
NEW YORK STATE DEPARTMENT OF HEALTH
Office of Health Insurance Programs
Division of Program Development and Management

**Funding Availability Solicitation (FAS)
Delivery System Reform Incentive Payment Program
Independent Assessor**

FAS # 15649

Schedule of Key Events

FAS Release Date.....	May 20, 2014
Non–Mandatory Bidders Conference.....	May 27, 2014
Written Questions Due	May 30, 2014
Response to Written Questions on or About	June 6, 2014
Proposal Due Date	June 23, 2014
Contract Start Date (Anticipated)	July 15, 2014

Contacts Pursuant to State Finance Law § 139-j and 139-k

DESIGNATED CONTACTS

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contacts to whom all communications attempting to influence this procurement must be made:

Mr. Joseph Zeccolo
New York State Department of Health
Fiscal Management Group
Empire State Plaza
Corning Tower, Room 2756
Albany, NY 12237

Telephone: 518-486-7896
Email address: jxz02@health.ny.us

Permissible Subject Matter Contact for this FAS:

Pursuant to State Finance Law § 139-j(3)(a), the Department of Health also identifies the following allowable contacts for communications related to the following subjects:

Submission of Written Proposals

Mark Bertozzi Ph.D.
New York State Department of Health
Office of Health Insurance Programs, Division of Program Development and Management
One Commerce Plaza, Room 720
c/o Empire State Plaza
Corning Tower
Albany, NY 12237

Submission of Written Questions **Negotiation of Contract Terms after Award**

Email address: mark.bertozzi@health.ny.gov

Carlos Cuevas
New York State Department of Health
Office of Health Insurance Programs, Division of Program Development and Management
One Commerce Plaza, Room 1211
Albany, NY 12237

Email: Carlos.Cuevas@health.ny.gov

For further information regarding these statutory provisions, see the Lobbying Statute summary in Section E.11 of this solicitation.

TABLE OF CONTENTS

Contents

SECTION A: INTRODUCTION	3
SECTION B: BACKGROUND	6
SECTION C: PROJECT SPECIFICATIONS	11
C.1. DSRIP PROJECT PLAN APPLICATIONS	11
C.2. MID-POINT ASSESSMENT	16
C.3. REPORTING AND MONITORING	18
C.4. AT-RISK PROJECT IDENTIFICATION, GUIDANCE AND MONITORING	21
C.5. TECHNICAL ASSISTANCE FOR DSRIP PROJECTS	22
C.6. DATA REPORTING AND STORAGE SYSTEM	23
C.7. DSRIP LEARNING COLLABORATIVES	23
C.8. STAFFING PLAN AND CORE MANAGEMENT TEAM	25
C.9. ASSESSOR TIMETABLE OF DELIVERABLES	27
C.10. CERTIFICATE OF PUBLIC ADVANTAGE (COPA)	33
C.11. ACCOUNTABLE CARE ORGANIZATION (ACO) APPLICATION REVIEWS	35
C.12. AUTHORIZING DSRIP ASSESSOR PROCUREMENT STATUTE	36
SECTION D: PROPOSAL REQUIREMENTS	37
D.1. OVERVIEW	37
D.2. GENERAL SUBMISSION REQUIREMENTS	37
D.3. CONFLICT OF INTEREST	37
D.4. TECHNICAL PROPOSAL	38
D.5. COST PROPOSAL	45
D.6. SELECTION METHOD AND AWARD	52
SECTION E: ADMINISTRATIVE REQUIREMENTS	53
E.1. ISSUING AGENCY	53
E.2. INQUIRIES	53
E.3. SUBMISSION OF PROPOSALS	54
E.4. RESERVED RIGHTS	55
E.5. PUBLIC INFORMATION	56
E.6. VOUCHER SUBMISSION, PAYMENT AND SUPPORTING DOCUMENTATION	56
E.7. TERM OF CONTRACT	57
E.8. EARLY TERMINATION TRANSITION PLAN	58
E.9. VENDOR RESPONSIBILITY QUESTIONNAIRE	58
E.10. STATE CONSULTANT SERVICES REPORTING	58
E.11. LOBBYING STATUTE	59
E.12. ACCESSIBILITY OF STATE AGENCY WEB-BASED INTRANET AND INTERNET INFORMATION AND APPLICATIONS	60
E.13. INFORMATION SECURITY BREACH AND NOTIFICATION ACT	60
E.14. NEW YORK STATE TAX LAW SECTION 5-A	61
E.15. PIGGYBACKING	62
E.16. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN	62
SECTION F: DEFINITIONS (DSRIP GLOSSARY)	65
SECTION G: LIST OF ATTACHMENTS	75
SECTION H: APPENDICES	77

ATTACHMENT G	TRANSMITTAL FORM DELIVERY SYSTEM REFORM INCENTIVE PROGRAM INDEPENDENT ASSESSOR - FAS	79
ATTACHMENT H	BID FORM	80
ATTACHMENT I	LOBBYING FORM.....	83
ATTACHMENT J	VENDOR RESPONSIBILITY ATTESTATION	85
ATTACHMENT K	M/WBE PROCUREMENT FORMS	86
ATTACHMENT L	ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE.....	95
ATTACHMENT M	SAMPLE STANDARD NYS CONTRACT LANGUAGE AND APPENDICES	97

SECTION A: INTRODUCTION

The New York State's Medicaid program is the largest health insurance program in the state, spending more than \$54 billion annually to provide health care to more than 5.4 million eligible individuals including 2.0 million enrollees age 18 and under, 2.2 million adults ages 19 to 64 without disabilities, 610,000 elderly, and 553,000 adult disabled individuals. These costs are borne by the state, county and federal governments. Of the state's 5.4 million Medicaid enrollees, 3.3 million reside in New York City. Approximately 2.6 million of the eligible beneficiaries residing in New York City are enrolled in managed care plans. Of the 2.1 million eligible beneficiaries residing elsewhere in the state, approximately 1.4 million are enrolled in managed care plans.

As of April 16, 2014, 1,319,239 New Yorkers had completed their applications and 960,762 had enrolled for coverage since the launch of the New York State of Health (New York's health exchange) on October 1, 2013. More than 70 percent of those who had enrolled were uninsured at the time of application. The New York State of Health (New York's new insurance exchange) is well on its way to meeting or exceeding its enrollment goal of 1.1 million people by the end of 2016.

The New York State Department of Health is the Single State Agency recognized by the federal government for administering the New York State Medicaid program. The Department's Office of Health Insurance Programs (OHIP) has direct responsibility for management and oversight of the Medicaid program.

Effective April 10, 2014, the Centers for Medicare and Medicaid Services (CMS) approved New York's request for a Medicaid waiver amendment to the existing 1115 Partnership Plan. The waiver amendment will allow New York to reinvest in its health care infrastructure and provide the targeted resources it needs to implement further innovative programs in areas such as care coordination and transition, behavioral health, population-wide health initiatives and the creation of integrated delivery systems; while achieving effective overall Medicaid cost reductions as envisioned by the state's Medicaid Redesign Team.

The centerpiece of the waiver amendment is the creation of the Delivery System Reform Incentive Payment (DSRIP) Program. The DSRIP program is the major policy and financing component of the waiver amendment, and is designed to stabilize the state's health care safety-net system, re-align the state's delivery system to shift the focus from the service volume in the inpatient setting to rewards for service quality outcomes that leverage evidence-based approach in the outpatient setting. The statewide goal by the end of the DSRIP program is to reduce avoidable hospital use and emergency department use by 25% over the next five years.

Pursuant to this Funding Availability Solicitation, the Department of Health seeks to procure one contractor to serve as an independent assessor of New York State's newly created DSRIP program for the contract period July 15, 2014 to March 31, 2019 (see: Section E.7. Term of Contract for additional information). The independent assessor's contract fulfillment responsibilities will include any

assessor–related task prescribed in this FAS and the waiver amendment’s Standard Terms and Conditions (STCs) (see the Department’s DSRIP website).

The DSRIP assessor’s tasks include, but are not limited to, creating an application and application review tool as well as a process for a transparent and impartial review of all proposed project plans, making project approval recommendations to the state using CMS-approved criteria, assembling an independent review panel chosen by the Department of Health based on standards set forth in the DSRIP STCs, conducting a transparent and impartial mid-point assessment of project performance during the third year to determine whether the DSRIP project plans merit continued funding or need plan alterations, and assisting with the ongoing monitoring of performance and reporting deliverables for the duration of the DSRIP program.

The DSRIP assessor will also assist the Department in reviewing Certificate of Public Advantage (COPA) applications from Performing Provider Systems for the purpose of securing state action immunity under federal and state antitrust laws. CMS requires that COPA oversight be “ongoing and rigorous”. In 2011, Article 29-F of New York’s Public Health Law was enacted authorizing the state to encourage appropriate collaborative arrangements among health care providers “who might otherwise be competitors.” The section further provides that to the extent such arrangements may be anticompetitive within the meaning of state and federal antitrust laws, the intent of the state is to supplant competition with such arrangements under the active supervision and related administrative actions of the commissioner as necessary to accomplish the state’s policy goals, and to provide immunity under the state and federal antitrust laws.

For the “state action immunity” doctrine to apply, there must be thorough review of a proposed collaborative transaction, both before the COPA is issued and on an ongoing basis, to ensure that the benefits of the collaborative activities outweigh any disadvantages attributable to the resulting reduced competition.

The DSRIP assessor shall assist the Department, as requested, in reviewing applications for certificates of authority for accountable care organizations (ACO’s) affiliated with Performing Provider Systems pursuant to regulations issued by the Commissioner pursuant to Article 29-E of the Public Health Law, and in carrying out any other duties related to the development and oversight of ACOs related to DSRIP Performing Providers Systems as assigned by the Department.

The expertise required to successfully performing the role of the DSRIP Independent Assessor vendor include:

- Expertise in Integrated Health Care Delivery: A core objective of DSRIP is to transform health care delivery. In particular the state seeks to evolve performing provider systems into high performing “integrated delivery systems”. The entity must demonstrate substantial knowledge of what it takes for a group of health care providers to become an integrated delivery system. In particular, expertise is required around the following areas: governance, performance measurement, population health management, quality measurement and improvement, hospital service restructuring, strategic contracting, etc.

- Project Management Expertise: The entity must provide the state with an experienced project manager with experience in health care transformation. The entity must also have a successful track record of standing up large (e.g. geographically large projects with broad and complex scope) projects under tight timeframes.
- Understanding of Health Care Delivery in New York State: A strong understanding of how health care is delivered in New York State will be very helpful. The entity will need to evaluate multiple project proposals from every corner of the state and a detailed knowledge of the state's health care challenges and opportunities will be important in effectively evaluating those proposals.
- Expertise in Payment Reform: A primary DSRIP goal is to prepare performing provider systems for payment reform. The state has set a goal of 90% of Medicaid provider payments being made through non-FFS reimbursement systems that reward value over volume. Each provider application must be reviewed with an eye to the ability of the proposed project to prepare participating providers to thrive in the new payment system.
- Knowledge of Health Care Workforce Restructuring: Health care transformation has major workforce implications. Each project application will include a workforce strategy and as a result the entity will need to have expertise in how providers can transition their workforce from a system dominated by FFS reimbursement where more is always better to a system where providers need to work together as a team dedicated to improving population health and lowering costs.
- Experience with DSRIP in Other States: New York is not the first state to implement DSRIP. It would be helpful if the entity has knowledge of how other states have implemented the program and what lessons can be gleaned from those experiences.

Federal waiver authorization requires the state to procure an “independent” DSRIP assessor for the purposes described in this FAS. Accordingly, the assessor must:

- **Not be an employee or entity of the New York State Department of Health;**
- **Not have any business relationship with any of the prospective applicants and Performing Provider Systems it is assessing; and**
- **Act as an independent, unbiased third party with the capabilities to assess each application, without input from the state, based upon the scoring criteria approved by CMS.**

Prospective vendors may respond to both the DSRIP Independent Assessor FAS (#15649) and the DSRIP Program Support Team FAS (#15658).

However, the vendor selected as the DSRIP Independent Assessor and any of their affiliates will not be selected by the Department as a contractor or subcontractor providing the DSRIP Support Team services - nor will the vendor selected to provide Support Team services be selected to be the DSRIP Independent Assessor. (DSRIP Support Team's tasks include working with providers to strategically think through their potential DSRIP project plans to transition to effective and efficient high performing health care delivery systems. The Support Team will work on developing project proposal prototypes and “how to” guides to help providers as they prepare their applications and then work with providers from shortly after design grant receipt until final project proposal submission on these applications.)

The 2014-15 State Budget amends Section 364-j of the Social Services Law (**see: FAS Section C.12.**) to give the Commissioner of Health authority to enter into contracts “without a competitive bid or request for proposal process” as prescribed in the State Finance Law, for the purpose of assisting the Department with implementing projects authorized under the waiver amendment (i.e., DSRIP). The Commissioner must select the contractor that in his or her discretion is best suited to serve this purpose.

SECTION B: BACKGROUND

New York State is committed to redesigning its Medicaid program, the largest in the nation. To pursue this goal, the Medicaid Redesign Team (MRT) was created in January 2011 with the express purpose of formulating a multi-year action plan that would improve patient outcomes and lower program costs. As a result, the MRT finalized an action plan, and the state is now implementing a comprehensive array of targeted health care redesign proposals. The state’s waiver amendment to its 1115 Partnership Plan Demonstration waiver is necessary to fully implement the MRT’s action plan.

New York State’s Section 1115 Partnership Plan waiver program established in 1997 has played a critical role in improving access to health services and outcomes for the poorest and most at risk residents. The waiver allows the State to provide a mandatory Medicaid managed care program designed to improve the health of recipients by providing comprehensive and coordinated health care; offer comprehensive health coverage to low-income uninsured adults who have income and/or assets above Medicaid eligibility standards (Family Health Plus Program) and provide family planning services to women losing Medicaid eligibility at the conclusion of their postpartum period and certain other adults of child bearing age (Family Planning Expansion Program). The State’s goal in implementing the program was to improve the health status of low-income New Yorkers by improving access to health care for the Medicaid population, improving the quality of health services delivered, and expanding coverage to additional low income New Yorkers with resources generated through managed care efficiencies.

Through the MRT policy recommendation process, New York State continues to implement redesign initiatives to slow the rate of growth in Medicaid spending and ensure that cost neutrality is maintained. The Medicaid waiver amendment’s budget neutrality calculation is linked to the state’s new Medicaid Global Spending Cap which is currently working to control cost growth despite sharp enrollment growth. This Medicaid Global Spending Cap will generate significant out-year savings for both the state and federal governments.

The state’s Medicaid waiver amendment was submitted to the Federal Center for Medicaid and Medicare Services (CMS) in August 2012 to address the underlying challenges facing health care delivery: lack of primary care; weak healthcare safety net; health disparities; and transition challenges to managed care. A major component of the Waiver is the Delivery System Reform Incentive Payment (DSRIP) program.

These discussions culminated with CMS approving an \$8 billion Medicaid Waiver for New York on April 10, 2014. The purpose of this demonstration amendment is to provide funding for a CMS approved subset MRT recommended activities including delivery

system reform in the waiver, managed care programming and State Plan Amendment activities. DSRIP will be a major component of the Waiver and comprise 80 percent of the total amount -- \$6.42 billion. The remaining funds, about 20 percent, are comprised of the Interim Access Assurance Fund (IAAF), a temporary, time limited funding to protect against degradation of the current key health care services until DSRIP is implemented, as well as investments implemented through the State Plan or contracts with managed care plans. For more information on the Medicaid redesign waiver and for additional background on the managed care and state plan amendment portions of the Medicaid waiver, please visit the Medicaid Redesign Team website at: http://www.health.ny.gov/health_care/medicaid/redesign/.

The purpose of the DSRIP is to provide a new federal investment which provides incentives for Medicaid providers to create and sustain an integrated, high performing health care delivery system that can effectively and efficiently meet the needs of Medicaid beneficiaries and low income uninsured individuals in their local communities by improving care, improving health, and reducing costs.

DSRIP has a statewide goal of reducing avoidable hospital use (i.e., avoided admissions and avoided emergency room visits) by 25% over a five-year period. DSRIP is a performance based payment system open statewide to public hospitals and safety net providers. The Department and CMS will require local partnerships and regional collaboration to transform the delivery system.

DSRIP participating partnerships will include hospitals, Health Homes, nursing homes, clinics and FQHCs, behavioral health providers, home care agencies, and other key stakeholders. Applications from a single entity will not be accepted. It is expected that public hospitals will participate in safety net hospital networks, and vice versa. Providers will choose from a “menu” of CMS approved programs with clearly defined objectives and measurable metrics. Additionally, certain programs from the menu may be mandated by the state. With the exception of planning funds, performance payments will be paid to providers as agreed upon process and outcome milestones are reached.

DSRIP projects will be designed to meet, and be responsive to, community needs while ensuring overall transformation objectives are met. DSRIP provides funding for projects that are designed to transform the systems of care that support Medicaid beneficiaries and uninsured, which must be reflected in all DSRIP projects proposed by safety net providers participating in DSRIP (referred to as “Performing Provider Systems”), by addressing three key Elements itemized below:

DSRIP Element 1: Appropriate Infrastructure

The DSRIP will further the evolution of infrastructure and care processes to meet the needs of their communities in a more appropriate, effective and responsive fashion to meet key functional goals. This will include changes in the workforce. Infrastructure evolution must support the broader goals of DSRIP, and key outcomes reflect the kinds of infrastructure to be supported under DSRIP. Appropriate infrastructure should ensure access to care, particularly to outpatient resources as well as effective care integration. In support of linking settings, the transforming infrastructure should place more emphasis on outpatient settings. Also, critical services such as care coordination may need to be expanded to meet the broad needs of the population served.

DSRIP Element 2: Integration across settings

The DSRIP will further the transformation of patient care systems to create strong links between different settings in which care is provided, including inpatient and outpatient settings, institutional and community based settings, and importantly behavioral and physical health providers. The goal will be to coordinate and provide care for patients across the spectrum of settings in order to promote health and better outcomes, particularly for populations at risk, while also managing total cost of care. The DSRIP will fund projects that include new and expanded care coordination programs, other evidence based, data driven interventions and programs focused on key health and cost drivers and opportunities for providers to share information and learn from each other.

Key outcomes to be measured are expected to reflect this ongoing transformation. Integration across settings will create alignments between providers. The DSRIP will include restructuring payments to better reward providers for improved outcomes and lower costs.

DSRIP Element 3: Assuming responsibility for a defined population

The DSRIP projects will be designed in ways that promote integrated systems that assume responsibility for the overall health needs of a population of Medicaid beneficiaries and low income uninsured people, not simply responding to the patients that arrive at the doors of a hospital. The state will approve a defined population for each DSRIP project based on geographic and member service loyalty factors, as described in STC Attachment I. Integrated systems may propose to target the individuals served by a set of aligned community-based providers, or more ambitious systems may propose to tackle accountability for an entire geographic population. Patient and beneficiary engagement through tools including community needs assessment and responsiveness to public health needs will be an important element of all DSRIP projects.

Each indicator used to determine DSRIP awards should reflect a population, rather than the patients enrolled in a particular intervention. In addition, Performing Provider Systems will be required to report on progress on priorities related to the Prevention Agenda as included in the Population-wide Strategy Implementation Milestones.

