APPENDIX E
 - a. 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:
Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
 - i. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - ii. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
 - iii. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.
 - b. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
 - i. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR

- ii. DB-120.1 – Certificate of Disability Benefits Insurance; OR
 - iii. DB-155 – Certificate of Disability Benefits Self-Insurance; and,
- 6. APPENDIX G - Notices
- 7. APPENDIX H .Health Insurance Portability and Accountability Act (HIPAA).

Attachment 1: Proposal Content

A. Introduction

These instructions prescribe the format and content of the offeror's proposal and are designed to facilitate the submission of a proposal that is easy to understand and evaluate.

Proposals should be prepared in the format described in this section. The format of the proposal should follow, in sequence, each of the sections outlined. While the FAS numbering scheme does not need to be followed, the proposal should clearly reference the specific FAS sections by number that are being addressed. Appendices should be similarly sequential.

In submitting a response to this FAS, interested offerors should be aware that it is their sole responsibility to obtain any third party financing which may be necessary for the offeror to submit a proposal and, if an award is made, to provide the services being sought by the Department under the FAS. The State of New York or the Department will in no manner underwrite, guarantee, act as a signatory or co-signatory or in any manner participate in the securing of third party financing.

For the purposes of this section, the terms bidder, offeror and vendor may be used interchangeably and the terms bid, offer or proposal may be used interchangeably.

B. Proposal Requirements Overview

The following sections include requirements that should be met by offerors in the submission of their FAS responses.

B.1 General Requirements

1. By signing the "Bid Form" in Attachment 4, each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that:
 - a. The FAS and all associated specifications, general and specific appendices, including Appendix A Standard Clauses for NYS Contracts and all schedules and forms included with such documents, as well as subsequently issued and agreed-upon work specifications issued pursuant to this Contract, will become part of any contract entered into, resulting from the FAS. Anything which is not expressly set forth in the above-referenced documents, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.
 - b. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work, products and services to be performed and the conditions under which the contract is to be executed.
2. The Department of Health will make no allowances or concession to an offeror for any alleged misunderstanding or deception related to quantity, quality, character, location or other conditions.
3. The proposal price should cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications. Work to be provided by subcontractors should be documented in the FAS response.
4. If the use of subcontractors is proposed, the Proposal should explain how the work of subcontractor's will be managed and controlled.

B.2 Experience

1. The offeror shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the services required including at least the following:
 - a. The offeror should have a minimum of thirty-six (36) months of providing Quality Assurance Services in supporting health policy development and public benefit eligibility systems;
 - b. The offeror should have a minimum of forty-eight (48) months assisting governmental clients in the areas of project management and/or quality assurance of complex and large data systems;
 - c. The offeror should have relevant experience on systems projects in the health and human services area; and
 - d. The offeror should have QA experience in a MITA environment.
2. An offeror may be disqualified from receiving awards if such offeror or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.

B.3 References

1. The offeror should provide three (3) references external to the offeror or subcontractor organizations. The purpose is to provide the Department the ability to verify the claims made in the proposal by the offeror.
2. Each of the references provided should meet all of the following criteria:
 - a. Every reference should be with regard to a project implemented within the past ten (10) years;
 - b. The services provided for each of the references should have included QA activities related to system design, development, implementation, maintenance and operations; and,
 - c. At least one of the references should be for QA pertaining to a healthcare data system or should be for a United States-based governmental (Federal, State or local) client.
3. The Department reserves the right to contact additional references (i.e., those known to the Department as clients of the offeror but not listed by the offeror as a reference).

B.4 Conflict of Interest

As part of its proposal, the offeror (and /or any subcontractor) must disclose all business relationships with and/or ownership interests in any managed care plan and/or health insurance program operating in New York State. In cases where such relationship(s) and/or interests exist, offeror must describe how an actual or potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided.

The Department reserves the right to reject bids, at its sole discretion, based on any actual or perceived Conflict of Interest.

Each offeror and the successful contractor shall ensure that its officers, employees, agents, consultants and/or sub-contractors comply with the requirements of the New York State Public Officers Law ("POL"), as amended, including but not limited to Sections 73 and 74, as amended, with regard to ethical standards applicable to State employees.

In signing its Proposal, each offeror guarantees knowledge and full compliance with the provisions of the POL for purposes of this FAS and procurement. Failure to comply with these provisions may result in disqualification from the procurement process, or withdrawal of a proposed contract award and criminal proceedings as may be required by law.

If during the term of a resulting contract, the successful contractor becomes aware of a relationship, actual or potential, which may be considered a violation of the POL, or which may otherwise be considered a conflict of interest, the Contractor shall notify the Department in writing immediately. Failure to comply with these provisions may result in termination or cancellation of the resulting contract and criminal proceedings as may be required by law.

B.5 Non-Collusive Bidding

By submission of this proposal, each offeror and each person signing on behalf of any offeror certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its/his/her/their knowledge and belief:

1. The prices of this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other contractor or with any competitor;
2. Unless otherwise required by law, the prices that have been quoted in this proposal have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition; and
3. No attempt has been made or will be made by the offeror to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

A proposal shall not be considered for award nor shall any award be made where (1), (2) and (3) above have not been complied with; provided however, that if in any case the offeror cannot make the foregoing certification, the offeror shall so state and shall furnish with the proposal a signed statement which sets forth in detail the reasons therefore. Where (1), (2) and (3) above have not been complied with, the proposal shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the proposal is made or its designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that an offeror has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any proposal made to the State or any public department, agency or official thereof by a corporate contractor for work or services performed or to be performed or goods, sold or to be sold and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the contractor, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation or other legal entity involved in the proposal.

C. Proposal Contents

Proposals should be fully responsive to the requirements; however offerors are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, examples, processes, and procedures. Merely repeating a requirement statement does not demonstrate that the offeror understands the requirement and will be reviewed less favorably in the technical evaluation. Proposals should clearly and prominently identify any requirements that the offeror cannot satisfy.

The Proposal should consist of the following sections separated by tabs. Documents and responses must be presented in this order:

Tab	Proposal Contents
1.	Table of Contents
2.	Transmittal Letter
3.	Executive Summary and Introduction
4.	Project Planning
5.	Approach
6.	Staffing Requirements
7.	Corporate Organization, Experience, and Qualifications
8.	Price
9.	Minority and Women Owned Business Enterprise (M/WBE) Plan
10.	Certifications and Guarantees by the Offeror

C.1 Table of Contents (Tab 1)

A Table of Contents of the Proposal should be inserted in Tab 1. The Table of Contents identifies all sections (identified here as Tabs), all subsections contained therein, and the corresponding page numbers. The Table of Contents should include all sections and subsections present under Tabs 1 through 10.

C.2 Transmittal Letter (Tab 2)

Utilizing the Transmittal Letter Template provided in Attachment 3, an individual authorized to legally bind the offeror should complete and place a hand written signature on the Transmittal Letter template and include it in Tab 2. A photocopy of the Transmittal Letter should be included in each copy of the Proposal. The Transmittal Letter should include the complete name and address of the company and the name, mailing address, email address, fax number and telephone number for both the authorized signer and the person the Department should contact regarding the proposal. The Transmittal Letter will be evaluated as part of the screening and should include:

1. A statement indicating the legal structure of the entity submitting the offer;
2. A statement that the offeror accepts the contract terms and conditions contained in this FAS including attachments;
3. A statement confirming that the offeror has received and acknowledged all Department amendments to the FAS, as may be amended;
4. A statement confirming that the offeror is either registered to do business in New York State, or if formed or incorporated in another jurisdiction than New York State, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available;

5. A statement that the offeror (i) does not qualify its proposal, or include any exceptions from the FAS and (ii) acknowledges that should any alternate proposals or extraneous terms be submitted with the proposal, such alternate proposals and extraneous terms will not be evaluated by the Department;
6. A statement that the proposal of the offeror will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals;
7. A statement that the offeror agrees that it has the sole responsibility for obtaining any third party financing which may be necessary for the offeror to submit a proposal, and further that the offeror understands and agrees that should an award be made, the State of New York and the Department of Health will in no manner underwrite, act as a signatory or co-signatory, or in any manner guarantee participation in the securing of the offeror's financing;
8. A statement which complies with the four conflict of interest requirements set forth in this FAS Attachment 1, Section B.4, Conflict of Interest. Where any potential or actual conflict is disclosed, a description shall also be included as to how a potential or actual conflict and/or disclosure of confidential information relating to the contract will be avoided. If there is no conflict of interest a statement so indicating should be included;
9. If a proposal is submitted which proposes to utilize the services of a subcontractor(s), the offeror should provide, in an appendix to the Transmittal Letter, one subcontractor summary for each listed subcontractor. An individual authorized to legally bind the subcontractor should sign that subcontractor's summary document and certify that the information provided is complete and accurate. The summary document should contain the following information:
 - a. Complete name of the subcontractor;
 - b. Complete address of the subcontractor;
 - c. Percentage of work the subcontractor will be providing;
 - d. A statement confirming that the subcontractor is either registered to do business in New York State, or if formed or incorporated in another jurisdiction than New York State, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available;
 - e. A general description of the scope of work to be performed by the subcontractor; and,
 - f. The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or handicap.

C.3 Executive Summary and Introduction (Tab 3)

Tab 3 should be labeled Executive Summary and Introduction and should contain a narrative prepared by the offeror that provides the Department with a collective understanding of the contents of the entire Proposal. The Executive Summary/Statement of Understanding should briefly summarize the offeror's understanding of the services that the Department is requesting, the strengths of the offeror, the key features that distinguishes its proposed approach to meet the requirements of the FAS and the major benefits offered by this proposal. The Executive Summary is limited to twenty (20) pages in length (any submitted text beyond this length will be disregarded by evaluators).

C.4 Project Planning (Tab 4)

Tab 4 should be labeled Project Planning. The offeror will be required to provide, as part of their response to this FAS, a **fully loaded** Project Management Plan (PMP) based upon the schedule defined in Section VIII Schedule of this FAS. This plan shall define all tasks and milestones the offeror

feels are necessary to complete the requirements set forth herein. The PMP must be broken down into Work Breakdown Structures (WBS) and include key tasks, resources, milestones, deliverables and task dependencies.