DSRIP Planning & Application Assessment

- Each Performing Provider System that elects to participate in the DSRIP program must submit a DSRIP Project Plan in accordance with the DSRIP Project Plan guidelines.
- In Year Zero (DY0), DSRIP funding will be used for planning activities and development purposes. Providers will submit a Project Design Grant application to the Department of Health (DOH); provide a progress report by the 2nd quarter; and produce a final project plan by December 16, 2014. The Project Design Grant application and the final Project Plan will be reviewed by the Project Plan Review Panel and supplemented by an independent assessor using a CMS-approved checklist.

- All Performing Provider Systems will be subject to additional review during the mid-point assessment, at which point the state may require DSRIP plan modifications and may terminate some DSRIP projects, based on the feedback from the independent assessor, and the state's own assessment of project performance.

After DSRIP Project Plans are submitted by Performing Provider Systems on or before December 16, 2014, the independent assessor will conduct an initial screen to ensure that they meet the minimum submission requirements. The independent assessor will notify the Performing Provider System in writing of any initial questions or concerns identified with the provider's submitted DSRIP Project Plan and provide a 14 day period for Performing Provider Systems to address these concerns. All submitted DSRIP Project Plans will be posted for a 30 day public comment period.

The independent assessor will use the review tool to score all submitted DSRIP Project Plans. After scoring, the state and independent assessor will convene a panel of non-conflicted relevant experts and public stakeholders with significant health care transformation experience. The panel will hold an open public meeting to review the assessor's recommendations. The independent assessor will present each submitted DSRIP Project Plan with its score and recommendation for approval or rejection to the panel. The panel will have the opportunity to accept, reject, or modify the independent assessor's recommendation.

The independent assessor will then forward the panel's recommendations to the state regarding approvals, denials or recommended changes to project plans to make them approvable. The state will then accept or reject the panel's recommendations. Any deviations from the independent assessor's recommendations will need to be explained to CMS which will maintain its own monitoring process of these reviews. Awards will be made prior to the start of DSRIP Year 1 (April 1, 2015.)

Procedures to reduce avoidable hospital use

New York has identified a statewide goal of reducing avoidable hospital use and improving outcomes in other key health and public health measures. Effectively reducing avoidable hospital use requires alignment of outpatient and inpatient settings, requires systems that can take responsibility for a population, and requires investments in key infrastructure--and so this is a guidepost that can ensure that these transformations are aligned with our shared goals of better health, and better care at lower cost.

Because this is an integral guidepost to system transformation, key improvement outcomes for avoidable hospital use and improvements in other health and public health measures will be included for each project, and the state will be held accountable for these measures as part of the statewide accountability required by CMS.

State managed care contracting reforms

The state must also ensure that its managed care payment systems recognize, encourage and reward positive system transformation. To fully accomplish DSRIP goals and ensure sustainability of the initiatives supported by this demonstration, as a condition of receiving DSRIP project funding, the state shall develop and execute payment arrangements and accountability mechanisms with its managed care

contractors. These payment and accountability changes, described further in STC 38, must be reflected in the state's approved state plan and managed care contracts, and are funded through the approved state plan (without separate DSRIP funding). These changes are a condition for overall DSRIP project funding to be released.

This goal will also be monitored as part of the statewide accountability test described in STC 5 and will be tracked not at a DSRIP project level, but at the state level. The state must ensure state payments to managed care plans reflect and promote the establishment and continuation of integrated service delivery systems and procedures to reduce avoidable hospital use and ensure improvements in other health and public health measures. Therefore, the assessor's role to assist in the ongoing monitoring of DSRIP project performance is critical to assuring access to timely performance information to enable critical course corrections needed to achieve the highest possible levels of performance and DSRIP payment both at the individual project and the statewide levels.

Certificate of Public Advantage (COPA)

Article 29-F of the Public Health Law (PHL) sets forth the State's policy of promoting improved quality, access, and efficiency by encouraging, "where appropriate, cooperative, collaborative and integrative arrangements including but not limited to, mergers and acquisitions among health care providers or among others who might otherwise be competitors, under the active supervision of the commissioner." PHL § 2999-aa. As set forth in the statute, the Department of Health will establish a regulatory structure allowing it to engage in "appropriate state supervision necessary to promote state action immunity under the state and federal antitrust laws." Proposed regulations were published in the State Register on September 18, 2013. The Department is reviewing the comments received and expects to finalize a revised version of the regulations in the near future.

The regulations will establish a process for providers to apply for a Certificate of Public Advantage (COPA) for their collaborative arrangements, including but not limited to mergers, acquisitions and clinical integration agreements, as well as planning processes intended to lead to such collaborative arrangements. A COPA will be granted if it appears that the benefits of the collaborative activities outweigh any disadvantages attributable to their anticompetitive effects. In making that determination, the Department will consult with the Office of the Attorney General (OAG) and the mental hygiene agencies, as appropriate. In addition, as required in the statute, the Department will consult with and receive a recommendation from the Public Health and Health Planning Council (PHHPC) before issuing a COPA. By statute, no COPAs may be granted after December 31, 2016.

Among other things, the regulations will provide that the COPA may include any conditions that the Department determines to be appropriate in order to ensure that the collaborative arrangement or the planning process are consistent with Article 29-F and its purpose to improve health care quality, access, efficiency and clinical outcomes. The regulations further will require the parties to a COPA to report to the Department, annually and as otherwise required by the Department, for purposes of the ongoing active state supervision. Additionally, COPAs will be issued for a period of time of no less than two years or as otherwise determined by the Department, and subsequently

could be renewed. The regulations also will authorize the Department, in consultation with OAG and the mental hygiene agencies to revoke a COPA, if appropriate.

To implement the process established by the COPA regulations, the Department will establish an application, review applications received, consult with OAG, and, as appropriate, the mental hygiene agencies, conduct and/or review analyses of proposed collaborative transactions, and present information to PHHPC for its recommendation. COPA applicants must post on their public websites a description of their applications, with a link to the Department website, and the Department website must include a summary of such applications as well as the action ultimately taken on the applications. In reaching its determination, the Department must consider any public comments received.

Accountable Care Organizations (ACOs)

In 2011, based on a recommendation of the MRT, PHL Article 29-E was enacted, requiring the Department to establish a process for the issuance of certificates of authority for Accountable Care Organizations (ACOs). The Department is in the process of finalizing those regulations for publication in the State Register.

SECTION C: PROJECT SPECIFICATIONS

C.1. DSRIP Project Plan Applications

Assessor responsibilities regarding the DSRIP Project Plan Applications are as follows:

- **Create the DSRIP Project Plan Template,**
- **Create the DSRIP Project Plan Review Tool,**
- **Communicate with DSRIP Project Plan applicants, as needed, to provide feedback and carry out application review duties,**
- **Conduct Initial Review of all submitted DSRIP Project Plans,**
- **Convene DSRIP Project Plan Review Panel and manage the Public Hearing**
- **Aggregate the findings of the DSRIP Project Plan Review Panel,**
- **Submit a recommendation report to the state accepting or denying applicant based on the applicant's submitted DSRIP Project Plan,**
- **Provide application review supporting documentation to the state.**
- **Submit a recommendation report to the state to accept or deny applicant based on DSRIP Project Plan, and**
- **Provide application review supporting documentation to the state.**

All Emergent Performing Provider Systems must develop a DSRIP Project Plan that is based on five to ten of the projects specified in the DSRIP Strategies Menu and Metrics and complies with all requirements specified in the DSRIP Program Funding and Mechanics Protocol. Emergent Performing Provider Systems should develop DSRIP Project Plans that leverage community needs, including allowing community

engagement during planning, to sufficiently address the delivery system transformation achievement that is expected from their projects. DSRIP Project Plans will be provided in a structured format developed by the state and approved by CMS and will be tracked by the assessor over the duration of the DSRIP program. DSRIP Project Plans will be scored by the independent assessor and reviewed by the DSRIP Project Plan Review Panel as well as the state and may be subject to additional review by CMS. DSRIP Project Plans must include the following elements:

Rationale for Project Selection.

1. Each DSRIP project plan must identify the target populations, program(s), and specific milestones for the proposed project, which must be chosen from the options described in the approved DSRIP Strategies Menu and Metrics.
2. Milestones should be organized as described above in STC reflecting the three overall goals and subparts for each goal as necessary.
3. The project plans must describe the need being addressed and the starting point (including baseline data consistent with the agreement between CMS and the state) of the performing provider system related to the project.
4. Based on the starting point the Emergent Performing Provider System must describe its 5-year expected outcome for each of the domains described in STC. Supporting evidence for the potential for the interventions to achieve these changes should be provided in support of this 5 year projection for achievement in the goals of this DSRIP.
5. The DSRIP Project Plan shall include a description of the processes used by the Emergent Performing Provider System to engage and reach out to stakeholders, including a plan for ongoing engagement with the public.
6. Emergent Performing Provider Systems must demonstrate how the project will transform the delivery system for the target population and do so in a manner that is aligned with the central goals of DSRIP, and in a manner that will be sustainable after contract year 5. The projects must implement new, or significantly enhance existing health care initiatives; to this end, providers must identify the CMS and HHS funded delivery system reform initiatives in which they currently participate or in which they have participated in the previous five years, and explain how their proposed DSRIP activities are not duplicative of activities that are already or have recently been funded.
7. The plan must include an approach to rapid cycle evaluation that informs the system in a timely fashion of its progress, how that information will be consumed by the system to drive transformation and who will be accountable for results, including the organizational structure and process to oversee and manage this process. The plan must also indicate how it will tie into the state's requirement to report to CMS on a rapid cycle basis.

8. The plan must contain a comprehensive workforce strategy. This strategy will identify all workforce implications – including employment levels, wages and benefits, and distribution of skills – and present a plan for how workers will be trained and deployed to meet patient needs in the new delivery system. Applicants will need to include workers and their representatives in the planning and implementation of their workforce strategy.

Description of Project Activities.

1. Each project must feature strategies from all domains described in STC and the DSRIP Strategies Menu and Metrics.
2. For each domain of a project, there must be at least one associated outcome metric that must be reported in all years, years 1 through 5. The initially submitted DSRIP project plan must include baseline data on all measures, should demonstrate the ability to provide valid data and provide benchmarks for each measure. Baseline measurements should be based on the most recently available baseline data, as agreed to by CMS and the state.

Justification of Project Funding.

1. The DSRIP Project Plan shall include a detailed project specific budget as provided for in Attachment I and a description of the performing provider system or provider coalition's overall approach to valuing the project. Project valuations will be subject to a standardized analysis by the state as described below and further specified in the Program Funding and Mechanics Protocol.
2. DSRIP Project Plans shall include any information necessary to describe and detail mechanisms for the state to properly make or receive intergovernmental transfer payments (as applicable and further described in the program funding and mechanics protocol).

C.1.a. Drafting the DSRIP Project Plan application

The assessor shall create the DSRIP Project Plan application with feedback from the state.

DSRIP Project Plans must be submitted in a structured format agreed upon by the assessor, the state and CMS. Please refer to the DSRIP Program Funding and Mechanics Protocol for a full list of the DSRIP project plan application. At a minimum, the plan shall include the following sections:

1. DSRIP Face Sheet
2. Provider Demographics
3. Identification of Provider Overarching Goals
4. Identification of Provider Project to meet identified goals
5. Performance Assessment
6. Work Plan Development
7. Rapid cycle evaluation
8. Establishment of Milestones and Metrics
9. Budget

10. Governance
11. Data sharing and confidentiality
12. Expectation of Sustainability
13. Signed Attestations
14. Financial Assessment

C.1.b. Drafting the DSRIP Project Plan application review tool

The assessor shall create the DSRIP Project Plan application review tool with any input from the Department that it (the Department) deems necessary. The review tool will define relevant factors, assign weights to each factor and include scoring for each factor.

C.1.c. Working with Support Team to Create Prototype Application and “How-To” Guides

Once the draft Project Plan template is made public for comment, the assessor should begin assisting/providing feedback to the Support Team on prototype application examples that will be used to educate emerging Performing Provider Systems. During this time, the assessor will also provide feedback to the Support Team in its effort to create “how to” guides, which will be provided to emerging Performing Provider Systems as examples of what the assessor believes to be successful application constructs.

While the assessor may communicate with and provide feedback to the DSRIP Support Team regarding the Prototype example applications and “How-To” Guides, the DSRIP assessor will remain an independent entity from the DSRIP Support Team.

C.1.d. Initial review of DSRIP Project Plan applications

The assessor shall perform the initial review of DSRIP Project Plan applications and score DSRIP Project Plan applications based on the application review tool to assess anticipated performance. While the number of DSRIP Project Plan applications is unknown, the expectation is for between 25 and 50, but there possibly could be more.

C.1.e. Communication with DSRIP Applicants

The independent assessor shall notify the DSRIP applicant in writing of any initial questions or concerns identified with the submitted DSRIP Project Plan application and provide a determination in consultation with DOH for Performing Provider Systems to address these concerns. Assessor notifications to the applicant may include recommended changes to an applicant’s plan to make the Project Plan approvable. The assessor may take part in conversation with the applicant, their application consultants (including the DSRIP Support Team) and project managers to help the applicant understand deficiencies or potential areas for improvement in their application. **While the assessor may communicate with the DSRIP Support Team to help an applicant by providing clarifications and guidance, the DSRIP assessor will remain an independent entity from the DSRIP Support Team.**

C.1.f. Convene and manage DSRIP Application Review Panel

After reviewing and scoring the DSRIP Project Plans meeting the submission criteria, the independent assessor shall convene a panel of relevant experts and public stakeholders. The independent assessor shall ensure that standards are followed to prevent conflict of interest in the panel scoring process.

The panel will be selected with assistance from the state and in a manner consistent with state and federal requirements. The panel will hold an open public meeting to review the assessor's recommendations. The assessor shall manage the panel reviewer meeting. The independent assessor will present each submitted DSRIP Project Plan with its score and recommendation for approval or rejection to the panel. The panel will have the opportunity to accept, reject, or modify the independent assessor's recommendation.

This meeting is meant to provide a structure for panelists to discuss the merits of each application. There will be no reimbursement to the review panel members, including for any travel costs.

During the DSRIP Project Plan Application Review Panel, the assessor will be responsible for the following:

I. Panel Participant Recruitment and Assignment Process

1. From lists of potential panelists, supplied by DOH, send a letter of interest to populate the panel and provide weekly updates of the names of the interested individuals. DOH will provide a list of DOH panelists that will also be assigned based on state regulations and the DSRIP STCs. DOH will review and approve the letter,
2. Review all potential panelists for conflict of interest,
3. After review by DOH, send confirmation letters appointing the panelists as reviewers,
4. Collect all signed Conflict of Interest Statements and with DOH, review for any potential conflict of interest, and
5. The assessor will develop a training guide to help panels understand the application review process as well as provide a remote training and/or orientation session for all panel reviewers prior to the panel reviewing the assessor recommendations.

II. Application Processing and Distribution

1. The assessor shall produce copies of each application submission for use by panelists.
2. The assessor will provide to each panelist a package containing the assigned applications, instructions and review criteria. This package will need to be received by the participants at least one week prior to the scheduled public hearings and panel review.

III. Public Meeting / Application Scoring Review Process

The assessor will conduct two open public meetings (one upstate, one downstate) for the DSRIP Project Review Plan at a location chosen and paid for by the assessor. During this public meeting the panel will be able to hear from the public on the assessor's scoring of applications. As well, the panel will be able to review applications and ask the assessor questions about their scoring and recommendations. The assessor will be responsible for making sure that any CMS and state requirements for the meeting are met (i.e. webcasting meeting or operated assisted calls).

IV. Summary of Project Plan Review Plan Recommendations

For each Emergent Performing Provider System application, the assessor shall summarize the findings of the DSRIP Project Plan Review Panel. Most importantly, the summaries should include any insights, any areas of concern in the application as well as whether the panel decided to accept, reject or modify the independent assessor's recommendation. . If the panel deviated from the assessor's recommendation in any way, a thorough write-up detailing specific discrepancies or deviations in scoring should be highlighted and provided to the state.

C.1.g. Application Approval Recommendations provided to the State

The independent assessor will then forward its write-up of the panel's recommendations to the state regarding approvals, denials or recommended changes to project plans to make them approvable. The assessor should be available to the state if there are any additional questions regarding the application scoring or the application review process. The state will then accept or reject the panel's recommendations. Any deviations from the independent assessor's recommendations will need to be explained to CMS, which will maintain its own monitoring process of these reviews.

C.1.h. Provide Application Review Supporting Documentation to the State

For every DSRIP Project Plan application, the assessor shall provide the state with a thorough record of findings, as well as the copies of all scoring and assessment documents from the assessor and from the DSRIP Project Plan Review Panel.

C.2. Mid-point Assessment

Assessor responsibilities regarding the DSRIP Mid-Point Assessment are as follows:

- **Create a DSRIP Mid-point Assessment Review Plan,**
- **Create a DSRIP Mid-point Assessment Review Tool,**
- **Conduct Initial Review of all submitted DSRIP Mid-point Reports,**
- **Communicate with DSRIP Performing Provider System, as needed, to carry out mid-point assessment duties,**
- **DSRIP Mid-point Assessment Report and Recommendations, and**
- **Provide Mid-point Assessment Supporting Documentation to the State**

During DSRIP Year 3, the independent assessor will work with the state to conduct a transparent mid-point assessment of all DSRIP projects using CMS-approved criteria. This review will provide an opportunity to modify projects and/or metrics in consideration of learning and new evidence. The independent assessor will conduct a focused review of certain high-risk projects the state or CMS has identified based on information provided for all projects in the provider's monitoring reports.

The state's mid-point assessment review will be developed by the assessor and the state in collaboration with CMS. All DSRIP plans initially approved by the state must be re-approved by the state in accordance with the CMS approved review protocol in order to continue receiving DSRIP funding in DSRIP years 4 and 5. Similar to the process used for the initial approval of projects, the assessor shall perform similar functions for the mid-point assessment.

Based on the recommendations by the independent assessor, the state or CMS may require prospective plan modifications that would be effective for DSRIP Years 4 and 5, including adjustments to project metrics or valuation.

C.2.a. Create a Template for the DSRIP Mid-point Assessment Review Plan

The assessor, with input from the state, shall create a DSRIP mid-point Assessment Review Plan, which will be submitted to CMS for approval. The Plan should include a draft mid-point assessment review criteria, a description of its approach to review, and a draft DSRIP Plan Mid-point Assessment Checklist and or Project mid-point assessment tool that will reflect the approved criteria and will be used in the assessment. CMS, the state and the assessor will work collaboratively to refine the criteria, approach, and DSRIP Mid-Point Assessment Checklist and/or review tool. The Assessor will also be responsible for creating any special report templates that may be needed to efficiently conduct the mid-point assessment.

At a minimum, the assessor will evaluate the following elements as part of the mid-point assessment review:

1. Compliance with the approved DSRIP project plan, including the elements described in the project narrative;
2. Compliance with the required core components for projects described in the DSRIP Strategies Menu and Metrics, including continuous quality improvement activities;
3. Non-duplication of Federal funds;
4. An analysis and summary of relevant data on performance on metrics and indicators to this point in time;
5. The benefit of the project to the Medicaid and uninsured population and to the health outcomes of all patients served by the project (examples include number of readmissions, potentially preventable admissions, or adverse events that will be prevented by the project);
6. An assessment of project governance including recommendations for how governance can be improved to ensure success. The composition of the performing provider system network from the start of the project until the midpoint will be reviewed. Adherence to required policies regarding management of lower performing providers in the network will be reviewed with a special focus on any action with regard to removing lower performing members prior to DSRIP Year 4 and 5. (Note: Modifying coalition members requires a plan modification);
7. The opportunity to continue to improve the project by applying any lessons learned or best practices that can increase the likelihood of the project advancing the three part aim; and
8. Documents provided by the Performing Provider Systems concerning their financial viability in the short, medium, and long term according to criteria established by the Department of Health.