This section shall also require a narrative of the PMP that must be in sufficient detail as to demonstrate the offeror has a clear and concise understanding of project's overall complexity and all associated tasks to successfully implement the requirements in this FAS. At a minimum this narrative shall include:

- a. A detailed description of the offeror's:
 - i. Quality Management Methodology
 - ii. Issue/Problem Resolution Methodology
 - iii. Risk Management Methodology
- b. How the proposed PMP will address and balance such factors as quality, scope time and cost;
- c. All tasks and activities to be undertaken in the delivery of the QA activities for the NY-HX Solution and the timing of these activities; and
- d. The deliverables that will be produced at different milestones in the PMP;

This Project Management Plan (PMP) will be one aspect used by the Department as part of the evaluation of responses to ensure that the offeror has a clear and concise understanding of the scope of providing QA services to the NY-HX.

Because of the compressed schedule required as a result of the EI grant, the offeror must provide a detailed description in this section of its response that shows its experience with the QA tasks associated with health policy, public benefit eligibility systems, federal reimbursement, monitoring operations, MITA, the readiness to commence work immediately, and the capability to meet the aggressive schedule shown in Exhibit 1.

C.5 Approach (Tab 5)

At a high level, the NY-HX Solution must support six (6) core business areas set forth in the federal definition of the Exchange Business Architecture:

1. Eligibility Determination & Enrollment,
2. Plan Management,
3. Financial Management,
4. Customer Service,
5. Communications, and
6. Oversight.

The QA contractor must provide QA services for the System Development Lifecycle (SDLC) phases for each of these core business areas. In this section of the proposal the offeror must provide a detailed description of the proposed approach to providing Quality Assurance for these business areas. The offeror must provide a detailed description of its Quality Assurance Methodology and how that methodology will be applied to the activities described in this FAS.

At a minimum, this section should contain subsections in which the offeror provides a detailed description of its approach to applying the QA methodology and the QA tasks defined in Section V herein to the SDLC phases defined below.

SDLC Phases	Description
1.	Requirements Definition
2.	System Design
3.	System Construction and System Test
4.	User Acceptance Test
5.	CMS Operational Review

C.6 Staffing Requirements (Tab 6)

In this section the offeror should provide a detailed description of the proposed staffing and organization plan for each phase of the project, as detailed in Section IX, Staffing Plan.

The offeror must name at a minimum a Project Manager and two (2) Senior Quality Assurance Business Analysts and provide a detailed current resume for each. These individuals will be designated as key staff. **Failure to name key staff may result in disqualification of the proposal.** All proposed key staff must be available no later than two (2) weeks following the Commissioner's execution of the contract. These resources, at a minimum, are responsible for providing the overall leadership and management, obtaining necessary corporate resources, and creating standards and processes required for the successful implementation of the QA tasks. All key staff positions must be full-time roles filled by a single, dedicated person who is assigned to work at the contractor's primary site.

The offeror should also provide in this Section a projected quarterly staffing plan based upon its understanding of the requirements in this FAS. This quarterly plan should include job titles and number(s) of staff in each title that will be assigned to the project. For each job title represented in the projected quarterly plan the offeror should provide the qualifications, roles and responsibilities for that title. This will be one instrument used to evaluate the offeror's proposal.

All staff in the staffing plan will be included in the offeror's fixed costs.

C.7 Corporate Organization, Experience, and Qualifications (Tab 7)

The proposal should document the legal structure of the offeror company, including the date established and the state in which the company is registered, licensed, and incorporated, as applicable:

1. Describe the history of the company;
2. Provide a corporate organizational chart;
3. Describe the executive and management staff assigned to this project. Include the number of staff, their roles on this project, their expertise and experience in providing the services described in this FAS, and their tenure with the company;
4. Identify any contractual terminations for cause within the past five (5) years; and
5. Describe resource availability for this project, given other projects currently undertaken by the offeror.

Letters of Reference

The offeror should provide Letters of Reference (LORs) from three (3) previous customers and include a contact person, email address, and telephone and fax numbers for each reference. The LORs may not be from any proposed subcontractor; all three (3) references must be external to the offeror and proposed subcontractor organizations. The purpose is to provide the Department the ability to verify the claims made in the proposal by the offeror.

The LORs should meet all of the criteria below. The reference criteria are as follows:

- a. Every reference must be with regard to a project implemented within the past ten (10) years;
- b. The offeror must have been the prime contractor for at least one (1) of the contract(s) associated with any one of the three references; and,
- c. The services provided for each of the references must have included system design, development, implementation, maintenance and operations.

The Department reserves the right to contact additional references (i.e., those known to the Department as clients of the offeror but not listed by the offeror as a reference).

Experience

In this section the offeror should provide a detailed description of its relevant and extensive QA expertise.

The offeror should also submit documentation to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the services required including at least the following:

- a. The offeror should have a minimum of thirty-six (36) months of providing Quality Assurance Services in supporting health policy development and public benefit eligibility systems;
- b. The offeror should have a minimum of forty-eight (48) months assisting governmental clients in the areas of project management and quality assurance of complex and large data systems;
- c. The offeror should have relevant experience on systems projects in the health and human services area; and
- d. The offeror should have QA experience in a MITA environment.