C.2.b. Conduct Initial review of DSRIP Project Plan Applications

The assessor shall perform the initial assessment of the DSRIP Performing Provider Systems mid-point reports and score the individual Performing Provider Systems reports

based off the midpoint assessment checklist/review tool.

C.2.c. Communication with DSRIP Performing Provider Systems

The independent assessor shall communicate with Performing Provider Systems regarding any questions or concerns identified with the DSRIP mid-point assessment information and provide a determination in consultation with the Department for Performing Provider Systems to address these concerns.

C.2.d. Assessor DSRIP Mid-point Assessment Report and Recommendations

Within two weeks of receiving the mid-point reports/information from DSRIP Performing Provider Systems, the independent assessor shall provide the state with a report for each Performing Provider System that includes, but is not limited to the following:

- a) detailed analysis summarizing DSRIP Performing Provider Systems' mid-point assessment findings for each performing provider system (based on mid-point assessment review areas in the tool kit and in the mid-term review plan approved by the state and CMS),
- b) detailed summary of performance for each metrics in Performing Provider Systems plan (based on mid-point assessment review areas in the tool kit and in the mid-term review plan approved by the state and CMS),
- c) assessment on the likelihood of each project to reach its projected end goals, and
- d) recommendations to the state, for each Performing Provider System, on whether or not the state should extend, should terminate or should extend with alterations (to achieve success) based upon the mid-point assessment.

C.2.e. Mid-point Assessment Recommendations provided to the State

The independent assessor will then forward its midpoint assessment recommendations to the state regarding approvals, denials or recommended changes to Project Plans.

The assessor should be available to the state if there are any additional questions regarding the application scoring or the application review process. The state will then accept or reject the panel's recommendations. Any deviations from the independent assessor's mid-point assessment recommendations will need to be explained to CMS, which will maintain its own monitoring process of these reviews.

C.2.f. Provide Mid-Point Assessment Supporting Documentation to the State

For every DSRIP Performing Provider System mid-point assessment, the assessor shall not only provide the state with a summative report for each Performing Provider System, but the assessor shall also provide the state with the actual scoring and assessment documents used in the review.

C.3. Reporting and Monitoring

Assessor Responsibilities regarding the DSRIP reporting & monitoring are as follows:

- **Develop templates for all DSRIP reports (as needed),**

- **Develop review tools for all DSRIP reports,**
- **Review, monitor and provide oversight of all DSRIP Reports for accuracy and compliance,**
- **Ensure reporting capabilities are compatible with State Data Portal,**
- **Provide monthly Reporting Review Summaries for each Performing Provider System to DOH,**
- **Create all Reporting Summaries for CMS,**
- **Conduct Annual On-Site Visits of all Performing Provider Systems, and**
- **Develop Summary Reports of Visits for the State.**

The assessor shall conduct robust monitoring and assessment of all submitted reports related to DSRIP. These reports include, but are not strictly related to Performing Provider System progress and statewide performance. The assessor is responsible for collecting data as well as completing and submitting reports to the state or CMS no less frequently than as appropriate in order to monitor DSRIP implementation and activities.

Upon this review, an analysis will be made regarding the:

1. Extent of progress each Performing Provider System is making towards meeting each milestone,
2. Specific activities that appear to be driving measureable change,
3. Key implementation challenges, including governance issues, associated with, specific activities designed to drive improvement,
4. Identification of adjustments to the DSRIP program, and/or strategies as observed through the analysis of submitted provider-level data and/or onsite findings as they occur, and
5. For data and metrics reported in systems not subject to CFR 438.242 (Health Information Systems) these agreements between the state and Performing Provider Systems should also be accompanied by a validation process performed by the independent assessor to ensure that the processes are generally valid and accurate. Penalties will be applied to Performing Provider Systems that do not reporting data that are valid and accurate as described.

C.3.a. Reporting Templates & Reporting Review Tools

The assessor shall help the state develop model templates and reporting assessment review tools for all DSRIP reports:

1. Templates should be designed to assess reporting and performance measures, including: transformation, sustainability, appropriate infrastructure, integration across settings, reducing avoidable hospitalizations, and population focused improvement,
2. Templates should define the parameters for acceptable project reporting and eligibility for reporting and performance DSRIP payments,
3. Templates should describe the overarching relationship between providers and intergovernmental transferring entities to draw down incentive payments; set forth guidelines for the distribution of incentive payments contingent upon successful completion of project metrics, and

4. Templates should establish reasonable timelines for the submission of deliverables required to operationalize the DSRIP program and provider project plans for the course of the demonstration.

C.3.b. Semi-Annual Milestone Reports

Twice annually, in accordance with CMS requirements, the assessor shall develop a report demonstrating the progress of each PPS DSRIP project as measured by the project-specific milestones and metrics achieved during the relevant reporting period. More frequent milestone achievement reports (possibly monthly) may be required to assist with ongoing project management. These reports should be provided to the state with an adequate time frame for the state to review and make any changes to the document before the report is due to CMS. Review time shall be determined by the state depending on the type of report, but there will be penalties related to not meeting specified timeframes (See Bid Form notes in Section D.5).

C.3.c. DSRIP Quarterly Reports

In accordance with CMS requirements, the assessor shall develop a report template demonstrating the progress of the state in its implementation and management of the DSRIP program. The assessor will be responsible for producing all DSRIP quarterly reports as required in the terms and conditions of the waiver amendment. These reports should be provided to the state with an adequate time frame for the state to review and make any changes to the document before the report is due to CMS. Review time shall be determined by the state depending on the type of report, but there will be penalties related to not meeting specified timeframes (See Bid Form notes in Section D.5).

C.3.d. Review, Monitoring and Oversight of Reports for Accuracy and Compliance

The assessor shall review all deliverables from every PPSs and is responsible for identifying, monitoring and providing oversight of the reports. The frequency of this activity will depend on the reporting frequency specified in the STCs or as needed. The assessor shall give particular scrutiny to the monthly progress reports, quarterly, semi-annual reports and annual reports and determine whether all topics required to be addressed by the terms are actually addressed and milestones have been achieved.

C.3.e. Reporting Compatibility with State Data Portal

Assessor reports and data gathering mechanisms are expected to be compatible with the state's data portal in an effort to highlight potential performance trouble spots, allowing for a deep review of troubled projects and systems. The state's data portal will allow access to appropriately permissioned patient and provider specific data in the Medicaid Data Warehouse. Role based access to this portal will allow providers and their partnering health plans to deliver current Medicaid claims and encounters data and care management data provided through connectivity with local regional health organizations (RHIOs). Faster access to more real time clinical and managed care data will be particularly relevant to creating the most accurate reports.

C.3.f. Monthly Reporting Review Summaries to DOH

On a monthly basis, for each DSRIP Performing Provider System, summarized results from the assessor reporting reviews will be provided to the state and to CMS as

requested. Also, the assessor will provide a suggested draft agenda for a DOH-led monthly monitoring call with the assessor. The main purposes of the monthly call will be to identify issues that need to be discussed with the State (i.e., missed deliverables, issues identified from review of deliverables, monthly progress report deficiencies). If critical concerns are identified, they must be reported to DOH as soon as they are identified.

C.3.g. Reporting Summaries for CMS

The assessor shall prepare all materials for CMS reports/updates regarding implementation and progress of the demonstration, including progress toward the goals, and key challenges, achievements and lessons learned. Prepared draft reporting summaries for CMS shall be provided to the state with sufficient time (review time shall be determined by the state depending on the type of report) to review and make changes before final submission of the reports to CMS.

C.3.h. Site Visits/On-site-Assessments

The assessor will conduct annual on-site visits of all Performing Providers to ensure continued compliance with DSRIP requirements. Reports of the onsite visits should be provided to the state for review within two weeks of the visit. If critical concerns are identified, they must be reported to DOH as soon as they are identified.

C.4. At-Risk Project Identification, Guidance and Monitoring

Assessor responsibilities regarding At-Risk Project Identification, Guidance and Monitoring are as follows:

- **Identify at-risk DSRIP Projects,**
- **Creating Additional Benchmarks for At Risk Projects, and**
- **Monitoring additional benchmarks for At Risk Projects**

Based on the information contained in the Performing Provider System's reports, information gathered from the state's data portal or other monitoring and evaluation information collected, the assessor shall identify particular projects as being at risk of not successfully completing its DSRIP project in a manner that will result in meaningful delivery system transformation. Once these concerns are identified by the assessor, they must be reported to DOH immediately. With input from the assessor, the state or CMS may require these projects to meet additional progress milestones in order to receive DSRIP funding in a subsequent semi-annual reporting period. Projects that remain at risk are likely to be discontinued at the mid-point assessment.

C.4.a. Identify At Risk DSRIP Projects and Performing Provider Systems

In their monthly reports to the state, the assessor shall inform the state of any Performing Provider Systems that are experiencing reporting issues, performance issues, and, in particular, any projects as being at risk of not successfully completing its DSRIP project in a manner that will result in meaningful delivery system transformation as soon as they are identified. These issues will be threshold or benchmarks created in the report reviewing tool. The assessor shall identify if the issue is the product of the Performing Provider System not meeting the set benchmark or if there is a flaw in the reporting

benchmark. If critical concerns are identified, they must be reported to DOH as soon as they are identified.

C.4.b. Creating of Additional Benchmarks for At Risk Projects

On a case-by-case basis, when appropriate, assessor shall work with the state and CMS to develop additional progress milestones for at risk projects, based on information from contained in the Performing Provider System's semiannual reports or other monitoring and evaluation information collected to improve performance so that the Performing Provider System will be in alignment to receive DSRIP funding in a subsequent semi-annual reporting period.

C.4.c. Monitoring At Risk Projects

When needed, the assessor shall review additional deliverables from Performing Provider Systems, and if needed, provide additional guidance via meetings and teleconferences to Performing Provider Systems who are deemed "at-risk." The assessor is responsible creating additional monitoring and oversight structures for these matters. The frequency of this activity will depend on the reporting frequency specified in the STCs or as needed.

C.5. Technical Assistance for DSRIP Projects

Assessor responsibilities regarding Technical Assistance for DSRIP Projects are as follows:

- **Technical Assistance for DSRIP Projects, and**
- **Reporting of Technical Assistance given to DSRIP Projects.**

C.5.a. Technical Assistance for Projects

Once DSRIP Project Plans are approved, the assessor shall be prepared to assist Performing Provider Systems that need technical support to implement their approved Project Plans. Technical assistance may include, but is not limited to the following:

- Clarifying and providing feedback on reporting procedures,
- community needs assessment,
- logic model to achieve DSRIP project objectives,
- Quality measurement implementation and improvement analytics
- Targeted assistance needed to drive specific performance improvement in target areas in project plan, etc.

The DSRIP Assessor contract should indicate the base number of technical assistance hours established in the contract (see: Technical Proposal response item D.4.4.5.a.), with the option for adding extra hours if deemed necessary (these hours will not be used for billing purposes but to assess the level of assistance provided by the contractor).

C.5.b. Reporting of Technical Assistance

The assessor shall make note of any technical assistance given to a DSRIP Performing Provider System Project in their monthly assessment to the state. If critical concerns are identified, they must be reported to DOH as soon as they are identified.

C.6. Data Reporting and Storage System

Assessor Responsibilities regarding Data Reporting and Storage System Requirements are as follows:

- **Creating and Monitoring Centralized Storage and Retrieval of Deliverables**
- **Maintenance and Upkeep of Database**

The assessor, through the state will collect data from Performing Provider Systems as often as it is practical in order to ensure that project impact is being viewed in as “real time” a fashion as possible. Collecting and analyzing data in this fashion will allow for rapid, life-cycle improvement which is an essential element of the DSRIP project plan. The assessor shall maintain an information system, likely resident in the State’s Medicaid Data Warehouse and associated provider portal, that collects, analyzes, integrates and reports, so carry out its given tasks during the DSRIP demonstration.

C.6.a. Centralized Storage and Retrieval of Deliverables

The assessor shall develop a system for centralized storage and retrieval of written and electronic deliverables that Performing Provider System must submit to DOH, as required in the STCs that govern the section 1115 demonstration. System requirements include, but are not limited to, the following:

- (a) the system must include random access and query capabilities that will allow documents to be identified by selected characteristics or search terms,
- (b) the system must also have the capability of tracking Performing Provider Systems’ performance on their deliverables relative to the required delivery dates in the STCs, and generate alerts when anticipated deliverables are not received,
- (c) the system must be created using standard issue software installed on DOH employee laptops, along with documentation of its creation and functionality, such that DOH staff could assume responsibility for its maintenance or assign responsibility to another Contractor at the end of this contract,
- (d) the system and all documents must be maintained on shared drives at DOH,
- (e) the system will likely be resident in the State’s Medicaid Data Warehouse and will utilize its portal functionality, if not at a minimum the system and must be compatible with and able to access information from the state’s Medicaid data warehouse portal.

C.7. DSRIP Learning Collaboratives

Assessor responsibilities regarding DSRIP Learning Collaboratives are as follows:

- **Establish Framework for Learning Collaborative,**
- **Convene and Manage Learning Collaborative Meetings,**
- **Create Learning Collaborative Reports, and**
- **Learning Collaborative Subcontractor Oversight Plan.**

One facet of the DSRIP program is the development of the Learning Collaborative. The purpose of the Learning Collaborative is to promote and support a continuous

environment of learning and sharing based on data transparency within the New York healthcare industry in an effort to bring meaningful improvement to the landscape of healthcare in New York.

The Learning Collaboratives are the responsibility of the assessor, but can be subcontracted out, provided that there is close supervision from the assessor and oversight from the state. Learning Collaboratives may be either virtual or in-person, but both are meant to build relationships between Performing Provider Systems as well as facilitates project analysis and measurement.

The Learning Collaborative will be designed to promote and/or perform the following:

1. Sharing of DSRIP project development including data, challenges, and proposed solutions based on the Performing Provider Systems' quarterly progress reports,
2. Collaborating based on shared ability and experience,
3. Identifying key project personnel,
4. Identification of best practices,
5. Provide updates on DSRIP program and outcomes,
6. Track and produce a Frequently Asked Questions document ,and
7. Encourage the principles of continuous quality improvement cycles.

C.7.a. Establish Framework for Learning Collaborative

The assessor shall organize and support a series of learning collaboratives during DY1-DY5 of the DSRIP program at which Performing Provider Systems will be able to share best practices and get assistance in implementing and managing their DSRIP projects. Learning collaboratives should primarily be focused on learning (through the exchange of ideas at the front lines) rather than teaching (i.e. large conferences).

1. Learning collaboratives will be a required activity for all Performing Provider Systems.
2. The assessor shall assist the DOH to establish a website (the website will hosted by the Department) to supplement the Learning Collaborative to help providers share ideas and relevant data over time.
3. The assessor shall provide Performing Provider Systems, either by its own or contracted staff, with regional "innovator agents" who are trained in quality improvement, who can travel from site to site in the network to rapidly answer practical questions about implementation and harvest good ideas and practices that they systematically spread to others. The cost of the innovator agents, including their travel expenses, will be paid for by the contractor.

C.7.b. Convene and Manage Learning Collaborative Meetings

1. At least one statewide, face-to-face learning collaborative meeting must be held in each year from DY1-DY5 (any travel costs will be paid by the Performing Provider system members).
2. Learning Collaboratives meetings may be organized either geographically, by the goals of the DSRIP, or by the specific DSRIP projects as described in the DSRIP Strategies Menu and Metrics.
3. In addition to at least one statewide face-to-face meeting, the assessor shall conduct monthly calls with project leads to discuss status and answer questions.

State staff will participate in the learning collaborative calls and meetings, but the assessor shall organize, support and handle all logistics, administrative and operations matters pertaining to the learning collaborative meetings.

State staff will participate but the assessor shall organize, support and handle all logistics, administrative and operations matters pertaining to the learning collaborative meetings.

C.7.c. Create Learning Collaborative Reports

The assessor shall provide the state with a monthly report on feedback and shared ideas from calls, meeting and innovator agents. b) If critical concerns are identified, they must be reported to DOH as soon as they are identified.

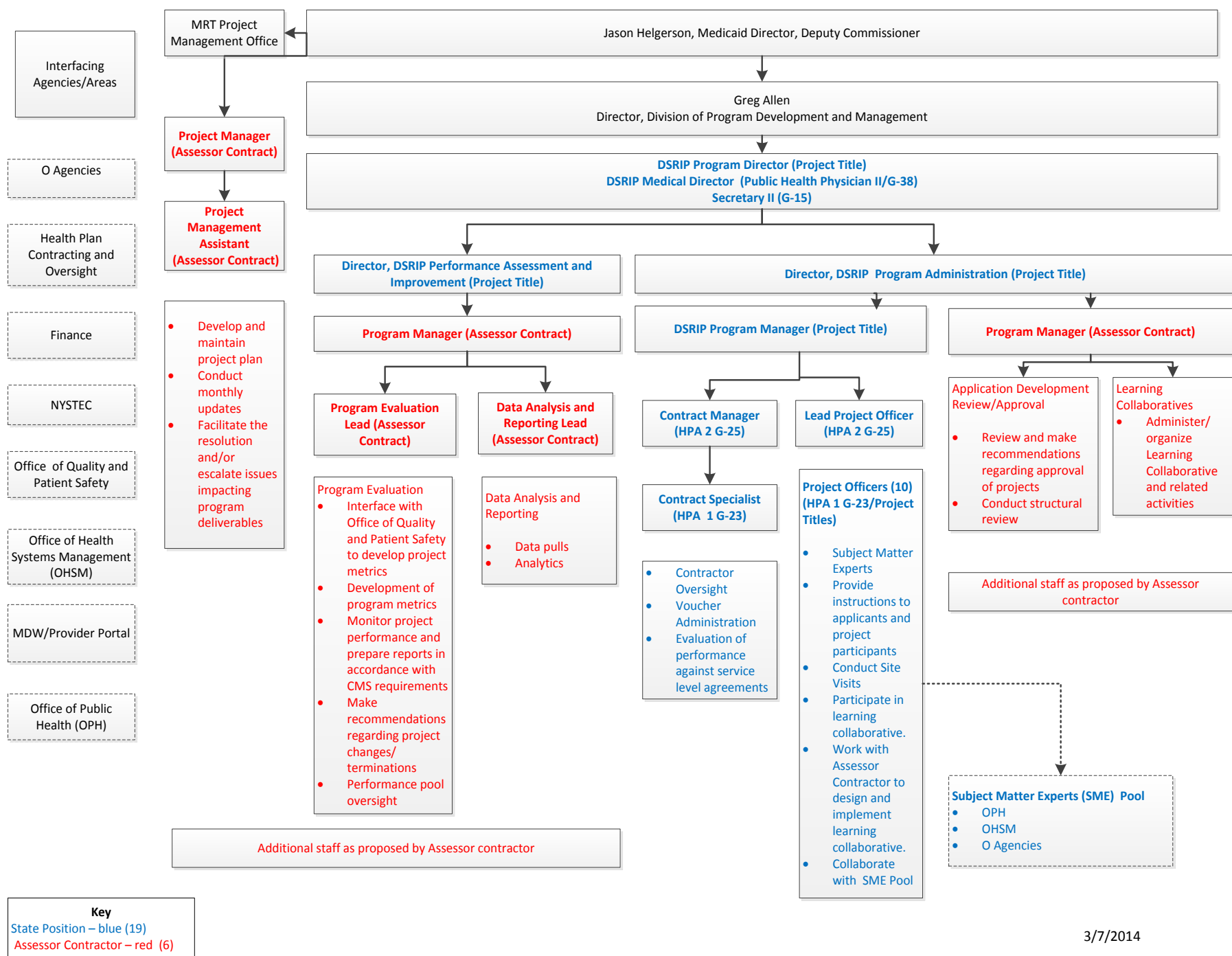
C.7.d. Learning Collaborative Subcontractor Oversight Plan

If the assessor decides to subcontract the Learning Collaborative duties to another party, the assessor must provide the state with a contract and oversight plan approved by the state that reflects compliance with Learning Collaborative responsibilities outlined in the DSRIP STCs.