C.8 Price (Tab 8)

Tab 8 should be labeled Price and contain a hardcopy of the pricing schedules described in Attachment 2 Pricing Schedules. Offerors should use the Microsoft Excel spreadsheet titled "Attachment 2 - Pricing Schedules QA NY-HX.xls" in the form and content provided with this FAS. Offerors should also submit the Excel spreadsheet in electronic form.

The Fixed Cost for each contract year and the Supplemental Staff hourly rate in Schedule B must be a fully loaded rate and includes all personnel, overhead, indirect, travel, profit, equipment usage and any other miscellaneous costs.

Company Financials Content

The offeror should submit the following documents to be used in the evaluation of financial viability:

1. Audited financial statements (annual reports) for the last three (3) years;

2. Comprehensive Dunn & Bradstreet report;
3. Certificate of Incorporation, together with any and all amendments thereto; Partnership Agreement; or equivalent business organizational documents, as applicable.

C.9 Minority and Women Owned Business Enterprise (M/WBE) Plan (Tab 9)

The Department of Health (DOH) encourages the use of Minority and/or Women Owned Business Enterprises (M/WBE's) for any subcontracting or purchasing related to this contract. Bidders who are not currently a New York State certified M/WBE must define the portion of all consumable products and personnel required for this proposal that will be sourced from a M/WBE. The amount must be stated in total dollars and as a percent of the total cost necessary to fulfill the RFP requirement. Supportive documentation must include a detail description of work that is required including products and services.

The goal for usage of M/WBE's is at least 20% of monies used for contract activities (Minority-owned – 10%; Women-owned – 10%). In order to assure a good-faith effort to attain this goal, the DOH requires that bidders complete the M/WBE Utilization Plan (Attachment 6) and submit this Plan with their bid documents.

Bidders that are New York State certified MBE's or WBE's are not required to complete this form. Instead, such bidders must simply provide evidence of their certified status.

Failure to submit the above referenced Plan (or evidence of certified M/WBE status) may result in disqualification of the vendor from consideration for award.

C.10 Certifications and Guarantees by the Offeror (Tab 10)

New York State Department of Health Bid Form

The offeror should complete the Bid Form included as Attachment 4 - Bid Form. The Bid Form should be filled out in its entirety. The responsible corporate officer for contract negotiation, consistent with the terms and conditions of the FAS, should be listed and the document should be signed by the responsible corporate officer.

Vendor Responsibility Attestation

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Offerors should also complete and submit Attachment 5 - Vendor Responsibility Attestation.

Attachment 2: Pricing Schedules

Use of the Microsoft Excel spreadsheet titled “Attachment 2 - Pricing Schedules NY-HX.xls” in the form and content provided with this FAS is highly encouraged.

Pricing Schedule A – Total Fixed Price

Pricing Schedule A summarizes the costs for all contractor activities during the base contract period, including all activities related to providing QA services for the NY-HX Solution, including but not limited to the QA functions for all planning, joint application design sessions, design, conversion, construction, testing, implementation, and certification. The Total Fixed Price on this schedule should equal the sum of all other pricing schedule totals. The offeror needs to enter data in the gray highlighted fields. The Department reserves the option to receive line item reports on all costs. The offeror should insert its name in cell B2 of the spreadsheet.

Pricing Schedule B – Supplemental Staff Price

In Pricing Schedules B, offerors should submit the fixed hourly rate for each labor category identified and calculate the total annual price for each labor category and the total for each contract year. Using the attached spreadsheet, offerors need only complete the shaded cell indicating the hourly rate for each labor category. The hourly rate must be a fully loaded rate and include all personnel, overhead, indirect, travel, profit, equipment usage, and other miscellaneous costs. The contractor will be paid at the hourly rates proposed for time each individual is used on identified and approved Department projects. Time spent by these individuals for such activities as training or administrative time is to be included in the fixed cost and will not be paid separately.

Total Price**Offeror:**Pricing Schedule A

Pricing Element	Contract Year 1	Contract Year 2	Contract Year 3	Contract Year 4	Total
1. Fixed Cost	\$ -	\$ -	\$ -	\$ -	\$ -
2. Supplemental Staff (Schedule B)	\$ -	\$ -	\$ -	\$ -	\$ -
Total Price	\$ -	\$ -	\$ -	\$ -	\$ -

The fixed price is an all-inclusive price for the NY-HX Solution as defined herein. The contractor will not be reimbursed for any additional costs except for supplemental staff that the Department may require as additional requirements become known and additional funding becomes available. These staff will be based on the hourly rate in Pricing Schedule B.

Supplemental Staff Price**Offeror:**Pricing Schedule B

Contract Year 1

<u>Labor Category</u>	<u>Hourly Rate</u>	<u>Annual Hours</u>	<u>Total Annual Price</u>
Senior Quality Assurance Business Analyst		8,000	
Quality Assurance Business Analyst		8,000	
		<u>16,000</u>	<u>\$ -</u>

Contract Year 2

<u>Labor Category</u>	<u>Hourly Rate</u>	<u>Annual Hours</u>	<u>Total Annual Price</u>
Senior Quality Assurance Business Analyst		8,000	
Quality Assurance Business Analyst		8,000	
		<u>16,000</u>	<u>\$ -</u>

Contract Year 3

<u>Labor Category</u>	<u>Hourly Rate</u>	<u>Annual Hours</u>	<u>Total Annual Price</u>
Senior Quality Assurance Business Analyst		8,000	
Quality Assurance Business Analyst		8,000	
		<u>16,000</u>	<u>\$ -</u>

Contract Year 4

<u>Labor Category</u>	<u>Hourly Rate</u>	<u>Annual Hours</u>	<u>Total Annual Price</u>
Senior Quality Assurance Business Analyst		8,000	
Quality Assurance Business Analyst		8,000	
		<u>16,000</u>	<u>\$ -</u>

Attachment 3: Transmittal Letter Template

[TO BE COMPLETED ON OFFEROR'S LETTERHEAD]

Mr. Joseph Zeccolo
New York State Department of Health
Corning Tower, Room 2019
Albany, NY 12237

[Insert Current Date]

Re: NYS Department of Health (Department)
Funding Availability Solicitation (FAS)
New York State Health Benefit Exchange (NY-HX)

Dear Mr. Zeccolo:

[Insert Offeror's Name] submits this firm and binding offer to the Department in response to the above-referenced FAS and agrees as follows:

1. Offeror provides the following statement which describes the legal structure of the entity submitting the proposal _____ **[Insert Offeror's Response]**;
2. the offeror accepts the contract terms and conditions contained in this FAS including attachments;
3. the offeror has received and acknowledges all Department amendments to the FAS, as may be amended;
4. the offeror is either registered to do business in New York State, or if formed or incorporated in another jurisdiction than New York State, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available;
5. the offeror (i) acknowledges that it does not qualify its proposal, or include any exceptions from the FAS and (ii) acknowledges that should any alternate proposals or extraneous terms be submitted with the proposal, such alternate proposals and extraneous terms will not be evaluated by the Department;
6. the offeror's proposal will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals;
7. the offeror agrees that it has the sole responsibility for obtaining any third party financing which may be necessary for the offeror to submit a proposal, and further that the offeror understands and agrees that should an award be made, the State of New York and the Department of Health will in no manner underwrite, act as a signatory or co-signatory, or in any manner guarantee participation in the securing of the offeror's financing;
8. a statement is provided which complies with the four conflict of interest requirements set forth in this FAS. Where any potential or actual conflict is disclosed, a description should also be included as to how a potential or actual conflict and/or disclosure of confidential information relating to the contract will be avoided. If there is no conflict of interest a statement so indicating should be included; and

9. the offeror is/is not **[indicate one]** planning the use of any subcontractor(s). If a proposal is submitted which proposes to utilize the services of a subcontractor(s), the offeror should provide, in an appendix to the Transmittal Letter, a subcontractor summary for each listed subcontractor. An individual authorized to legally bind the subcontractor should sign that subcontractor's summary document and certify that the information provided is complete and accurate. The summary document should contain the following information:
 - a. Complete name of the subcontractor;
 - b. Complete address of the subcontractor;
 - c. Percentage of work the subcontractor will be providing;
 - d. A statement confirming that the subcontractor is (i) either registered to do business in New York State, or if formed or incorporated in another jurisdiction than New York State, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available;
 - e. A general description of the scope of work to be performed by the subcontractor; and,
 - f. The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or handicap.

The undersigned individual affirms and represents that he/she has the legal authority and capacity to sign and submit this offer on behalf of **[Insert Offeror's Name]** as well as to execute a contract with the Department.

Signature

Print Name

Insert: [Offeror's Full Name]
[Offeror's Mailing Address]
[Title of Signatory]
[E-mail of Signatory]
[Telephone Number of Signatory]
[Fax Number of Signatory]
[Name of Proposal Contact] (if different from Signatory)
[Mailing Address for Proposal Contact]
[Title of Proposal Contact]
[E-mail of Proposal Contact]
[Telephone Number of Proposal Contact]
[Fax Number of Proposal Contact]

ATTACHMENT 4
NEW YORK STATE
DEPARTMENT OF HEALTH
BID FORM

PROCUREMENT TITLE: _____ **FAU # 1108311202**

Bidder Name:
Bidder Address:

Bidder Fed ID No:

A. _____ bids a total price of \$ _____
(Name of Offerer/Bidder)

B. Affirmations & Disclosures related to State Finance Law §§ 139-j & 139-k:

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the Department of Health relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid or Request for Proposal* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid, Request for Proposal, or other solicitation document*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

2b. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

C. Offerer/Bidder certifies that all information provided to the Department of Health with respect to State Finance Law §139-k is complete, true and accurate.