C.8. Staffing Plan and Core Management Team

The awardee of the DSRIP assessor contract must maintain a core management team in Albany, New York that is directly responsible for overseeing the day-to-day project operations. The core management team must include the individual with principal responsibility of overseeing the day-to-day operations of the contract who will be available to consult with DOH. Other core management team members must be knowledgeable, in the aggregate, of all functions required under this FAS.

The DSRIP assessor contractor must provide the following positions: "Project Manager, Project Management Assistant, Program Manager (MRT Project Management Office), Program Evaluator Lead, Data Analysts and Reporting Lead, and Program Manager (DSRIP Program Administration). The chart below indicates the expected management staffing and patterns of authority for the DSRIP project:



C.9. Assessor Timetable of Deliverables

The Assessor Timetable of Deliverables is sixty six months from the contract start date. The assessor shall submit required deliverables in accordance with the below schedule (**This timetable may be altered at the discretion of DOH**).

Description	Due Date
DSRIP Year 0 (9 Months) July 15, 2014- March 31,2015	
Assessor Contractor Begins Work	7/15/2014
Assessor/DOH kick-off meeting	7/18/2014
Draft DSRIP Project Plan Application & Application Review Tool Due to DOH	8/1/2014
Present work plan for reviewing DSRIP proposals and advising DOH in a timely manner.	8/8/2014
Assessor receives feedback on Draft DSRIP Application & Application Review Tool	8/8/2014
Revised DSRIP Project Plan Application & Application Review Tool Due to DOH	8/15/14
Assessor to start working with Support Team on Project Plan Prototypes & "How-To" Guides	8/15/14
DSRIP Project Plan Application Posted to Website for Public Comment	8/22/2014
Submit administrative plan for DSRIP Project Plan Review Panel	9/26/2014
Updated DSRIP Project Plan and Review Tool Application Due to DOH	9/26/2014
Finalized DSRIP Project Plan Application & Review Tool Posted to Website	10/3/2014
NYS submits DSRIP Quarterly Monitoring Report	11/30/2014
Kick-off Meeting for DSRIP Project Plan Review Panel	12/5/2014
DSRIP Project Plan Applications Due	12/15/14
Assessor begins review of DSRIP Project Plan Application	12/17/2014
Submit: Assessment of and	1/22/2015

Description	Due Date
recommendations for proposed PPS assessment plans At this time all supporting documents used to review applicants should be provided to the state as well	
Assessor Recommendations made public, sent to CMS, sent to DSRIP Project Plan Review Panel	2/2/2014
COPA Review Due	2/2/14
DSRIP Project Approval & Oversight Team Public Meeting to accept/reject assessor recommendations	2/10/2014-2/13/2014
Assessor delivers report on findings of DSRIP Project Plan Review Panel to State	2/20/2014
State announces final decisions of DSRIP applications based on assessor & review panel findings	2/27/2014
NYS submits DSRIP Quarterly Monitoring Report	2/28/2014
DSRIP Year 1 (9 Months) April 1,2015 – December 31, 2015	
NYS submits DSRIP Quarterly Monitoring Report	5/31/2015
Learning Collaborative DY1	7/2015
NYS submits DSRIP Quarterly Monitoring Report	8/31/2015
NYS submits DSRIP Quarterly Monitoring Report	11/30/2015
DSRIP Year 2 (12 Months) January 1,2016 –December 31,2016	
COPA Renewal Review Due	2/2/2016
NYS submits DSRIP Quarterly Monitoring Report	2/28/2016
NYS submits DSRIP Quarterly Monitoring Report	5/31/2016
Learning Collaborative DY2	6/2016
NYS submits DSRIP Quarterly Monitoring Report	8/31/2016
NYS submits DSRIP Quarterly	11/30/2016

Description	Due Date
Monitoring Report	
DSRIP Year 3 (12 Months) January 1, 2017- December 31 ,2017	
NYS submits DSRIP Quarterly Monitoring Report	2/28/2017
NYS submits DSRIP Quarterly Monitoring Report	5/31/2017
Learning Collaborative DY3	6/2017
DSRIP Mid-Point Assessment	7/15/2017
NYS submits DSRIP Quarterly Monitoring Report	8/31/2017
NYS submits DSRIP Quarterly Monitoring Report	11/30/2017
DSRIP Year 4 (12 Months) January 1,2018 – December 31,2018	
COPA Renewal Review Due	2/2/2018
NYS submits DSRIP Quarterly Monitoring Report	2/28/2018
NYS submits DSRIP Quarterly Monitoring Report	5/31/2018
Learning Collaborative DY4	6/2018
NYS submits DSRIP Quarterly Monitoring Report	8/31/2018
NYS submits DSRIP Quarterly Monitoring Report	11/30/2018
DSRIP Year 5 (12 Months) January 1,2019 – December 31,2019	
NYS submits DSRIP Quarterly Monitoring Report	2/28/2019
Learning Collaborative DY5	3/2019
NYS submits DSRIP Quarterly Monitoring Report	5/31/2019
NYS submits DSRIP Quarterly Monitoring Report	8/31/2019
NYS submits DSRIP Quarterly Monitoring Report	11/30/2019
DSRIP Year 6 (2 Months) January 1 ,2019 –February 29, 2019	
COPA Renewal Review Due	2/2/2020
NYS submits DSRIP Quarterly Monitoring Report	2/29/2020
DSRIP Year 0- DSRIP Year 6 Ongoing Tasks	
Monthly Summary Reports to DOH	4/1/2015- 2/29/2020

Description	Due Date
Monthly Summary Reports to CMS	4/1/2015-2/29/2020
Semi-Annual PPS Reporting Analysis	4/1/2015-2/29/2020
Accountable Care Organization and COPA: Application Review & Monitoring	7/15/2014-2/29/2020
	Due Date
DSRIP Year 0 (9 Months) July 15, 2014- March 31,2015	
Assessor Contractor Begins Work	7/15/2014
Assessor/DOH kick-off meeting	7/18/2014
DSRIP Project Plan Application & Application Review Tool Due to DOH	7/31/2014
Present work plan for reviewing DSRIP proposals and advising DOH in a timely manner.	8/08/2014
DSRIP Project Plan Application Posted to Website for Public Comment	8/22/2014
Description	8/22/2014
Submit administrative plan for DSRIP Project Plan Review Panel	9/26/2014
Updated DSRIP Project Plan and Review Tool Application Due to DOH	9/26/2014
Finalized DSRIP Project Plan Application & Review Tool Posted to Website	10/3/2014
NYS submits DSRIP Quarterly Monitoring Report	11/30/2014
Kick-off Meeting for DSRIP Project Plan Review Panel	12/5/2014
DSRIP Project Plan Applications Due	12/15/14
Assessor begins review of DSRIP Project Plan Application	12/17/2014
Submit: Assessment of and recommendations for proposed PPS assessment plans At this time all supporting documents used to review applicants should be provided	1/22/2015

Description	Due Date
to the state as well	
Assessor Recommendations made public, sent to CMS, sent to DSRIP Project Plan Review Panel	2/2/2014
COPA Review Due	2/2/14
DSRIP Project Approval & Oversight Team Public Meeting to accept/reject assessor recommendations	2/10/2014-2/13/2014
Assessor delivers report on findings of DSRIP Project Plan Review Panel to State	2/20/2014
State announces final decisions of DSRIP applications based on assessor & review panel findings	2/27/2014
NYS submits DSRIP Quarterly Monitoring Report	2/28/2014
DSRIP Year 1 (9 Months) April 1,2015 – December 31, 2015	
NYS submits DSRIP Quarterly Monitoring Report	5/31/2015
Learning Collaborative DY1	7/2015
NYS submits DSRIP Quarterly Monitoring Report	8/31/2015
NYS submits DSRIP Quarterly Monitoring Report	11/30/2015
DSRIP Year 2 (12 Months) January 1,2016 –December 31,2016	
COPA Renewal Review Due	2/2/2016
NYS submits DSRIP Quarterly Monitoring Report	2/28/2016
NYS submits DSRIP Quarterly Monitoring Report	5/31/2016
Learning Collaborative DY2	6/2016
NYS submits DSRIP Quarterly Monitoring Report	8/31/2016
NYS submits DSRIP Quarterly Monitoring Report	11/30/2016
DSRIP Year 3 (12 Months) January 1, 2017- December 31 ,2017	
NYS submits DSRIP Quarterly Monitoring Report	2/28/2017
NYS submits DSRIP Quarterly	5/31/2017

Description	Due Date
Monitoring Report	
Learning Collaborative DY3	6/2017
DSRIP Mid-Point Assessment	7/15/2017
NYS submits DSRIP Quarterly Monitoring Report	8/31/2017
NYS submits DSRIP Quarterly Monitoring Report	11/30/2017
DSRIP Year 4 (12 Months) January 1,2018 – December 31,2018	
COPA Renewal Review Due	2/2/2018
NYS submits DSRIP Quarterly Monitoring Report	2/28/2018
NYS submits DSRIP Quarterly Monitoring Report	5/31/2018
Learning Collaborative DY4	6/2018
NYS submits DSRIP Quarterly Monitoring Report	8/31/2018
NYS submits DSRIP Quarterly Monitoring Report	11/30/2018
DSRIP Year 5 (12 Months) January 1,2019 – December 31,2019	
NYS submits DSRIP Quarterly Monitoring Report	2/28/2019
Learning Collaborative DY5	3/2019
NYS submits DSRIP Quarterly Monitoring Report	5/31/2019
NYS submits DSRIP Quarterly Monitoring Report	8/31/2019
NYS submits DSRIP Quarterly Monitoring Report	11/30/2019
DSRIP Year 6 (2 Months) January 1 ,2019 –February 29, 2019	
COPA Renewal Review Due	2/2/2020
NYS submits DSRIP Quarterly Monitoring Report	2/29/2020
DSRIP Year 0- DSRIP Year 6 Ongoing Tasks	
Monthly Summary Reports to DOH	4/1/2015- 2/29/2020
Monthly Summary Reports to CMS	4/1/2015- 2/29/2020
Semi-Annual PPS Reporting Analysis	4/1/2015- 2/29/2020
Accountable Care Organization and COPA: Application Review	7/15/2014- 2/29/2020

Description	Due Date
& Monitoring	

C.10. Certificate of Public Advantage (COPA)

Assessor responsibilities regarding Certificates of Public Advantage are as follows:

- **Responsible for successfully performing the COPA review according to the criteria provided in this FAS and in New York State statute and regulation.**

The assessor shall be responsible for reviewing and evaluating the health care provider environment to determine what the market power of COPA applicants would be as a result of a collaborative arrangement. In order to determine market power, it is necessary to define the relevant market, determine the market share of the applicants, and determine whether any barriers exist to other providers expanding their services or new providers entering the relevant market. Performing Provider Systems applying for a COPA will be expected to provide information such as:

- Information related to the current organizational structure of each party to a cooperative agreement or planning process;
- A description of the primary service area, including available health care resources, and the community health needs of such area;
- Details of the cooperative agreement or planning process and the proposed collaborative arrangement;
- The projected impact of the cooperative agreement or planning process on health care utilization, spending and the costs and prices of health care services in the primary service area;
- Benefits of the cooperative agreement or planning process;
- Projected cost savings to the health care system and efficiencies over a five year period and how they will be achieved; and
- Information related to monitoring and supervision.

C.10.a. Staffing Expectations

The DISRIP assessor would be expected to offer a mix of economic and financial expertise, as well as expertise in industrial organization. Experts would likely have a Ph.D. in economics with at least 10 years of experience, including 5 years of experience analyzing health care transactions with a focus on antitrust and competitive issues in the health care marketplace. In some instances, a forensic accountant may be needed to review financial projections and accounting of proposed mergers, acquisitions or other collaborations.

C.10.b Assessor Responsibility for COPA Applicant Reviews

As part of the application review, the DSRIP assessor shall be responsible for successfully performing the COPA review according to the criteria provided in this FAS and in New York State statute and regulation. The factors to be

considered in evaluating applications include, but are not limited to:

- the financial condition of the parties to the agreement, including whether any health care provider party is experiencing financial distress and may be forced to cease operations or eliminate a service in the absence of the cooperative agreement;
- the dynamics of the relevant primary service area, including the availability of suitable and accessible health care services and the level of competition in the primary service area, the likelihood that other health care providers will enter or exit the primary service area, and the existence of unique challenges such as difficulties in recruiting and retaining health care professionals;
- the potential benefits of a COPA, including but not limited to the likelihood that one or more of the following may result from the cooperative agreement or planning process:
 - preservation of needed health care services in the relevant primary service area that would be at risk of elimination in the absence of a cooperative agreement;
 - improvement in the nature or distribution of health care services in the primary service area, including expansion of needed health care services or elimination of unnecessary health care services;
 - enhancement of the quality of health care provided by the parties to the cooperative agreement;
 - expansion of access to care by medically-underserved populations;
 - lower costs and improved efficiency of delivering health care services; including reductions in administrative and capital costs and improvements in the utilization of health care provider resources and equipment;
 - implementation of payment methodologies that control excess utilization and costs, while improving outcomes; and
 - preservation of the health care workforce in the primary service area;
- the potential disadvantages of a cooperative agreement, including but not limited to the likelihood that one or more of the following may result from the cooperative agreement or planning process:
 - increased costs or prices of health care in the primary service area resulting from the cooperative agreement, after taking into consideration improvements in quality and outcomes;
 - diminished quality, availability, and efficiency of health care services;

- inability of health care payers or health care providers to negotiate reasonable payment and service arrangements; and
- reduced competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, health care providers and the potential for adverse health system quality, accessibility and cost consequences.
- the availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition;
- other benefits or disadvantages identified in the course of review; and
- the extent to which active supervision is likely to mitigate the disadvantages.

C.11. Accountable Care Organization (ACO) Application Reviews

Assessor responsibilities regarding Accountable Care Organization Application Reviews are as follows:

- **Reviewing applications for certificates of authority for ACOs affiliated with Performing Provider Systems,**
- **Carrying out any other duties related to the development and oversight of ACOs.**

The DSRIP assessor shall assist the Department, as requested, in reviewing applications for certificates of authority for ACOs affiliated with Performing Provider Systems pursuant to PHL Article 29-E and the regulations issued thereto, and in carrying out any other duties related to the development and oversight of ACOs. The ACO is a relatively new model of care under which providers and practitioners enter into a voluntary arrangement for the purpose of providing patients coordinated care and sharing the savings (and potentially losses) that are achieved. State law requires the Department to establish regulations, which are in development, to establish a process for certification of ACOs.

Review of applications for certificates of authority for ACOs would include, but are not limited to matters such as: (1) applicant's ability to provide, manage, and coordinate health care within the ACO network, the sufficiency of the proposed ACO's plans for quality assurance and improvement, (2) the governance, leadership, and management structure of the proposed ACO, (3) the character and competence of the ACO's principals, and the relationship of the proposed ACO to payers.

All of these obligations are expected to be carried out on an ongoing basis. Reviewers should possess expertise in health care management of complex multi-faceted providers, quality management, clinically integrated health care

models, and health care systems finances. In addition, reviewers should be well versed in the relevant federal ACO regulations and NYS statute.

C.12. Authorizing DSRIP Assessor Procurement Statute

Pursuant to the 2014-15 Enacted State Budget (Chapter 60 of the Laws of 2014) amending Social Services Law Section 364j by adding a new subdivision 29 (below), the Commissioner of Health is authorized to enter into contracts for the purpose of assisting the Department of Health with implementing projects authorized by the Centers for Medicare and Medicaid Services (CMS) under its approved amendment to the 1115 Partnership Plan “without a competitive bid or request for proposal process”. As indicated in (c) of the new subdivision, the Commissioner is required to “select such contractor or contractors that, in his or her discretion, are best suited to serve the purposes of this section”:

29. In the event that the department receives approval from the Centers for Medicare and Medicaid Services to amend its 1115 waiver known as the Partnership Plan or receives approval for a new 1115 waiver for the purpose of reinvesting savings resulting from the redesign of the medical assistance program, the commissioner is authorized to enter into contracts, and/or to amend the terms of contracts awarded prior to the effective date of this subdivision, for the purpose of assisting the department of health with implementing projects authorized under such waiver approval. Notwithstanding the provisions of sections one hundred twelve and one hundred sixty-three of the state finance law, or sections one hundred forty-two and one hundred forty-three of the economic development law, or any contrary provision of law, contracts may be entered or contract amendments may be made pursuant to this subdivision without a competitive bid or request for proposal process if the term of any such contract or contract amendment does not extend beyond March thirty-first, two thousand nineteen; provided, however, in the case of a contract entered into after the effective date of this subdivision, that:

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

(i) A description of the proposed services to be provided pursuant to the contract or contracts;

(ii) The criteria for selection of a contractor or contractors;

(iii) 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

(iv) The manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

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

(c) The commissioner of health shall select such contractor or contractors that, in his or her discretion, are best suited to serve the purposes of this section.

SECTION D: PROPOSAL REQUIREMENTS

D.1. Overview

In order to be considered for evaluation, each proposal must meet the following minimum requirements:

- The proposal is received prior to the required deadline;
- The cost proposal is submitted with completed bid prices (Attachment H).

Additionally, a signed Transmittal Form (Attachment G) should be submitted in the technical proposal.

D.2. General Submission Requirements

Page limits should be adhered to. If a proposal section exceeds the maximum page length, reviewers will be instructed to cease reading at the end of the maximum number of pages. Proposals should be submitted with a single cover page as outlined in Section D.4.

D.3. Conflict of Interest

- a) As part of the proposal submission, the bidder (and/or any subcontractor) must disclose any and all relationships that may be construed as actual or potential conflicts of interest. In cases where such relationship(s) and/or interests exist, the bidder must describe how, including the process by which, an actual or potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided. The bidder's disclosure must include any relationship or interest, financial, beneficial or otherwise, which is in conflict with the proper discharge of their responsibilities under this FAS, including but not limited to any business relationship or financial interest with health care providers that receive DSRIP funding (e.g. members of Performing Provider Systems). **If no conflicts exist, indicate that as well.**

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

Prospective vendors may respond to both the DSRIP Independent Assessor FAS (#15649) and the DSRIP Program Support Team FAS (#15658).

However, the vendor selected as the DSRIP Independent Assessor and any of their affiliates will not be selected by the Department as a contractor or subcontractor providing the DSRIP Support Team services - nor will the vendor selected to provide Support Team services be selected to be the DSRIP Independent Assessor.

- b) No later than 30 calendar days following notification of an award, and prior to execution of the contract, the contractor must abrogate any ownership, affiliation, subsidiary relationship, management or operating interest, or participation of any kind in any entity that is a member of a Performing Provider System.
- c) All bidders and the resulting 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.
- d) By signing the proposal, the bidder guarantees knowledge and full compliance with the provisions of the POL for purposes of this FAS. Failure to comply with these provisions may result in disqualification from the procurement process, or withdrawal of a proposed contract award.
- e) If, during the term of a resulting contract, the 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 required by law.