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(e-mail Address)

Attachment 5

Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in this FAS, I hereby certify:

Choose one:

- An on-line Vendor Responsibility Questionnaire has been updated or created at NYS OSC's website: <https://portal.osc.state.ny.us> within the last six months.
- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: _____

Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____

Attachment 6

New York State Department of Health

BIDDERS PROPOSED M/WBE UTILIZATION PLAN

Bidder Name:	
RFP Title:	RFP Number

Description of Plan to Meet M/WBE Goals

--

PROJECTED M/WBE USAGE

	%	Amount
1. Total Dollar Value of Proposal Bid	100	\$
2. MBE Goal Applied to the Contract		\$
3. WBE Goal Applied to the Contract		\$
4. M/WBE Combined Totals		\$

Attachment 7: NYS Department of Taxation and Finance Forms

An electronic fill-in version of the *NYS Taxation and Finance Contractor Certification Form ST-220-TD*, can be found at:

http://www.tax.state.ny.us/forms/form_number_order_st_y.htm

An electronic fill-in version of the *NYS Taxation and Finance Contractor Certification Form ST-220-CA* can be found at:

http://www.tax.state.ny.us/forms/form_number_order_st_y.htm

Attachment 8 State Consultant Services Form A

<p>State Consultant Services</p> <p style="font-size: 2em; font-weight: bold; margin-top: 20px;">FORM A</p>	<p><u>OSC Use Only</u></p> <p>Reporting Code: Category Code: Date Contract Approved:</p>
---------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------

**Contractor's Planned Employment
 From Contract Start Date through End of Contract Term**

New York State Department of Health	Agency Code 12000
Contractor Name:	Contract Number:
Contract Start Date: / /	Contract End Date: / /

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
Totals this page:	0	0	\$ 0.00
Grand Total:	0	0	\$ 0.00

Name of person who prepared this report:

Title:

Phone #:

Preparer's signature:

Date Prepared: / /

Page of
 (use additional pages if necessary)

Instructions

State Consultant Services

Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report

Form A: This report must be completed before work begins on a contract. Typically it is completed as a part of the original bid proposal. The report is submitted only to the soliciting agency who will in turn submit the report to the NYS Office of the State Comptroller.

Form B: This report must be completed annually for the period April 1 through March 31. The report must be submitted by May 15th of each year to the following three addresses:

1. the designated payment office (DPO) outlined in the consulting contract.
2. NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting
or
via fax to (518) 474-8030 or (518) 473-8808
3. NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239
Attn: Consultant Reporting

Completing the Reports:

Scope of Contract (Form B only): a general classification of the single category that best fits the predominate nature of the services provided under the contract.

Employment Category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)

Number of Employees: the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.

Number of hours (to be) worked: for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the Report Period by the employees in the employment category.

Amount Payable under the Contract: the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

State Consultant Services
FORM B

OSC Use Only
Reporting Code:
Category Code:

Contractor's Annual Employment Report
Report Period: April 1, ____ to March 31, ____

New York State Department of Health	Agency Code 12000
Contract Number:	
Contract Start Date: / /	Contract End Date: / /
Contractor Name:	
Contractor Address:	
Description of Services Being Provided:	

Scope of Contract (Chose one that best fits):

Analysis	Evaluation	Research
Training	Data Processing	Computer Programming
Other IT Consulting	Engineering	Architect Services
Surveying	Environmental Services	Health Services
Mental Health Services	Accounting	Auditing
Paralegal	Legal	Other Consulting

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
Totals this page:	0	0	\$ 0.00
Grand Total:	0	0	\$ 0.00

Name of person who prepared this report:

Title:

Phone #:

Preparer's signature:

Date Prepared: / /

Page of (use additional pages if necessary)

Attachment 10

SAMPLE STATE CONTRACT WITH APPENDICES

MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE:12000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:

TO:

CONTRACTOR HAS () HAS NOT () TIMELY. FILED WITH THE ATTORNEY GENERAL'S CHARITIES BUREAU ALL REQUIRED PERIODIC OR ANNUAL WRITTEN REPORTS

FUNDING AMOUNT FOR CONTRACT TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

MUNICIPALITY NO. (if applicable):

STATUS:

CONTRACTOR IS () IS NOT () A SECTARIAN ENTITY

CONTRACTOR IS () IS NOT () A NOT-FOR-PROFIT ORGANIZATION

CONTRACTOR IS () IS NOT () A N Y STATE BUSINESS ENTERPRISE

() IF MARKED HERE, THIS CONTRACT'S RENEWABLE FOR ___ 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:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

Precedence shall be given to these documents in the order listed below.

- APPENDIX A Standard Clauses as required by the Attorney General for all State Contracts.
APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
APPENDIX Q Modification of Standard Department of Health Contract Language
STATE OF NEW YORK AGREEMENT
APPENDIX B Funding Availability Solicitation (FAS)
APPENDIX C Proposal
APPENDIX E-1 Proof of Workers' Compensation Coverage
APPENDIX E-2 Proof of Disability Insurance Coverage
APPENDIX H Federal Health Insurance Portability and Accountability Act Business Associate Agreement
APPENDIX G Notices
APPENDIX __:

Contract No.:

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

_____	.	_____
CONTRACTOR	.	STATE AGENCY
	.	
	.	
	.	
_____	.	_____
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)
)SS.:
 County of _____)

On the ___ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

 (Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE	.	STATE COMPTROLLER'S SIGNATURE
	.	
_____	.	_____
Title: _____	.	Title: _____
	.	
Date: _____	.	Date: _____

STATE OF NEW YORK
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York Department of Health (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this AGREEMENT; and

WHEREAS, the STATE has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment in connection therewith;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. The modification agreement is subject to the approval of the Commissioner of Health.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "Funding Availability Solicitation" and "FAS" include all Appendix B documents as marked on the face page hereof.
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment:

·
·

- B. Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, 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 the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at 518-486-1255. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>.

Completed W-9 forms should be submitted to the following address:

NYS Office of the State Comptroller
Bureau of Accounting Operations
Warrant & Payment Control Unit
110 State Street, 9th Floor
Albany, NY 12236

III. Term of Contract

- A. Upon approval of the Commissioner of Health, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

IV. 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:

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
 - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - 2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
 - 3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
 - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - 2. DB-120.1 – Certificate of Disability Benefits Insurance OR
 - 3. DB-155 – Certificate of Disability Benefits Self-Insurance

APPENDIX A STANDARD CLAUSES FOR NEW YORK STATE
CONTRACTS

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**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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments 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 \$50,000 (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 \$85,000 (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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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 affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms 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, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(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, 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 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. 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 Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 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 Section 165 of the State Finance Law, (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
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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
Telephone: 518-292-5250
Fax: 518-292-5803
<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. COMPLIANCE WITH 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).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the

contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX X Agency Code 12000

Contract Number: _____ Contractor: _____

Amendment Number X-_____

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through NYS Department of Health, having its principal office at Albany, New York, (hereinafter referred to as the STATE), and _____ (hereinafter referred to as the CONTRACTOR), for amendment of this contract.

This amendment makes the following changes to the contract (check all that apply):

- _____ Modifies the contract period at no additional cost
- _____ Modifies the contract period at additional cost
- _____ Modifies the budget or payment terms
- _____ Modifies the work plan or deliverables
- _____ Replaces appendix(es) _____ with the attached appendix(es) _____
- _____ Adds the attached appendix(es) _____
- _____ Other: (describe) _____

This amendment *is* / *is not* a contract renewal as allowed for in the existing contract.

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

Prior to this amendment, the contract value and period were:

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.
(Value before amendment) (Initial start date)

This amendment provides the following modification (complete only items being modified):

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.

This will result in new contract terms of:

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.
(All years thus far combined) (Initial start date) (Amendment end

date)

APPENDIX D
GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that:

All specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specification, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.

- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, telegram, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowances or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work, or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the

work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.

I. Non-Collusive Bidding

By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

- a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any bid made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods, sold or to

be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its or its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. **Work for Hire Contract**
Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed or included in the application software provided to the Department as a part of this contract.
- M. **Technology Purchases Notification --** The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"
 - 1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
 - 2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
 - 3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.
 - 4. The responses to this RFP must include a solution to effectively handle the turn of the century issues related to the change from the year 1999 to 2000.

N. YEAR 2000 WARRANTY

1. Definitions

For purposes of this warranty, the following definitions shall apply:

- a. Product shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g. consulting, systems integration, code or data conversion or data entry, the term Product shall include resulting deliverables.
- b. Vendor's Product shall include all Product delivered under this Agreement by Vendor other than Third Party Product.
- c. Third Party Product shall include products manufactured or developed by a corporate entity independent from Vendor and provided by Vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. Third Party Product does not include product where Vendor is:
 - a) corporate subsidiary or affiliate of the third party manufacturer/developer; and/or
 - b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Warranty Disclosure

At the time of bid, Product order or Product quote, Vendor is required to disclose the following information in writing to Authorized User:

- a. For Vendor Product and for Products (including, but not limited to, Vendor and/or Third Party Products and/or Authorized User's Installed Product) which have been specified to perform as a system: Compliance or non-compliance of the Products individually or as a system with the Warranty Statement set forth below; and
- b. For Third Party Product Not Specified as Part of a System: Third Party Manufacturer's statement of compliance or non-compliance of any Third Party Product being delivered with Third Party Manufacturer/Developer's Year 2000 warranty. If such Third Party Product is represented by Third Party Manufacturer/Developer as compliant with Third Party Manufacturer/Developer's Year 2000 Warranty, Vendor shall pass through said third party warranty from the third party manufacturer to the Authorized User but shall not be liable for the testing or verification of Third Party's compliance statement.

An absence or failure to furnish the required written warranty disclosure shall be deemed a statement of compliance of the product(s) or system(s) in question with the year 2000 warranty statement set forth below.

3. Warranty Statement

Year 2000 warranty compliance shall be defined in accordance with the following warranty statement:

Vendor warrants that Product(s) furnished pursuant to this Agreement shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Vendor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Vendor's sole cost and expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion.

This warranty shall survive beyond termination or expiration of the Agreement.

Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Agreement.

O. No Subcontracting

Subcontracting by the contractor shall not be permitted except by prior written approval and knowledge of the Department of Health.

P. Superintendence by Contractor

The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.

Q. Sufficiency of Personnel and Equipment

If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.

R. Experience Requirements

The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.