D.4. Technical Proposal

Do not include any cost information in this section of the proposal. See Section D.5.

The technical proposal should address all Project Specifications. It should also demonstrate the bidder's understanding of the scope and purpose of the various review activities and tasks required under the contract.

Throughout this section, the bidder will be asked to provide responses to specific topics. Do not exceed page limits in the responses. The bidder may submit reference material in appendices. Appendices will not count towards the page count. However, appendices may not be used to circumvent page limitations.

The Technical Proposal should be submitted separate from the Cost Proposal. The outside of the Technical Proposal package should be clearly labeled in bold **"Funding Availability Solicitation (FAS) Delivery System Reform Incentive Payment Program Independent Assessor - Technical Proposal."**

To promote uniformity of preparation and to facilitate review, the Technical Proposal should include the following information in the order prescribed below and comply with the following general format requirements:

- Submit **two (2)** originals, **ten (10)** bound exact copies and one digital exact copy.

- Use letter size paper (8.5 x 11 inch);
- Font type for narrative information should be a minimum of 11 point;
- Submit each copy in a three ring binder with no staples or clasps;
- Use tab dividers for each section of the proposal; and
- Clearly number pages of the proposal, with each section of the proposal separately numbered and identified in a Table of Contents.

The technical proposal will be evaluated along with the cost proposal to select the vendor who, at the discretion of the Commissioner of Health, is best able to successfully perform the tasks of the DSRIP assessor as specified by this FAS in the most cost effective manner.

D.4.1. Transmittal Form (Attachment G)

Do not include any cost information in this section of the proposal. See section D.5.

The Transmittal Form should be signed in ink by an official of the bidding organization. The signatory should be authorized to bind the organization to the provisions of the FAS and Proposal.

The Transmittal Form includes the following information:

1. The Bidder's complete name and address, including the name, mailing address, email address, fax number and telephone number for both the authorized signatory and the contact name and number for representatives authorized to answer questions regarding this proposal, and
2. The FEIN, DUNS Number, and Office of the State Comptroller vendor ID Number, and Type of Legal Business Entity of the bidder.

The Transmittal Form includes the following attestations:

1. That the bidder accepts the contract terms and conditions contained in this FAS, including any exhibits and attachments, that the bidder has received and acknowledged all Department amendments to the FAS;
2. That the bidder is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department.
3. That the bidder has disclosed any and all potential conflicts of interest according to the requirements described in Section D.3. of this FAS and the bidder has knowledge of, and full compliance with, the New York State Public Officers' Law, as amended, including, but not limited to, sections 73

and 74 with regard to ethical standards applicable to State employees. If no conflict of interest exists, the bidder has confirmed that; and

4. **The bidder has disclosed the expectation that subcontractor(s) services** will be utilized. The Appendix to the Transmittal Form should include a subcontractor summary document for each listed subcontractor.

The summary document should contain the following information:

- a. Complete name of the subcontractor, including DBA and the names of controlling interests for each entity;
- b. Complete address of the subcontractor;
- c. A general description of the scope of work to be performed by the subcontractor;
- d. Percentage of work the subcontractor will be providing;
- e. Evidence that the subcontractor is authorized to do business in the State of New York, and is authorized to provide the applicable goods or services in the State of New York; and
- f. The subcontractor's assertion that they do not discriminate in its employment practices with regards to race, color, religion, age, sex, marital status, political affiliation, national origin, or handicap.

D.4.2. Table of Contents

The Table of Contents should contain beginning page numbers for each section and subsection of the proposal. There is no page limit for the Table of contents.

D.4.3. Executive Summary (3 page limit)

Do not include any cost information in this section of the proposal. See Section D.5.

The Executive Summary should include a clear, concise summary of the proposed approach to the project specifications indicated in the FAS as well as the bidder's past experience conducting any relevant related projects. Additionally, a general description of the capabilities and planned roles of any proposed subcontractor(s), a summary of the bidder's demonstrated understanding of the project's major components and required processes should be included.

D.4.4. Performance Criteria Responses

In answering the sections below, the respondent should review the project specifications itemized in Section C..

Page limits for each response must be strictly adhered to. Evaluators will not continue reading responses after the page limits have been reached.

Responses are to be enumerated in direct correlation to each request below. For example, a response to Section D.4.4.1 (Drafting the DSRIP Project Plan Application) below should begin with “D.4.4.1.”

Detailed, specific information is expected in the responses. The respondent is expected to demonstrate as specifically as possible within the prescribed page limitations how they will they will they accomplish each itemized DSRIP performance criteria requested.

In completing the Technical Proposal, responses must be provided to the items listed below. For some items, the respondent may wish to include an attachment or appendix that adds great detail to the response, such as a flowchart of operations. Attachments are allowed in a section following the Technical Proposal requirements, and each attachment should be identified with a tab divider. The number of pages in these attachments will not be considered part of the actual count of pages listed below. **However, attachments may not be used to circumvent page limitations as determined by the evaluation team.**

D.4.4.1. Drafting the DSRIP Project Plan Application (8 page limit)

- a. Describe the most effective way that the assessor will assist the state in drafting the DSRIP project plan application according to the specifications of Section C.1.a.. The answer may include the respondent’s relevant expertise in producing this deliverable.
- b. Describe how the assessor will assist the state in drafting the DSRIP project plan application review tool. Demonstrate how the tool will define relevant factors, assign weights to each factor and include scoring for each factor.
- c. Describe how the assessor will meet the requirements of Section C.1.c., including the expertise provided, to assist the Support Team by providing feedback concerning the Team’s development of a prototype application and “How-To” Guides and communicate with DSRIP applicants while meeting the assessor’s independent entity requirements.
- d. Describe the resources that would be committed to convening and managing the DSRIP Application Review Panel as indicated in C.1.f. including those necessary to: (1) develop a training guide to help the panels understand the application review process, and provide a remote training and orientation session for all panel reviewers prior to any reviews, (2) review all potential panelists for conflict of interest, (3) conduct an open, webcasted public meeting for the DSRIP Project Review Plan, and (4) producing accurate summaries of the panel’s recommendations for the state that include any insights, any areas of concern in the application as well as whether the panel decided to accept, reject or modify the independent assessor’s recommendation.

D.4.4.2. Mid- Point Assessment (10 page limit)

- a. Describe the respondent's expertise and technical capacity create a Mid Point Assessment Review Plan, including development of review criteria and templates, and to conduct a mid-point assessment review according to the requirements indicated in Section C.2.a.
- b. Describe the expertise the respondent will provide to conduct a focused review of certain high-risk projects that the state or CMS has identified based on information provided for all projects in the provider's monitoring reports.
- c. Describe the respondent's experience with developing an assessment tool, and describe its relevance to creating the DSRIP mid-point assessment tool to evaluate/score Performing Provider Systems' mid-point reports.
- d. Describe the respondent's experience and expertise in producing summative reports and supportive documents and making the recommendations to the state similar to those described for the mid- point assessment report in C.2.d., C.2.e. and C.2.f..

D.4.4.3. Reporting and Monitoring (12 page limit)

- a. Describe the respondent's capacity to conduct robust monitoring and assessment of all submitted, Performing Provider System reports, Performing Provider System progress, data collection, challenges and completion no less frequently than as appropriate in order to monitor DSRIP implementation and activities as described in Section C.3.
- b. For data and metrics reported in systems not subject to CFR 438.242 (Health Information Systems) describe how the agreements between the state and Performing Provider Systems will also be accompanied by a validation process performed by the independent assessor to ensure that the processes are generally valid and accurate.
- c. Describe the respondent's capacity to help the state develop model templates and reporting assessment review tools for DSRIP reports as indicated in Section C.3.a.
- d. Describe the respondent's capacity to meet the extensive reporting requirements of the FAS as required in the terms and conditions of the waiver amendment which includes semi-annual milestone achievement reports with metrics achieved during the relevant reporting period, reviewing all reporting deliverables from Performing Provider Systems for accuracy and compliance as indicated in C.3.d., monthly reporting review summaries as indicated in C.3.f., and preparing materials for CMS reports/updates regarding implementation progress of the demonstration, including progress toward the goals, and key challenges, achievements and lessons learned.

- e. Describe the experience the respondent has and the staffing envisioned, to conduct annual on-site visits of all Performing Providers to ensure continued compliance with DSRIP requirements, and report to DOH if critical concerns are identified.

D.4.4.4. At- Risk Project Identification, Guidance and Monitoring (4 page limit)

- a. Describe the respondent's capacity to (1) identify particular projects as being at risk of not successfully completing its DSRIP project in a manner that will result in meaningful delivery system transformation, (2) develop additional progress milestones (benchmarks) for at risk projects, based on information contained in the Performing Provider Systems' semiannual reports or other monitoring and evaluation information collected to improve performance so that the provider will be in alignment to receive DSRIP funding in a subsequent semi-annual reporting period, (3) be responsible for creating additional monitoring and oversight structures for identified At-risk entities, and (4) develop relevant information technologies for this task, HEDIS / QARR Preventables.

D.4.4.5. Technical Assistance for DSRIP Projects (2 page limit)

- a. Describe (1) the respondent's expertise to provide technical assistance to projects that need technical support to implement their state approved plans, and how it includes: reporting procedures, community needs assessment, logic model to achieve DSRIP project objectives, etc., and (2) indicate the base number of technical assistance hours the respondent would established in the contract as indicated in C.5.a..

D.4.4.6. Data Reporting and Storage System (3 page limit)

- a. Describe (1) how the assessor will develop a system for centralized storage maintained in the state's Medicaid Data Warehouse and associated provider portal and retrieval of written and electronic deliverables that Performing Provider Systems must submit to DOH, as required in the DSRIP STCs that has the query capabilities, and performance tracking software, and document sharing functionalities as indicated in section C.6.a., (2) and any previous experience relevant to this task.

D.4.4.7. DSRIP Learning Collaboratives (2 page limit)

- a. Describe the respondent's experience and the expertise, including any innovative technologies, they will provide in developing and managing learning cooperatives among Performing Provider Systems as indicated in Section C.7. (including C.7.a. and C.7.b.). The answer must include a description of the regional "innovator agents" who are trained in quality improvement, who can travel from site to site in the network to rapidly answer practical questions about implementation and harvest good ideas and practices that they convey to other Performing Provider systems.

D.4.4.8. Staffing Plan and Core Management Team (4 page limit)

- a. Identify the core management team's professional staff members who would be directly involved in the DSRIP assessor project, their experience, and relevant job qualifications. The core management team must include the individual with principal responsibility of overseeing the day-to-day operations of the contract who will be available to consult with DOH..

D.4.4.9. Organizational Support and Experience (12 page limit)

Provide the following information for the respondent's organization:

- a. Provide a brief history and description of your organization. Include an organizational chart providing a comprehensive depiction of the organization.
- b. Provide (1) an organization chart that includes key positions and functions related to the DSRIP assessor project, (2) a detailed staffing and organization plan to address all work related to the project, and (3) a description of the strategy for being flexible to address potential work load issues resulting from the uncertain volume of Performing Provider Systems applications.
- c. Give the name and title of person(s) authorized to bind the bidder, the main office address, telephone number (including area code) and email address.
- d. Describe what support the organization will contribute to develop the essential features of a successful DSRIP assessor model over the project time period.
- e. Describe the organization's direct experience with the implementation and administration of the key components of the DSRIP project, **including those related to a Medicaid waiver program and direct care performance management and improvement**.
- f. Identify all subcontractors that the organization intends to use in fulfilling the requirements of this FAS, including the relevant experience of each and submit a letter from each planned subcontractor (letters can be included as an attachment) affirming their commitment to participate in the project described in this FAS and their responsibilities.
- g. Provide a minimum of three (3) professional references from organization leaders for whom your organization have provided services. Include the name, title, address, telephone number and email address of a contact person for each organization. The reference projects should be similar in size and scope to this project.
- h. Provide: (1) a list of all current and past government contracts awarded to the organization including the name, title, and telephone number of the principle contact person for those contracts within the organization, and (2) a list of all

current and past government contracts which the organization participated as a subcontractor, including the name, title, and phone number of the principal contact person.

D.4.4.10. Certificate of Public Advantage (COPA) (4 page limit)

- a. Describe in detail: (1) the staffing resources and their professional expertise that would be committed to performing the COPA application review process identified in C.10., including how these resources would be procured by the respondent, and (2) the plan for expanding these staffing resources in the event of rapidly escalating COPA applications from increasing numbers of Performing Provider Systems.
- b. Describe the respondent's relevant experience and technical capacity that would assist the Department in determining, both before the COPA is issued and on an ongoing basis, that the benefits of proposed collaborative activities or planning processes outweigh any disadvantages attributable to the resulting reduced competition, which would include defining the relevant market, determining the market share of the applicants, and determining whether any barriers exist to other providers expanding their services or new providers entering the relevant market, as itemized in C.10.

D.4.4.11. Accountable Care Organization (ACO) Application Reviews

- a. Describe any experience, and staff and expertise that will be provided, in health care management of complex multi-faceted providers, quality management, clinically integrated health care models, health care systems finances, and federal ACO regulations and NYS statute necessary to review of applications for certificates of authority for ACOs on an ongoing basis.

An effective review would assess matters such as the: (1) applicant's ability to provide, manage, and coordinate health care within the ACO network, the sufficiency of the proposed ACO's plans for quality assurance and improvement, (2) the governance, leadership, and management structure of the proposed ACO, (3) the character and competence of the ACO's principals, and the relationship of the proposed ACO to payers.

D.5. Cost Proposal

The bidder should submit a Cost Proposal separate from the Technical Proposal (see: submission requirements in E.3.). The Cost Proposal should be submitted in a sealed package and should be clearly labeled in bold "Funding Availability Solicitation (FAS) Delivery System Reform Incentive Payment Program Independent Assessor – Cost Proposal."

The Cost Proposal consists of the following completed forms:

- Bid Form (Attachment H)
- Lobbying Form (Attachment I)
- Vendor Responsibility Attestation (Attachment J)
- M/WBE Forms (Attachment K)

Cost Proposals should be accurate, clear and concise. The Department may reject any bid containing Cost Proposal inaccuracies. The respondent must submit a bid as indicated on the Bid Form in Attachment H.

The cost proposal will be evaluated along with the technical proposal to select the vendor who, at the discretion of the Commissioner of Health, is best able to successfully perform the tasks of the DSRIP assessor as specified by this FAS in the most cost effective manner.

All bids are subject to change subsequent to Department of Health negotiation with any bidder.

D.5.1. Bid Form

Attachment H contains the Bid Form that must be submitted in response to this FAS. Compliance with provisions of this form will be evaluated as part of the screening for minimum requirements described in Section D.1 of this FAS. Failure to comply may result in disqualification of the bidder.

Bids must be submitted on the Attachment H Bid Form for each of the 6 deliverable items indicated in the shaded cells on the bid form (bids should be included for every shaded cell)

For deliverable items 1 through 6 the bidder should enter a bid for the Performing Provider System application volume thresholds indicated (A. 1-25, B. 26-50, C. 51-75, D. 76 +).

When completed the Attachment H Bid Form, please review the notes below that pertain to each of the six itemized deliverables.

Bid Form Notes:

- 1) **DSRIP Plan Application Duties:** Deliverables in this area include all items mentioned in Section C.1 of the Assessor FAS. **Assessor payment in this area will be based on the number of completed DSRIP Project Plan applications in DY0.** The assessor shall receive payment for all items in this category *after the last deliverable* in Section C.1 has been submitted to, and the submitted work is deemed satisfactory by the Department. If any of the deliverables in this category are submitted after the specified due date listed in Section C.9 (DOH has the authority to alter dates in Section C.9 timeline)

of the Assessor FAS, the assessor shall forfeit 5% of the agreed upon deliverable payment for each 30- day period the item is late for the DSRIP plan application payment period. Items in this category include, but are not limited to:

Assessor Responsibilities regarding the DSRIP Plan Application:

- Create the DSRIP Project Plan Template,
- Create the DSRIP Project Plan Review Tool,
- Communicate with DSRIP Project Plan applicants, as needed, to provide feedback and carry out application review duties,
- Conduct Initial Review of all submitted DSRIP Project Plans,
- Convene DSRIP Project Plan Review Panel and manage the Public Hearing
- Aggregate the findings of the DSRIP Project Plan Review Panel,
- Submit a recommendation report to the state accepting or denying applicant based on the applicant's submitted DSRIP Project Plan,
- Provide application review supporting documentation to the state.
- Submit a recommendation report to the state to accept or deny applicant based on DSRIP Project Plan, and
- Provide application review supporting documentation to the state.

2) **DSRIP Performing Provider System Mid-Point Assessment Duties:**

Deliverables in this area include all items mentioned in Section C.2 of the Assessor FAS. **Assessor payment in this area will be based on the number of DSRIP Performing Provider Systems in the program at the start of DY3.** The assessor shall receive payment for all items in this category *after the last deliverable* in section C.2 has been submitted to, and the submitted work is deemed satisfactory by, the state. If any of the deliverables in this category are submitted after the specified due date listed in Section C.9 (DOH has the authority to alter dates in Section C.9 timeline) of the Assessor FAS, the assessor shall forfeit 5% of the agreed upon deliverable payment for each 30- day period for which the item is late for the Mid-Point Assessment payment period. Items in this category include, but are not limited to:

Items in this category include, but are not limited to:

Assessor Responsibilities regarding the DSRIP Mid-Point Assessment:

- Create a DSRIP Mid-point Assessment Review Plan,
- Create a DSRIP Mid-point Assessment Review Tool,
- Conduct Initial Review of all submitted DSRIP Mid-point Reports,
- Communicate with DSRIP Performing Provider System, as needed, to carry out mid-point assessment duties,
- DSRIP Mid-point Assessment Report and Recommendations, and

- Provide Mid-point Assessment Supporting Documentation to the State

- 3) **Learning Collaborative Duties:** Deliverables in this area include all items mentioned in Section C.7 of the Assessor FAS. The assessor shall receive bi-annual DSRIP Year payment during DY1 – DY5 of the DSRIP demonstration (10 payments in total; please note that DY1 has a compressed timeframe) for all items in this category. Assessor payments in this area will be based on the number of DSRIP Performing Provider Systems in the program at two distinct time points highlighted below.

For payment in years DY1-DY3 (area 3a on the bid form), payment will be based on the number of PPS in the program at the start of DY1. Please note that the proposed bid for DY2 & DY3 should be a cumulative bid, encompassing the bid price in this area for both years. DY1, although based on the same number of PPS, has a different bid cell, because it encompasses a nine month time frame, rather than a twelve month time frame found in DY2 & DY3.

For payment in years DY4 & DY5 (area 3b on the bid form), payment will be based on the number of PPS in the program at the start of DY4 (after the findings of the mid-point assessment). Please note that the proposed bid for DY4 & DY5 should be a cumulative bid, encompassing the bid price in this area for both years.

The assessor will receive an initial 50% of the DY bid price for satisfactory completing the in-person Learning Collaborative meeting and delivering the meeting report to the state. The assessor will receive the remaining 50% of the yearly allocation at the DSRIP year-end if they have satisfactory completed, to the state's approval, other reports and administrative duties of the Learning Collaborative. If any of the deliverables in this category are submitted after the specified due date listed in Section C.9 (DOH has the authority to alter dates in Section C.9 timeline) of the Assessor FAS, or do not meet the state's approval, the assessor shall forfeit 5% of the agreed upon deliverable payment for each 30- day period for which the item is late during that Learning Collaborative payment period. Items in this category include, but are not limited to:

Assessor Responsibilities regarding DSRIP Learning Collaboratives:

- Establish Framework for Learning Collaborative
- Create and maintain a Learning Collaborative Website,
- Provide Performing Provider Systems with regional “innovator agents”,
- Convene and manage Learning Collaborative Meetings
- At least one annual face-to-face statewide meeting,
- Facilitate monthly calls and/or webinars with Performing Provider Systems,
- Create Learning Collaborative Reports
- Learning Collaborative Subcontractor Oversight Plan

4) **DSRIP Database / Centralized Electronic Information Repository:**

Deliverables in this area include all items mentioned in Section C.6 of the Assessor FAS. Assessor payments in this area will be based on either the number of completed DSRIP Project Plan applications (for DY0 or section 4a of the bid form) or based on the number of DSRIP Performing Provider Systems in the program at two distinct points highlighted below. The assessor shall receive one payment in DY0 for creating the DSRIP database/repository at its satisfactory completion. For DY1-5, the assessor will receive bi-annual DSRIP Year payment for staffing, maintenance, updates and general upkeep of the database (DY1 will have a shorter bi-annual timeframe). For DY6, the assessor will receive one payment (for 2 months) to fulfill any staffing, maintenance, updates and general upkeep of the database after the work has satisfactorily been completed.

For DY0 (section 4a of the bid form), assessor payment in this area will be based on the number of completed DSRIP Project Plan applications.

For payment in years DY1-DY3 (area 4b on the bid form), payment will be based on the number of PPS in the program at the start of DY1. Please note that the proposed bid for DY2 & DY3 should be a cumulative bid, encompassing the bid price in this area for both years. DY1, although based on the same number of PPS, has a different bid cell, because it encompasses a nine month time frame, rather than a twelve month time frame found in DY2 & DY3.

For payment in years DY4 – DY6 (area 4c on the bid form), payment will be based on the number of PPS in the program at the start of DY4 (after the findings of the mid-point assessment). Please note that the proposed bid for DY4 & DY5 should be a cumulative bid, encompassing the bid price in this area for both years. DY6, although based on the same number of PPS in the program, has a different bid cell, because it encompasses a two month time frame, rather than a twelve month time frame found in DY4 & DY5.

If any of the deliverables in this category are submitted after the specified due date listed in Section C.9 (DOH has the authority to alter dates in Section C.9 timeline) of the Assessor FAS, or do not meet the state's approval, the assessor shall forfeit 5% of the agreed upon deliverable payment for each 30- day period for which the item is late during that DSRIP Data Base payment period. Items in this category include, but are not limited to:

Assessor Responsibilities regarding Data Reporting and Storage System Requirements:

- Create a centralized storage and retrieval of deliverables,
- Maintenance and upkeep of database.

- 5) **DSRIP Reporting, Monitoring, Technical Assistance, and At-Risk Projects:** Deliverables in these areas are seen as on-going and include all items mentioned in Sections C.3, C.4 and C.5 of the Assessor FAS, **including any “start-up” costs.**

The assessor shall receive quarterly payments during DY0-DY5 of the DSRIP demonstration during (22 payments in total) for all items in this category. For the condensed timeframe in years DY0 & DY1, each of the three quarterly payments will equate to 33% of the bid price for satisfactory completing the duties from section C.3, C.4 and C.5 in the given quarter. For DY2-DY5, each of the quarterly payments will equate to 25% of the yearly allocation of this category for satisfactory completing the duties from section C.3, C.4 and C.5 in the given quarter. For DY 6, the assessor will receive one payment (for 2 months) for satisfactory completing the duties from section C.3, C.4 and C.5 in DY6.

For DY0 (section 5a of the bid form), assessor payment in this area will be based on the number of completed DSRIP Project Plan applications.

For payment in years DY1- DY3 (area 5b on the bid form), payment will be based on the number of PPS in the program at the start of DY1. Please note that the proposed bid for DY2 & DY3 should be a cumulative bid, encompassing the bid price in this area for both years. DY1, although based on the same number of PPS, has a different bid cell, because it encompasses a nine month time frame, rather than a twelve month time frame found in DY2 & DY3.

For payment in years DY4 – DY6 (area 5c on the bid form), payment will be based on the number of PPS in the program at the start of DY4 (after the findings of the mid-point assessment). Please note that the proposed bid for DY4 & DY5 should be a cumulative bid, encompassing the bid price in this area for both years. DY6, although based on the same number of PPS in the program, has a different bid cell, because it encompasses a two month time frame, rather than a twelve month time frame found in DY4 & DY5.

If any of the deliverables in these categories for a given deliverable timeframe are submitted after the specified due date listed in Section C.9 (DOH has the authority to alter dates in Section C.9 timeline) of the Assessor FAS, or does not meet the state’s approval, the assessor shall forfeit 5% of the agreed upon deliverable payment for the given payment period, every 14 calendar days the item is late. Items in this category include, but are not limited to:

Assessor Responsibilities regarding the DSRIP Reporting & Monitoring:

- Develop templates for all DSRIP reports (as needed),
- Develop review tools for all DSRIP reports,

- Review, monitor and provide oversight of all DSRIP Reports for accuracy and compliance,
- Ensure reporting capabilities are compatible with State Data Portal,
- Provide monthly Reporting Review Summaries for each Performing Provider System to DOH,
- Create all Reporting Summaries for CMS,
- Conduct Annual On-Site Visits of all Performing Provider system, and
- Develop Summary Reports of Visits for the State.

Assessor Responsibilities regarding At-Risk Project Identification, Guidance and Monitoring:

- Identify at-risk DSRIP Projects and PPSs,
- Create additional benchmarks for At Risk Projects,
- Monitor additional benchmarks for At Risk Projects.

Assessor Responsibilities regarding Technical Assistance for DSRIP Projects:

- Technical assistance for DSRIP Projects
- Reporting of technical assistance given to DSRIP Projects

6) **DSRIP COPA Applicant Reviews and Accountable Care Organization**

(ACO) Application Reviews: Deliverables in this area include all items mentioned in Section C.10 as well as section C.11 of the DSRIP Assessor FAS and are expected to be carried out on an ongoing basis as needed.

Assessor payment in this area will be based on the number of completed COPA and ACO applications reviews by the assessor from emerging Performing Provider Systems (DY0) or Performing Provider Systems (DY1-DY5) in a given year.

For DY0 – DY6 (section 6 of the bid form), the assessor shall receive one an annual payment for all items in this category *after the last deliverables* in Sections C.10 and C.11. have been submitted to, and the submitted work is deemed satisfactory, by the Department for each demonstration year the COPA and ACO reviews take place.

If any of the deliverables in this category are submitted after the specified due date listed in the Section C.9 Timeline (DOH has the authority to alter dates in Section C.9 timeline), the assessor shall forfeit 5% for each 30-day period for which the item is late for the given payment period. Items in this category include, but are not limited to:

- performing the COPA and ACO reviews according to the criteria provided in this FAS and in New York State statute and regulation.

D.5.2. Financial Capacity and Stability

Bidders should be prepared, at any point during the evaluation, to provide evidence of their organization's financial stability in order to confirm their ability to perform the terms and conditions of this contract. Evidence includes independently audited financial statements (not annual reports) for the last three full years of operations. If these reports are considered proprietary in nature, indicate this with the submission. If a bidder is not required to have independent audits performed, a statement to that effect should be included with the submission, and evidence of financial ability to perform this project should be provided for the same time period.

D.5.3. Vendor Responsibility Attestation

The Vendor Responsibility Attestation (Attachment J) should be completed and included in the Cost Proposal.

This document is explained in detail in Section E.9.

D.6. Selection Method and Award

The Commissioner of Health will establish a FAS review team with professional expertise in the area of both the administration of the New York State Medicaid program and the delivery of health care services. Proposals deemed by the Department to have met the minimum requirements as outlined in Section D.1. will have both their technical and cost proposal evaluated.

The selected review team will evaluate the proposals made in response to this FAS in the process of recommending a contractor for selection by the Commissioner according to a methodology chosen by the Department of Health. The review team will recommend to the Commissioner the bidder determined to be best qualified perform the FAS project specifications. The criteria used to evaluate the responses to this FAS will include:

- **Work experience related to performing the DSRIP assessor's functions;**
- **Level of staffing resources and their professional expertise;**
- **Technological capacity and innovation;**
- **Reporting and data analytic capacity;**
- **Health care quality assessment and evaluation expertise;**
- **Health care economics evaluation expertise;**
- **Quality of responses to Technical Evaluation; and**
- **Bid price**

In performing this evaluation, the review team may consider any other relevant information derived from the respondent's current or past employers as well as the Department's previous experience with the respondent's work performance.

D.6.1. Notification of Award

After evaluation and selection of the successful bidder, all applicants will be notified in writing of the selection or non-selection of their proposals. The name of the successful bidder will be disclosed.

Once an award has been made, bidders may request a debriefing with regard to their proposal. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's proposal, and will not include any discussion of other proposals. Requests must be received no later than ten (10) business days from date of award or non-award announcement.

Press releases by any bidder pertaining to this project shall not be made without prior written approval of, and in conjunction with, the Department of Health.

SECTION E: ADMINISTRATIVE REQUIREMENTS

E.1. Issuing Agency

This FAS is a solicitation issued by the NYS Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

E.2. Inquiries

Any questions concerning this solicitation must be directed to:

Mark Bertozzi Ph.D.
New York State Department of Health
Office of Health Insurance Programs
One Commerce Plaza, Room 720 c/o Empire State Plaza
Corning Tower
Albany, NY 12237
Email: Mark.Bertozzi@[Health.NY.Gov](mailto:Mark.Bertozzi@Health.NY.Gov)

To the degree possible, each inquiry should cite the FAS section and paragraph to which it refers. Written questions will be accepted until the date and time posted on the cover of this FAS.

Prospective bidders should note that all clarification and exceptions, including those relating to the terms and conditions of the contract, are to be raised prior to the question and answer period due date.

Questions and answers, as well as any updates or modifications, will also be posted on the Department's website at <http://www.health.ny.gov/funding>. All such updates will be posted on or about the date identified on the cover sheet of this FAS. Bidders wishing to receive these documents via mail must send a request, in writing, to the Department at the address above.

Non- Mandatory Bidders Conference

There will be a Non–Mandatory bidders conference concerning the DSRIP Independent Assessor procurement:

- Prospective bidders wishing to attend the conference must do so in person.
- There is no maximum number of attendees a prospective bidder may bring to the bidders conference.
- Attendees must register at the time of attendance at the bidders conference.
- Information concerning the time and place of the bidders conference will be posted along with the DSRIP Independent Assessor Funding Availability Solicitation on the Department’s DSRIP website.

http://www.health.ny.gov/health_care/medicaid/redesign/delivery_system_reform_incentive_payment_program.htm

E.3. Submission of Proposals

Interested bidders should submit 12 complete sets of both the technical and cost proposal: 2 originals and 10 bound exact copies in hardcopy format and an electronic copy in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only. The hardcopy sets and CD of the technical proposal should be packaged, labeled and sealed separately from the hardcopy sets and CD of the cost proposal. The separate technical and cost packages should be mailed as one parcel.

In case of any discrepancy between the electronic and the hard copy documents, the hard copy original shall supersede.

The responses to this FAS should be clearly labeled “**Funding Availability Solicitation (FAS) Delivery System Reform Incentive Payment Program Independent Assessor**” and submitted to:

Mr. Mark Bertozzi Ph.D.
New York State Department of Health
Office of Health Insurance Programs
Division of Program Development and Management
One Commerce Plaza, Room 720
c/o Empire State Plaza
Corning Tower
Albany, NY 12237

It is the responsibility of the bidder to see that complete copies of the proposal are delivered to the Department of Health prior to the date and time of the bid due date as indicated on the Schedule of Key Events. Bids not received by the due date and time will not be considered.

E.4. Reserved Rights

The Department of Health 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 proposal due date as indicated on the Schedule of Key Events, amend the FAS specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the proposal due date as indicated on the Schedule of Key Events, 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. Under the authority given to the Commissioner in Section 365-h of Social Services Law, select and negotiate with the successful bidder(s) best suited to serve the purposes set forth in the statute and the FAS;
13. Select and conduct contract negotiations with other bidders which, in the discretion of the Commissioner, are best suited to serve the purposes of Section 365-h of the Social Services Law and the FAS, 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 calendar 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 a bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation.

E.5. 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.

E.6. Voucher Submission, Payment and Supporting Documentation

If awarded a contract, the Contractor shall submit invoices and/or vouchers to the State's designated payment office:

- Preferred method: Email a .pdf copy of your signed voucher to the New York State Business Services Center (BSC) at:
DOHaccounts payable@ogs.ny.gov
- Alternate Method: Mail vouchers to BSC at the U.S. postal address to be specified in the contract.

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.ny.gov/epay/index.htm, by email at epayments@osc.state.ny.us or by telephone at 855-233-8363. 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.ny.gov/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

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 terms are:

- The contractor must provide complete and accurate billing invoices.
- The contractor will submit invoices, along with required deliverables, as indicated in Section D.5.1, as required by the FAS.
- All claims for payment submitted by the contractor pursuant to this agreement shall be submitted to the State no later than 30 days after the end of the payment period for which reimbursement is being claimed.
- Monthly claims for payment will not be paid until all required deliverables for that period are submitted and deemed acceptable by the Department. This monthly payment is an all-inclusive reimbursement under the contract and will be the only compensation received by the contractor for performing the DSRIP assessor duties procured by the state through this FAS.
- The payment may reflect the penalties for late completion of deliverables as determined by the Department of Health described in Section D.5.1.

E.7. Term of Contract

2014-15 Enacted State Budget (see Section C.11. Authorizing Procurement Statute) authorizing the Commissioner of Health to enter into contracts for the purpose of assisting the Department of Health with implementing projects authorized by the Centers for Medicare and Medicaid Services under its approved amendment to the 1115 Partnership Plan “without a competitive bid or request for proposal process”, requires that the term of any such contracts cannot extend beyond March 31, 2019.

Based on current legislated authority, the Department will award a contract pursuant to this FAS for the period July 15, 2014 through March 31, 2019. Should that authority be extended in the future, the resulting contract may be extended by the Department. It is the Department's intent that an assessor contract be in place for the entire period of the DSRIP assessor's role.

The contract 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 contract shall be deemed terminated and canceled.

E.8. Early Termination Transition Plan

If the contract is terminated before the end of the contract period, the bidder will work with the State to transition any documents, reports, files, activities, and responsibilities to the Department, or its designee, to maintain and continue these state and federally mandated requirements.

E.9. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors should 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.ny.gov/vendrep or go directly to the VendRep system online at <https://portal.osc.ny.gov>. 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.ny.gov/vendrep or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment 21).

E.10. 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.

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at:

<http://www.osc.ny.gov/procurement/>.

E.11. 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 bidders 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 offerers 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 lobbyists 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 Offerers. 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.

E.12. 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.

E.13. 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.dhSES.ny.gov/ocs/breach-notification/>.

E.14. 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 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 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 offerer 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 Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto. 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 complete and submit to the Department of Health the form ST-220-CA attached hereto, certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Forms ST-220-TD and ST-220-CA may be accessed electronically at:
ST-220-TD:

http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf and

ST-220-CA:

http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

E.15. Piggybacking

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.ny.gov/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.

E.16. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

New York State Law

Pursuant to New York State Executive Law Article 15-A, the New York State Department of Health recognizes its obligation to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of New York State Department of Health contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that New York State Department of Health establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned

Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>. For guidance on how New York State Department of Health will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and New York State Department of Health may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.
- B. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. New York State Department of Health may disqualify a Bidder as

being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If New York State Department of Health determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to New York State Department of Health, but must be made prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report on Form #3 to the New York State Department of Health address, phone and fax information, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form #4) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the New York State Department of Health, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic

characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All bidder's should complete Attachment 9 to indicate their intent to use/not use New York Businesses in the performance of this contract.

SECTION F: DEFINITIONS (DSRIP Glossary)

Achievement Value: Points received by a Performing Provider System for reaching a specified performance target/milestone during a specific reporting period. Achievement values are either expressed as 0=not meeting benchmark or 1=meeting benchmark. Achievement Values are used to determine incentive payments based on performance.

Advanced Primary Care (APC): Leading model for efficient management and delivery of quality health care services that builds on the principles embodied by the NCQA-certified medical home. An APC practice utilizes a team approach, with the patient at the center. The care model emphasizes prevention, health information technology, care coordination and shared decision-making among patients and their providers. The APC model is designed to leverage the strengths of New York State's emerging NCQA-certified medical homes while laying out a graduated path for all practices to advance toward integrated care.

Agency for Healthcare Research and Quality (AHRQ): Federal agency charged with improving the quality, safety, efficiency, and effectiveness of and effectiveness of health care for all Americans.

Attachment I: An attachment to the NY DSRIP Special Terms and Conditions that contain the Program Funding and Mechanics Protocol. Attachment I describes the review and valuation process for DSRIP project plans, incentive payment

methodologies, reporting requirements, and penalties for missed milestones.

Attachment J: An attachment to the NY DSRIP Special Terms and Conditions that contain the Strategies Menu and Metrics Attachment J details the specific delivery system improvement strategies and metrics that are eligible for DSRIP funding. The strategies are listed in Part I and the metrics are listed in Part II.

Attribution: A formula used to determine how a population is assigned to an affiliated group of providers responsible for the care of the population. For DSRIP, attribution will be done utilizing a hierarchical geographic and service loyalty methodology, to ensure that a beneficiary is only assigned to one Performing Provider System.

Avoidable Hospital Use: This term is used to designate all avoidable hospital service use including avoidable emergency department use, avoidable hospital admissions and avoidable hospital readmissions within 30 days. This can be achieved through better aligned primary care and community based services, application of evidence based guidelines for primary and chronic disease care, and more efficient transitions of care through all care settings.

Baseline Data: A set of data collected at the beginning of a study or before intervention has occurred. For DSRIP, Performing Provider System improvement targets will be established annually using the *baseline data* for DY 1 and then annually thereafter for DY2-5. The state must use existing data accumulated prior to implementation to identify performance goals for performing providers.

Behavioral Interventions Paradigm in Nursing Homes (BIPNH): As an additional behavioral health measure for provider systems, this strategy uses SNF skilled nurse practitioners and psychiatric social workers to provide early assessment, reassessment, intervention and care coordination to reduce transfer of patients from a SNF facility to an acute care hospital by early intervention strategies, to stabilize patients before crisis levels occur.

Center for Medicare and Medicaid Services (CMS): Federal agency responsible for administering Medicare and overseeing state administration of Medicaid.

Clinical Improvement Milestones: Noted under Domain 3, these milestones focus on a specific disease or service category, e.g., diabetes, palliative care, that is identified as a significant cause of avoidable hospital use by Medicaid beneficiaries. Milestones can either relate to process measures or outcome measures and can be valued either on reporting or progress to goal, depending on the metric. Every Performing Provider System must include one strategy from behavioral health. Payment for performance on these outcome milestones will be based on an objective demonstration of improvement over baseline, using a valid, standardized method.

Coalition: Partnerships that are formed between providers to apply collectively as a single Performing Provider System (PPS). Coalitions must designate a lead coalition provider who will be held responsible for ensuring that the PPS meets all

the requirements of the DSRIP program. Coalitions will be evaluated on performance on DSRIP milestones collectively as a single Performing Provider System.

Consumer Assessment of Healthcare Providers and Systems (CAHPS):

Surveys that ask consumers and patients to report on and evaluate their experiences with health care. The surveys cover topics that are important to consumers and focus on aspects of quality that consumers are best qualified to assess, such as the communication skills of providers and ease of access to health care services. The CAHPS program is funded and overseen by the U.S. Agency for Healthcare Research and Quality (AHRQ).