S. Contract Amendments

This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

The contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions Upon Default

1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor.
2. If, in the judgment of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgement of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Termination Provision

Upon termination of this agreement, the following shall occur:

1. Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
2. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

V. Conflicts

If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. **MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT**

The New York State Department of Health 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 of Health'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 New York State Department of Health to fully execute the mandate of Executive Law, Article 15-A 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 of Health 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 plan 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.

X. **Contract Insurance Requirements**

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and 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 proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the 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 the Department. The kinds and amounts of required insurance are:

- a. A policy covering the obligations of the successful bidder 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 successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
- b. 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.
 - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
 - ii. 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 proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
 - iii. 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 proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

Y. Certification Regarding Debarment and Suspension

Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and

benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1. APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who

is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
 - g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Nonprocurement Programs.
 - h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.

- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Z. Confidentiality Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.

5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.
6. All subcontracts shall contain provisions specifying:
 - a. that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and
 - b. that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

AA. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the STATE's designated payment office address included in this AGREEMENT; and
 - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting - or via fax at (518) 474-8030 or (518) 473-8808; and
 - c. The NYS Department of Civil Service, Alfred E. Smith Office Building, Albany NY 12239, ATTN: Consultant Reporting.

BB. Provisions Related to New York State Procurement Lobbying Law

1. The STATE reserves the right to terminate this AGREEMENT 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 STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

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

1. 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.

DD. Lead Guidelines

All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.

EE. Indemnification

1. Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the Contract.
2. The Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State and the Department from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by the Contractor, its agents, employees, partners or subcontractors, without limitation; provided however, that the Contractor shall not indemnify for the portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.
3. The Contractor shall indemnify, defend and hold the Department harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and cost which may be finally assessed against the Department in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or other third party proprietary right in relation to the Products furnished or utilized, provided that the State shall give the Contractor:
 - (i) prompt written notice of any action, claim or threat of infringement suit, or other suit,
 - (ii) the opportunity to take over, settle or defend such action, claim or suit at the Contractor's sole expense, and
 - (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require the Contractor, at Contractor's sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner shall require.
4. The Contractor shall not be obligated to indemnify that portion of damages, expenses (including reasonable attorneys' fees), claims, judgment, liabilities, cost or other dispute based upon; i) Department's unauthorized modification or alteration of a Product; ii) Department's unauthorized use of the Product in combination with the products not furnished by the Contractor; iii) Department's unauthorized use in other than the specified operating conditions and environment.

5. In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if the Contractor believes that it may be enjoined, the Contractor shall have the obligation, at its own expense and sole discretion as the State's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part(s) thereof, as applicable, (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the Department up to the dollar amount of the Contract Award. Time is of the essence in matters where the uses of any item(s) or part(s) thereof are enjoined.
6. For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, the Contractor's liability under the Contract for direct damages shall be limited to two (2) times the dollar amount of the contract including any amendments. Unless otherwise specifically enumerated herein, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.
7. Notwithstanding the foregoing or anything herein to the contrary, the Department will not consider any limitation of liability for personal injury or death, infringement, or damage to real or personal property, regardless of the nature of the damages sought for any such claim.
8. The Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due the Contractor, or may proceed against the performance and payment bond, maintenance or demolition bond, or letter of credit, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.
9. The Department does not agree to any indemnification provisions that require the Department to indemnify or hold harmless the Contractor or third parties.

Appendix H

for CONTRACTOR that uses or discloses individually identifiable health information on behalf of a New York State Department of Health HIPAA-Covered Program

- I. Definitions. For purposes of this Appendix H of this AGREEMENT:
- A. “Business Associate” shall mean CONTRACTOR.
 - B. “Covered Program” shall mean the STATE.
 - C. Other terms used, but not otherwise defined, in this AGREEMENT shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate:
- A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
 - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT.
 - C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this AGREEMENT.
 - D. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
 - 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - 4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
 - 5. Contact procedures for Covered Program to ask questions or learn additional information.
 - E. Business Associate agrees to ensure that any agent, including a subcontractor, to

whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Program agrees to the same restrictions and conditions that apply through this AGREEMENT to Business Associate with respect to such information.

- F. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
- G. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
- H. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- I. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- J. Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
- K. Business Associate agrees to comply with the security standards for the protection of electronic protected health information in 45 CFR § 164.308, 45 CFR § 164.310, 45 CFR § 164.312 and 45 CFR § 164.316.

III. Permitted Uses and Disclosures by Business Associate

- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
- B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
- C. Business Associate may disclose Protected Health Information as Required By Law.

IV. Term and Termination

- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by

Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix H of this AGREEMENT.

B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.

C. Effect of Termination.

1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this AGREEMENT to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations

- A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided,

however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

- A. Regulatory References. A reference in this AGREEMENT to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
- B. Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this AGREEMENT from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- C. Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix H of this AGREEMENT shall survive the termination of this AGREEMENT.
- D. Interpretation. Any ambiguity in this AGREEMENT shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- E. HIV/AIDS. If HIV/AIDS information is to be disclosed under this AGREEMENT, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

Appendix G

NOTICES

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time to time designate:

State of New York Department of Health

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Insert Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this AGREEMENT by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this AGREEMENT. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.