Designated State Health Programs (DSHP): State health programs not normally eligible for matching federal funds. Under the 1115 Partnership Waiver, CMS has the authority to match funding for state health programs in which CMS recognizes as providing a vital service to Medicaid beneficiaries.

Delivery System Reform Incentive Payment Program (DSRIP): As part of New York's Medicaid Redesign Team (MRT) Waiver Amendment, DSRIP's purpose is to fundamentally restructure the health care delivery system by reinvesting in the Medicaid program, with the primary goals stabilizing the safety-net system and reducing avoidable hospital use by 25% over 5 years. DSRIP is the largest piece of the MRT Waiver Amendment with a total allocation of \$6.9 billion.

Domain: Overarching areas in which DSRIP strategies are categorized. Performing Provider Systems must employ strategies from the domains two through four in support of meeting project plan goals and milestones. Domain one encompasses project process measures and does not contain any strategies. The Domains are:

- Domain 1: Overall Project Progress
- Domain 2: System Transformation
- Domain 3: Clinical Improvement
- Domain 4: Population-wide Strategy Implementation

DSRIP Plan Checklist: Criteria used to review submitted DSRIP Plans to ensure completeness. The checklist will be utilized as a robust review process for each submitted DSRIP Project.

DSRIP Project: Individual method created by a Performing Provider System to transform the delivery of care that support Medicaid beneficiaries and uninsured as well as address the broad needs for the population the performing provider system serves. DSRIP projects will be designed to meet and be responsive to community needs while meeting 3 key elements: appropriate infrastructure, integration across settings and assumes responsibility for a define population.

DSRIP Project Plan: Detailed plans that Performing Provider Systems submit to the state detailing DSRIP strategies they have selected to be directly responsive to the needs and characteristics of the their community in order to DSRIP's objectives.

DSRIP Strategies: A cluster DSRIP projects grouped together because they address the same issue within a given Domain. For each collection of strategies, there is a set of metrics that the performing provider system will be responsible for if they do any one of the projects within that strategy.

Evaluation Plan: Part of the DSRIP pre-implementation activities, the state must submit an evaluation plan for DSRIP, including the budget and adequacy of approach to meet the scale and rigor of the requirements of Special Terms and Conditions (STC's), and also provide the identification of the selected Independent Evaluator.

Federal Financial Participation (FFP): The portion of Medicaid health program expenditures that are paid by a Federal Government.

Health Resources and Services Administration (HRSA): An agency of the U.S. Department of Health and Human Services, HRSA is the primary Federal agency for improving access to health care services for people who are uninsured, isolated or medically vulnerable.

HRSA's grantees provide health care to uninsured people, people living with HIV/AIDS, and pregnant women, mothers, and children. HRSA also supports the training of health professionals, the distribution of providers to areas where they are needed most, and improvements in health care delivery.

Healthcare Effectiveness Data and Information Set (HEDIS): Tool used by more than 90 percent of America's health plans to measure performance on important dimensions of care and service. Altogether, HEDIS consists of 75 measures across 8 domains of care. The NCQA collects HEDIS data directly from Health Plan Organizations and Preferred Provider Organizations for multiple purposes and the data collected are maintained in a central database with strict controls to protect confidentiality.

High Performance Fund: A portion of the Public Hospital Transformation Fund and Safety Net Performance Provider System Transformation Fund will be set aside to reward Performing Provider Systems that exceed their metrics and achieve high performance by exceeding a preset higher benchmark for reducing avoidable hospitalizations or for meeting certain higher performance targets for their assigned behavioral health population.

Independent Assessor: An independent entity, with expertise in delivery system improvement, whose role is to conduct a transparent review of all proposed/submitted DSRIP project plans and make project approval recommendations to the state using CMS-approved criteria. In addition, the independent assessor will also assist with the mid-point assessment and any other ongoing reviews of DSRIP project plan.

Independent Evaluator: An independent entity, with expertise in delivery system improvement, who's role is to assist with continuous quality improvement within DSRIP.

Index Score: An evaluation or score assigned to DSRIP projects, based on five elements (1. Potential for achieving system transformation, 2. Potential for reducing preventable event, 3. % of Medicaid beneficiaries affected by project, 4. Potential Cost Savings and 5. Robustness of Evidence Based suggestions). Project index scores are set by the state and are released prior to the application period.

Integrated Delivery System (IDS): An organized, coordinated, and collaborative network of various healthcare providers that care connected with the aim to offer a coordinated, continuum of services to a particular patient population or community. A goal of an efficient Integrated Delivery System is to be accountable, both clinically and fiscally, for the clinical outcomes and health status of the population or community served, and has systems in place to manage and improve them.

INTERACT Project: INTERventions to Reduce Acute Care Transfers is a quality improvement program that focuses on inpatient transfer avoidance for SNF, the management of acute change in a resident's condition to stabilize the patient and avoid transfer to an acute care facility. The program includes clinical and educational tools and strategies for use in every day practice in long-term care facilities. The current version of the INTERACT Project was developed by the Interact interdisciplinary team under the leadership of Dr. Ouslander, MD with input from many direct care providers and national experts in projects based at Florida Atlantic University (FAU) supported by the Commonwealth Fund. There is significant potential to further increase the impact of INTERACT by integrating INTERACT II tools into nursing home health information technology through a standalone or integrated clinical decision support system.

Intergovernmental Transfer (IGT): IGT entities are entities that are eligible to contribute allowable governmental funds for use by the state for the non-federal share of DSRIP payments for a Performing Provider System. They include government-owned Hospitals and other government entities such as counties.

Interim Access Assurance Fund (IAAF): Temporary, time limited, funding available from an IAAF to protect against degradation of current access to key health care services and avoid gaps in the health delivery system. New York is authorized to make payments for the financial support of selected Medicaid providers.

Lead Coalition Provider: Provider that is primarily responsible for ensuring that the coalition partnerships meet all requirements of performing provider systems (PPS), including reporting to the state and CMS.

Learning Collaborative: Learning collaboratives are required forums for Performing Provider Systems to share best practices and get assistance with implementing their DSRIP projects. The state will support regular learning collaboratives regionally and at the state level (with at least one face -to-face statewide collaborative annually), and may be organized either geographically, by the goals of the DSRIP, or by the specific DSRIP projects. Learning collaboratives should primarily be focused on learning (through exchange of ideas at the front lines) rather than teaching (i.e. large conferences).

Maximum Application Valuation: Represents the highest possible financial value placed on a Performing Provider System's final DSRIP plan. The Maximum Application Valuation is the sum of the of all the maximum project valuation for each of the projects within a Performing Provider System DSRIP application.

Maximum Project Valuation: Represents the highest possible financial value placed on an individual project within a Performing Provider System's final DSRIP plan.

Meaningful Use (MU): The American Recovery and Reinvestment Act of 2009 authorizes the Centers for Medicare & Medicaid Services (CMS) to provide incentive payments to eligible professionals (EPs) and hospitals who adopt, implement, upgrade, or demonstrate meaningful use of certified electronic health record (EHR) technology. Meaningful Use is defined by the use of certified EHR technology in a meaningful manner (for example electronic prescribing); ensuring that the certified EHR technology is connected in a manner that provides for the electronic exchange of health information to improve the quality of care; and that in using certified EHR technology the provider must submit to the Secretary of Health & Human Services (HHS) information on quality of care and other measures.

Measure Steward: An individual or organization that owns a measure and is responsible for maintaining the measure.

Metric Specification Guide: A state developed guide that will provide additional information on the metrics and measures, data sources for each measure (whether the measure is collected by the state or the provider), the reference for the data steward for each metric (i.e. the National Quality Forum reference number, etc.) and the high performance level for each pay-for-performance metric.

Mid-point assessment: As part of the DSRIP review and ongoing funding, during DY3 of DSRIP, the state's independent assessor shall assess Performing Provider Systems performance to determine whether their DSRIP project plans merit continued funding and provide. Based on the findings, the independent assessor makes a recommendation to the state. The state then uses the assessor's recommendations to determine whether a project plan should be continued, discontinued or continued with alterations to the project plan.

Milestone: DSRIP project actions or activity goals, achieved over time.

MRT Waiver Amendment: An amendment allowing New York to reinvest \$8 billion in Medicaid Redesign Team generated federal savings back into NY's health care delivery system over five years. The Waiver amendment contains three parts: Managed Care, State Plan Amendment and DSRIP. The amendment is essential to implement the MRT action plan as well as prepare for ACA implementation.

National Committee for Quality Assurance NCQA: A private, not-for-profit organization dedicated to improving health care quality. Since its founding in 1990, NCQA has been a central figure in driving improvement throughout the health care system, helping to elevate the issue of health care quality to the top of the national

agenda. NCQA has helped to build consensus around important health care quality issues by working with large employers, policymakers, doctors, patients and health plans to decide what's important, how to measure it, and how to promote improvement.

New York State Health Innovation Plan (SHIP): - In April 2013, the New York State Department of Health was awarded a State Innovation Models (SIM) grant by the Centers for Medicare and Medicaid Innovation (CMMI) to develop a State Healthcare Innovation Plan (hereafter "the Plan") and is the roadmap to achieve the "Triple Aim" for all New Yorkers: improved health, better health care quality and consumer experience, and lower costs. The intent and goal of the Plan is to identify and stimulate the spread of promising innovations in health care delivery and finance that result in optimal health outcomes for all New Yorkers.

Partnership Plan (NY): – As part of Section 1115 of the Social Security Act, the Partnership Plan Section 1115(a) Demonstration for New York, uses a managed care delivery system to create efficiencies in the Medicaid program and enable the extension of coverage to certain individuals who would otherwise be without health insurance. CMS has approved New York's request for an amendment to New York's Partnership Plan, authorizing the creation of a Delivery System Reform Incentive Payment (DSRIP) Fund.

Patient Centered Medical Home (PCMH): A way of organizing primary care that emphasizes care coordination and communication to provide patients with timely, well-organized and integrated care, and enhanced access to teams of providers within a health care organization.

Pay-for-Performance (P4P): Payment model that rewards providers for meeting certain pre-established performance targets or measures for quality and efficiency.

Pay-for- Reporting (P4R): Payment model that rewards providers for reporting on certain pre-determined metrics.

Percentage Achievement Value (PAV): The ratio of the actual Achievement Value (AV) points earned by a Performing Provider System for meeting performance metrics during a reporting period to the total possible achievement value points that could have been earned by the Performing Provider System during the reporting period.

Performing Provider Systems (PPS): Entities that are responsible for performing a DSRIP project. DSRIP eligible providers, which include both major public general hospitals and safety net providers, collaborating together, with a designated lead provider for the group.

Plan Application Score: Each Performing Provider System's final plan application will receive a score (out of 100 possible points) base on the application's fidelity to the project description, likelihood of achieving DSRIP objectives by implementing the project. The plan application score is one variable used in calculating the maximum value of a project.

Population-wide Project Implementation Milestones: Also known as Domain 4, DSRIP performing provider systems responsible for reporting progress on measures from the New York State Prevention Agenda. These metrics will be measured for a geographical area denominator of all New York State residents, already developed as part of the Prevention Agenda:
http://www.health.ny.gov/prevention/prevention_agenda/2013-2017/index.htm

Potentially Preventable Emergency Room Visits (PPVs): Part of the nationally recognized measures for avoidable hospital use. The measures identify emergency room visits that could have been avoided with adequate ambulatory care.

Potentially Preventable Readmissions (PPRs): Part of the nationally recognized measures for avoidable hospital use. PPRs measure readmissions to a hospital following a prior discharge from a hospital and that is clinically-related to the prior hospital admission.

Prevention Agenda: As Part of Domain 4, Population-wide Strategy Implementation Milestones, the Prevention Agenda refers to the “blueprint for state and local action to improve the health of New Yorkers in five priority areas and to reduce health disparities for racial, ethnic, disability, socioeconomic and other groups who experience them”, as part of New York State’s Health Improvement Plan . Further information:
http://www.health.ny.gov/prevention/prevention_agenda/2013-2017/index.htm

Prevention Quality Indicators – Adults (PQIs): Part of the nationally recognized measures for avoidable hospital use PQIs are a set of measures that can be used with hospital inpatient discharge data to identify quality of care for “ambulatory care sensitive conditions.” These are conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The PQIs are population-based and can be adjusted for covariates for comparison purposes. Additionally there are similar potentially preventable hospitalization measures for the pediatric population referred to as PDIs.

Prevention Quality Indicators – Pediatric (PDIs): Part of the nationally recognized measures for avoidable hospital use that can be used with hospital inpatient discharge data to provide a perspective on the quality of pediatric healthcare. Specifically, PDIs screen for problems that pediatric patients experience as a result of exposure to the healthcare system and that may be amenable to prevention by changes at the system or provider level. Similarly the PDIs are population based and can be also be adjusted for covariates for evaluation.

Project Design Grants: As part of the DSRIP pre-implementation activities, the state will provide allotted amounts to providers for DSRIP Design Grants from a designated Design Grant Fund. These grants will enable providers to develop specific and comprehensive DSRIP Project Plans. Applicants who receive project design grants are expected to submit a DSRIP project plan or they will have to refund DSRIP Project Design Grant awards.

Project Progress Milestones: Also known as Domain 1, measures the investments in technology, tools, and human resources that strengthen the ability of the performing provider systems (PPS) to serve target populations and pursue DSRIP project goals. The Project Progress milestones include monitoring of the project spending and post-DSRIP sustainability. In addition, submission of quarterly reports on project progress specific to the PPS DSRIP project and its Medicaid and low-income uninsured patient population.

Project Toolkit: A state developed guide that will provide additional information on the core components of each DSRIP strategy, how they are distinct from one another, and the rationale for selecting each strategy (i.e. evidence base for the strategy and its relation to community needs for the Medicaid and uninsured population). In addition, the strategy descriptions provided in the toolkit will be used as part of the DSRIP Plan Checklist and can serve as a supplement to assist providers in valuing projects.

Project Valuation: Process by which the state assigns monetary value to Performing Provider Systems' final project plans.

Public Hospital Transformation Fund: A DSRIP funding pool, available to Performing Provider System applicants led by a major public hospital system.

Quality Strategy: A requirement of the 1115 Waiver, delineates the goals of the NYS Medicaid managed care program and the actions taken by the New York State Department of Health (NYS DOH) to ensure the quality of care delivered to Medicaid managed care enrollees. The Strategy has evolved over time as a result of programmatic changes, member health needs, clinical practice guidelines, federal and state laws, lessons learned, and best practices; it has been successful as it has documented improvement in the quality of health care being provided to enrollees.

Rapid Cycle Evaluation: As part of the DSRIP Project Plan submission requirements, the Performing Provider Systems must include in its' plan, an approach to rapid cycle evaluation, which informs the system in a timely fashion of its progress, how that information will be consumed by the system to drive transformation and who will be accountable for results, including the organizational structure and process to be overseen and managed.

Review Tool: As part of the DSRIP project plan application review, the state, in collaboration with the independent assessor, will develop and use a standardized review tool used to review DSRIP project plans and ensure compliance with the DSRIP Special Terms and Conditions (STC's) and associated protocols. The review tool will define the relevant factors, assign weights to each factor, and include a scoring for each factor. Each factor will address the anticipated impact of the project on the Medicaid and uninsured populations consistent with the overall purpose of the DSRIP program.

Safety Net Performance Provider System Transformation Fund: A DSRIP

funding pool, available to non-public DSRIP eligible providers (includes hospitals, nursing homes, clinics including FQHCs, behavioral health providers....).

Safety Net Provider (SNP): Entities that provide care to underserved and vulnerable populations. The term "safety net" is used because for many low-income and vulnerable populations, safety net providers are the "invisible net of protection" for individuals whose lack of health coverage or other social and economic vulnerabilities limits their ability to access mainstream medical care.

Below is the DSRIP specific definition of safety-net provider:

The definition of safety net provider for hospitals will be based on the environment in which the performing provider system operates. Below is the safety net definition:

- A hospital must meet the following criteria to participate in a performing provider system:
 - Must be either a public hospital, Critical Access Hospital or Sole Community Hospital, or
 - Must pass two tests:
 1. At least 35 percent of all patient volume in their outpatient lines of business must be associated with Medicaid, uninsured and Dual Eligible individuals.
 2. At least 30 percent of inpatient treatment must be associated with Medicaid, uninsured and Dual Eligible individuals; or
 - Must serve at least 30 percent of all Medicaid, uninsured and Dual Eligible members in the proposed county or multi-county community. The state will use Medicaid claims and encounter data as well as other sources to verify this claim. The state reserves the right to increase this percentage on a case by case basis so as to ensure that the needs of each community's Medicaid members are met.
- Non-hospital based providers, not participating as part of a state-designated health home, must have at least 35 percent of all patient volume in their primary lines of business and must be associated with Medicaid, uninsured and Dual Eligible individuals.
- Vital Access Provider Exception: The state will consider exceptions to the safety net definition on a case-by-case basis if it is deemed in the best interest of Medicaid members. Any exceptions that are considered must be approved by CMS and must be posted for public comment 30 days prior to application approval. Three allowed reasons for granting an exception are:
 - A community will not be served without granting the exception because no other eligible provider is willing or capable of serving the community.
 - Any hospital is uniquely qualified to serve based on services provided, financial viability, relationships within the community, and/or clear track record of success in reducing avoidable hospital use.
 - Any state-designated health home or group of health homes.
- Non-qualifying providers can participate in Performing Providers Systems. However, non-qualifying providers are eligible to receive DSRIP payments totaling no more than 5 percent of a project's total valuation. CMS can approve payments above this amount if it is deemed in the best interest of Medicaid members attributed to the Performing Provider System.

Special Terms and Conditions (STC): Describes the general rules and requirements of the Delivery System Reform Incentive Payment (DSRIP) Program.

Statewide Accountability: New York State meeting overall state milestones as described in the STCs and Attachment I. Statewide achievement of performance goals and targets must be achieved and maintained for full access to the funding level as specified in the STCs.

Statewide Planning and Research Cooperative System (SPARCS): A comprehensive data reporting system established in 1979 as a result of cooperation between the health care industry and government. Initially created to collect information on discharges from hospitals, SPARCS currently collects patient level detail on patient characteristics, diagnoses and treatments, services, and charges for every hospital discharge, ambulatory surgery patient, and emergency department admission in New York State.

System Transformation Milestones: Also known as Domain 2, these are outcomes based on a community needs assessment, which reflect measures of inpatient/outpatient balance, increased primary care/community-based services utilization, rates of global capitation, partial capitation, and bundled payment of providers by Medicaid managed care plans and measures for patient engagement.

“Three M” 3M: A company that provides software for analysis of potentially preventable events.

Total Achievement Value: The sum of all Achievement Value (AV) points a Performing Provider System has obtain for meeting performance metrics during a reporting period.

Valuation Benchmark: An external benchmark expressed in a per capital value that is based on a similar delivery reforms and used in the project valuation process. The valuation benchmark is set based on the overall scope of applications received with a maximum statewide value on \$15.

Vital Access Provider (VAP) Program: Funding available to qualified healthcare providers for supplemental financial assistance to improve community care in support of ensuring financial stability and advance ongoing operational change to improve community care.

SECTION G. LIST OF ATTACHMENTS

Attachment G	Transmittal Form
Attachment H	Bid Form
Attachment I	Lobbying Form
Attachment J	Vendor Responsibility Attestation

Attachment K NYS Department of Health M/WBE Procurement Forms

Attachment L Encouraging the use of New York Businesses in
Contract Performances

Attachment M Sample Standard NYS Contract Language and Appendices

SECTION H. APPENDICES

The following will be incorporated as appendices into any contract resulting from this Funding Award Solicitation. This Funding Award Solicitation, excluding Attachment L “Sample Standard NYS Contract Language and Appendices” will, itself, be included as an appendix of the contract.

- ❑ APPENDIX A - Standard Clauses for All New York State Contracts
- ❑ APPENDIX B - Request for Proposal
- ❑ APPENDIX C - Proposal
 - The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.
- ❑ APPENDIX D - General Specifications
- ❑ APPENDIX E
 - 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**:
 - **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
 - **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
 - **SI-12** – Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance.
 - ❑ Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
 - **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
 - **DB-120.1** – Certificate of Disability Benefits Insurance
 - **DB-155** – Certificate of Disability Benefits Self-Insurance

- ❑ Appendix G - Notices
- ❑ Appendix H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)
- ❑ Appendix M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures
- ❑ Appendix X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

Attachment G

Transmittal Form Delivery System Reform Incentive Program Independent Assessor - FAS FAS# 15649

Bidder Full Corporate Name: _____

Corporate Address: _____

NYS Vendor ID Number: _____ DUNS Number: _____

Type of Legal Business Entity: _____

Contact Person Information:

Name: _____
Title: _____
Address: _____
Phone: _____ Fax: _____
Email: _____

Attestations (check ALL boxes signifying agreement):

- ☐ I certify that the above named bidder accepts the contract terms and conditions contained in this Funding Availability Solicitation (FAS), including any exhibits and attachments, and has received and acknowledges all Department amendments to the FAS; **AND**
- ☐ I certify that the above named bidder is authorized by the NY Department of State to conduct business in New York State or, if formed or incorporated in a jurisdiction other than New York, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department.

Use of Subcontractors Attestation (check only one):

- ☐ I certify that the proposal submitted by the above named bidder proposes to utilize the services of a subcontractor(s). Attached to this Transmittal Form is a list of subcontractors and a subcontractor summary for each. The summary document for each includes the information detailed in Section D.4.1. Subsection 7; **OR**
- ☐ I certify that the proposal submitted by the above named bidder does not propose to utilize the services of any subcontractor.

Conflict of Interest Attestation (check only one):

- ☐ I certify that there are business relationships and/or ownership interests for the above name bidder that may represent a conflict of interest for the organization as bidder, as described in Section D.3. of the FAS. Attached to this letter is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided and the bidder's knowledge and full compliance with the NYS Public Officer's Law, as amended, including but not limited to, Sections 73 and 74; **OR**
- ☐ I certify that no conflict of interest relationship exists for the above named bidder.

Signature of Individual Authorized to Bind the Above Named Organization In a Contract with NYS:

_____ Date: _____

Print Name: _____
Title: _____
Address: _____
Phone: _____ Fax: _____
Email: _____

Attachment H

NEW YORK STATE DEPARTMENT OF HEALTH

BID FORM:

PROCUREMENT TITLE: Funding Availability Solicitation (FAS) Delivery System Reform Incentive Payment Program Independent Assessor

Bids must be submitted on the Attachment H Bid Form for each of the 6 deliverable items indicated in the shaded cells on the bid form (bids should be included for every shaded cell)

For deliverable items 1 through 6 the bidder should enter a bid for the Performing Provider System application volume thresholds indicated (A. 1-25, B. 26-50, C. 51-75, D. 76 +).

The bidder may use the EXCEL version of the bid form posted with this FAS on the procurement website for calculation purposes.

(Chart on Next Page)

	Bid Form	DY 0	DY 1	DY 2	DY 3	DY 4	DY 5	DY 6	
	Deliverable	7/15/14 - 03/31/15	4/1/15 - 12/31/15	1/1/16 - 12/31/16	1/1/17 - 12/31/17	1/1/18 - 12/31/18	1/1/19 - 12/31/19	1/1/20 - 2/28/20	Total
1	DSRIP Project Plan Application Duties								
A	Total Cost	1 - 25 Apps							0
B	Total Cost	26 - 50 Apps							0
C	Total Cost	51 - 75 Apps							0
D	Total Cost	76+ Apps							0
2	DSRIP PPS Mid-Point Assessment Duties								
A	Total Cost	1 - 25 PPS							0
B	Total Cost	26 - 50 PPS							0
C	Total Cost	51 - 75 PPS							0
D	Total Cost	76+ PPS							0
3a	Learning Collaborative Duties (DY1-DY3)								
A	Total Cost	1 - 25 PPS							0
B	Total Cost	26 - 50 PPS							0
C	Total Cost	51 - 75 PPS							0
D	Total Cost	76+ PPS							0
3b	Learning Collaborative Duties (DY4 & DY5)								
A	Total Cost	1 - 25 PPS							0
B	Total Cost	26 - 50 PPS							0
C	Total Cost	51 - 75 PPS							0
D	Total Cost	76+ PPS							0
4a	DSRIP Database / Centralized Electronic Information Repository								
A	Total Cost	1 - 25 Apps							0
B	Total Cost	26 - 50 Apps							0
C	Total Cost	51 - 75 Apps							0
D	Total Cost	76+ Apps							0
4b	DSRIP Database / Centralized Electronic Information Repository								
A	Total Cost	1 - 25 PPS							0
B	Total Cost	26 - 50 PPS							0
C	Total Cost	51 - 75 PPS							0
D	Total Cost	76+ PPS							0
4c	DSRIP Database / Centralized Electronic Information Repository								
A	Total Cost	1 - 25 PPS							0
B	Total Cost	26 - 50 PPS							0
C	Total Cost	51 - 75 PPS							0
D	Total Cost	76+ PPS							0
5a	DSRIP Reporting, Technical Assistance, and Monitoring Duties								
A	Total Cost	1 - 25 PPS							0
B	Total Cost	26 - 50 PPS							0
C	Total Cost	51 - 75 PPS							0
D	Total Cost	76+ PPS							0
5b	DSRIP Reporting, Technical Assistance, and Monitoring Duties								
A	Total Cost	1 - 25 PPS							0
B	Total Cost	26 - 50 PPS							0
C	Total Cost	51 - 75 PPS							0
D	Total Cost	76+ PPS							0
5c	DSRIP Reporting, Technical Assistance, and Monitoring Duties								
A	Total Cost	1 - 25 PPS							0
B	Total Cost	26 - 50 PPS							0
C	Total Cost	51 - 75 PPS							0
D	Total Cost	76+ PPS							0
6	Certificate of Public Advantage (COPA) & Accountable Care Organizations (ACOs)								
A	Total Cost	1 - 25 Apps							0
B	Total Cost	26 - 50 Apps							0
C	Total Cost	51 - 75 Apps							0
D	Total Cost	76+ Apps							0
								TOTAL	

FAS # 15649

Bidder Name: _____

Bidder Address: _____

Bidder NYS Vendor ID No: _____

All final bids are subject to negotiation by the Department of Health.

Attachment I

NEW YORK STATE DEPARTMENT OF HEALTH

Lobbying Form

PROCUREMENT TITLE: **Delivery System Reform Incentive Program Assessor**

Bidder Name:

Bidder Address:

Bidder Vendor ID #:

Bidder Federal ID#:

A. 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)

B. 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 J

Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in Section E.9., Vendor Responsibility Questionnaire, I hereby certify:

Choose one:

- ☐ An on-line Vendor Responsibility Questionnaire has been updated or created at NYS OSC's website: <https://portal.osc.ny.gov> 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 K

New York State Department of Health

M/WBE PROCUREMENT FORMS

The following forms are required to maintain maximum participation in M/WBE procurement and contracting:

Submitted with Bid:

M/WBE Form #1: Bidder's M/WBE Utilization Plan

M/WBE Form #2: M/WBE Waiver Request

M/WBE Form #4: M/WBE Staffing Plan

M/WBE Form #5: Equal Employment Policy Statement - Sample

Submitted by Successful Bidder Only:

M/WBE Form #3: QUARTERLY UPDATE - M/WBE CONTRACTOR
COMPLIANCE & PAYMENT Report

M/WBE Form #6: M/WBE Workforce Employment Utilization Report

- M/WBE Form #1 -
New York State Department of Health
BIDDERS PROPOSED M/WBE UTILIZATION PLAN

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title:	RFP/Contract No.

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		\$

New York State Department of Health

BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN

MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION

In order to achieve the MBE Goals, bidder expects to subcontract with New York State certified MINORITY-OWNED entities as follows:

MBE Firm (Exactly as Registered)	Description of Work (Products/Services) [MBE]	Projected MBE Dollar Amount
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____

New York State Department of Health

BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN

WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION

In order to achieve the WBE Goals, bidder expects to subcontract with New York State certified WOMEN-OWNED entities as follows:

WBE Firm (Exactly as Registered)	Description of Work (Products/Services) [WBE]	Projected WBE Dollar Amount
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____

- M/WBE Form #2 -
New York State Department of Health

M/WBE UTILIZATION WAIVER REQUEST

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title:	RFP/Contract No.

Explanation why Bidder/Contractor is unable to meet M/WBE goals for this project.:

Include attachments below to evidence good faith efforts:

- ☐ Attachment A. List of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.
- ☐ Attachment B. List of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- ☐ Attachment C. Descriptions of the contract documents/plans/specifications made available to certified MWBEs by the contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- ☐ Attachment D. Description of the negotiations between the contractor and certified MWBEs for the purposes of complying with the MWBE goals of this contract.
- ☐ Attachment E. Identify dates of any pre-bid, pre-award or other meetings attended by contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the contract.
- ☐ Attachment F. Other information deemed relevant to the request.

Section 4: Signature and Contact Information

By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.

Submitted by : _____ Title: _____

Signature

- M/WBE Form #3 -

New York State Department of Health
QUARTERLY UPDATE
M/WBE CONTRACTOR COMPLIANCE & PAYMENT REPORT

Contractor Name:	
Contract Title:	Contract No.

TOTAL PROJECTED M/WBE USAGE (from original M/WBE Utilization Plan)

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

ACTUAL M/WBE USAGE* AS OF _____ (insert date)

	%	Amount
1. Total Dollar Value Completed to date	100	\$
2. MBE Utilization to date		\$
3. WBE Utilization to date		\$
4. M/WBE Combined Utilization to date		\$

* Report usage from contract start date to quarterly end-date inserted above.

Explain any deficiencies in attaining M/WBE goals in the space below:

Submitted by : _____ Title: _____

Signature

- M/WBE Form #4 -
New York State Department of Health
M/WBE STAFFING PLAN

Check applicable categories: ☐ Project Staff ☐ Consultants
 ☐ Subcontractors

Contractor Name _____

Address _____

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

 (Name and Title)

 (Signature)

 Date

- M/WBE Form #5 -
**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE	<p>This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:</p> <ol style="list-style-type: none">(1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.(2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.(4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.	EEO	<p>(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.</p> <p>(b) This organization shall state in all solicitation 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 disability or marital status.</p> <p>(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.</p> <p>(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.</p> <p>(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.</p>
--------------	--	------------	--

Name & Title

Signature & Date

- M/WBE Form #6 -
New York State Department of Health
WORKFORCE EMPLOYMENT UTILIZATION REPORT

Check applicable categories: ☐ Project Staff ☐ Consultants
 ☐ Subcontractors

Contractor Name _____ Contract # _____

Staff Used on Contract for the quarter / / to / /

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

Explain variances from original staffing plan submitted in the space below:

 (Name and Title)

 (Signature)

 Date

Revised 3/2013

Attachment L

ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE

I. Background

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing service and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

II. Required Identifying Information

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?

 YES NO

If yes, identify New York State businesses that will be used and attach identifying information. Information should include at a minimum: verifiable business name, New York address and business contact information.

New York Business Identifying Information

[illegible]

SAMPLE STANDARD NYS CONTRACT LANGUAGE AND APPENDICES MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):

Department of Health
Corning Tower
Albany, NY 12237

NYS COMPTROLLER'S NUMBER: C#

ORIGINATING AGENCY GLBU: DOH01
DEPARTMENT ID: 3450000

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:

STATUS:
CONTRACTOR IS () IS NOT () A
SECTARIAN ENTITY

NYS VENDOR IDENTIFICATION NUMBER:

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

MUNICIPALITY NO. (if applicable)

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 COMMISSIONER OF HEALTH

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

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

- | | | |
|-----|-----------------------------|--|
| X | APPENDIX A | Standard Clauses as required by the Attorney General for all State Contracts. |
| X | 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 |
| X | STATE OF NEW YORK AGREEMENT | |
| X | APPENDIX D | General Specifications |
| X | APPENDIX B | Request For Proposal (RFP) |
| X | APPENDIX C | Proposal |
| X | APPENDIX E-1 | Proof of Workers' Compensation Coverage |
| X | APPENDIX E-2 | Proof of Disability Insurance Coverage |

- X APPENDIX H Federal Health Insurance Portability and Accountability Act Business Associate Agreement
- X APPENDIX G Notices
- X APPENDIX M Participation by Minority Group Members and Women with respect to State Contracts: Requirements and Procedures

Contract No.: C#

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)
County of _____)SS.:

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)

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 to one of the following addresses:
 - 1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: DOHaccountspayable@ogs.ny.gov with a subject field as follows:
Subject:

(Note: **do not** send a paper copy in addition to your emailed voucher.)
 - 2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health
Unit ID 345<<xxxx>>
PO Box 2093
Albany, NY 12220-0093**

- 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.ny.gov/epay/index.htm, by email at helpdesk@sfs.ny.gov or by telephone at 1-855-233-8363. 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.ny.gov/vendors/vendorguide/guide.htm>.

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

V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE
REFERENCE.

January 2014

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7

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). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.
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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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 the 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 noncollusive 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) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, 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
Albany, New York 12245
Telephone: 518-292-5100 Fax: 518-292-5884
email: opa@esd.ny.gov

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
633 Third Avenue
New York, NY 10017 212-803-2414 email:
mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

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.
- H. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- I. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- J. 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.
- K. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- L. 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.
- M. 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

- C. 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 to one of the following addresses:

1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: DOHaccountspayable@ogs.ny.gov with a subject field as follows:
Subject: <<Unit ID: 345XXXX>> <<Contract #>>

(Note: **do not** send a paper copy in addition to your emailed voucher.)

2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health
Unit ID 345<xxxx>>
PO Box 2093
Albany, NY 12220-0093**

- D. 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 helpdesk@sfs.ny.gov or by telephone at 1-855-233-8363. 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/vendors/vendorsguide/guide.htm>.

III. Term of Contract

- E. Upon approval of the Commissioner of Health, this AGREEMENT shall be effective for the term as specified on the cover page.
- F. This Agreement may be terminated by mutual written agreement of the contracting parties.
- G. 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.

H. 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.

F. 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:

4. 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

5. 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

6. 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:

4. 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

5. DB-120.1 - Certificate of Disability Benefits Insurance OR

6. DB-155 - Certificate of Disability Benefits Self-Insurance

VI. Indemnification

- B. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- C. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

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 specifications, 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, e-mail, 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 shall 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 allowance 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 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. 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 for use 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.

N. Date/Time Warranty

1. Definitions: For the purposes of this warranty, the following definitions apply:

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, 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.

"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the 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) 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. Date/Time Warranty Statement

Contractor warrants that Product(s) furnished pursuant to this Contract 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) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

- O. No Subcontracting Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- 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 judgment 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. 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. 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.

- X. 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 whom 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 Non-procurement 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.

Y. 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.

Z. 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 following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237; 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, Albany NY 12239, ATTN: Consultant Reporting.

AA. Provisions Related to New York State Procurement Lobbying Law 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.

BB. Provisions Related to New York State Information Security Breach and Notification Act CONTRACTOR shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.

CC. 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.

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

3. Termination (for Non-Responsibility) : Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

EE. Provisions Related to Iran Divestment Act As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract. During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

New York State Department of Health reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

Appendix H

for CONTRACTOR that creates, receives, maintains or transmits 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 and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart 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.
- C.** 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);
- 7.** Any steps individuals should take to protect themselves from potential harm resulting from the breach;
- 8.** 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
- 9.** Contact procedures for Covered Program to ask questions or learn additional information.
 - D.** Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health

Information on behalf of the Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.

- E.** 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.
- F.** 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.
- G.** 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; and 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.
- H.** Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.
- I.** 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.

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-

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.

APPENDIX M

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State New York State Department of Health (the "New York State Department of Health"), to fully comply and cooperate with the New York State Department of Health in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the

New York State Department of Health for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
 - c. 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.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. Form #4 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall

complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form #6 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

- A. For Waiver Requests Contractor should use Form #2 - Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health shall

evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.

APPENDIX A

APPENDIX B: FUNDING AVAILABILITY SOLICITATION

To be added upon award

APPENDIX C: PROPOSAL OF BIDDER

To be added upon award.

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 specifications, 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, e-mail, 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 shall 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 allowance 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 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. 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 for use 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.
- N. Date/Time Warranty
 - 1. Definitions: For the purposes of this warranty, the following definitions apply:

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, 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.

"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the 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) 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. Date/Time Warranty Statement

Contractor warrants that Product(s) furnished pursuant to this Contract 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) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

- O. No Subcontracting Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- 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 judgment 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. 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. **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.

X. 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 whom 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 Non-procurement 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.

Y. 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.

Z. 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.

AA. Provisions Related to New York State Procurement Lobbying Law 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.

BB. Provisions Related to New York State Information Security Breach and Notification Act CONTRACTOR shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.

CC. 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.

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
3. Termination (for Non-Responsibility) : Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

EE. Provisions Related to Iran Divestment Act As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract.

During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

New York State Department of Health reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

APPENDIX G: NOTICES

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

- (f) via certified or registered United States mail, return receipt requested;
- (g) by facsimile transmission;
- (h) by personal delivery;
- (i) by expedited delivery service; or
- (j) 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.

APPENDIX H: HIPAA CONFIDENTIALITY

for CONTRACTOR that creates, receives, maintains or transmits 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 and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart 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.
 - C. 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.
 - D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same

restrictions and conditions that apply to Business Associate with respect to such information.

- E. 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.
 - F. 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.
 - G. 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; and 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.
 - H. Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.
 - I. 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.
- 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 M PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- D. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- E. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State New York State Department of Health (the "New York State Department of Health"), to fully comply and cooperate with the New York State Department of Health in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- F. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- D. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- E. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- F. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York State Department of Health for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- F. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- G. Contractor shall comply with the following provisions of Article 15-A:
5. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 6. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
 7. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).

8. The Contractor's EEO policy statement shall include the following language:

- e. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- f. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
- g. 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.
- h. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

H. Form #4 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

I. Form #6 - Workforce Employment Utilization Report ("Workforce Report")

- 4. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

5. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
 6. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- J. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- D. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- E. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- F. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

- D. For Waiver Requests Contractor should use Form #2 – Waiver Request.
- E. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health

shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

- F. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

- D. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.
- E. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 3. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 4. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- F. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.

**GLBU: DOH01
APPENDIX X**

Contract Number: _____

Contractor: _____

Amendment Number X- _____

BSC Unit ID: 345<XXXX>

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.

Additionally, Contractor certifies that it is not included on the prohibited entities list published at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> as a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Contractor (or any assignee) also certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

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

to \$ _____ From _____ / _____ / _____
_____ / _____ / _____
(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)

Signature Page for:

Contract Number: _____ Contractor: _____

Amendment Number: X- _____ BSC Unit ID: 345<XXXX> _____

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

CONTRACTOR SIGNATURE:

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

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)

STATE AGENCY SIGNATURE

"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."

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

