

**NEW YORK STATE DEPARTMENT OF HEALTH**

*A Request for Proposals for*

**Consultant Services Related to the New York Health Benefit Exchange  
Policy Studies and Reporting Requirements**

New York State Department of Health  
Office of Health Insurance Programs

Erastus Corning II Tower  
The Governor Nelson A. Rockefeller Empire State Plaza  
Albany, NY 12237-0679

**RFP #: 1110141209**

Schedule of Key Events

RFP Release Date	November 15, 2011
Written Questions Due	November 28, 2011, 3:00 pm ET
Response to Written Questions	On or About December 9, 2011
Proposal Due Date	December 23, 2011, 3:00 pm ET
Anticipated Contract Start Date	January 20, 2012

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:

Pamela Petrie Baldasaro  
Office of Health Insurance Programs  
New York State Department of Health  
Corning Tower, Room 2019  
Albany, NY 12237  
Phone: (518) 486-6830  
Fax: (518) 486-1432  
Email: [ppb03@health.state.ny.us](mailto:ppb03@health.state.ny.us)

**Permissible Subject Matter Contacts:**

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 or bids**
- **Submission of written questions**
- **Debriefings**
- **Negotiation of Contract Terms after Award**

Joseph Zeccolo  
Office of Health Insurance Programs  
New York State Department of Health  
Corning Tower, Room 2019  
Albany, NY 12237  
Fax: (518) 486-1432  
Email: [jxz02@health.state.ny.us](mailto:jxz02@health.state.ny.us)

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

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## **A. INTRODUCTION**

This Request for Proposal (RFP) is issued by the New York State Department of Health (Department). The Department is responsible for the requirements specified herein and for the evaluation of all proposals. The purpose of this RFP is to secure one or more contractor(s) to assist the State with the conduct of one or more studies to inform policy decisions related to the implementation of the New York Health Benefit Exchange (Exchange). Only one award will be made per study. If a bidder should receive an award for more than one study, for ease of administration, one contract will be executed per bidder for all awarded studies.

As referenced herein, the State of New York anticipates the establishment of the New York Health Benefit Exchange by creation of a public benefit corporation. At any time during the contract, the resulting contractor shall agree, as directed by the Department, to the assignment of the resulting contract to such public benefit corporation, or any other similarly authorized legal entity, in accordance with the same contract terms and conditions, including but not limited to price.

This RFP may result in one or more contracts each with a term of one year with a possible one year extension. The contract is subject to the approval of the New York State Office of the State Comptroller and the availability of sufficient federal grant funds to support the work of the contractor.

## **B. BACKGROUND**

On March 23 and 30, 2010, President Obama signed into law the Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152, respectively. The two laws are collectively referred to as the Affordable Care Act (ACA). ACA creates new competitive health insurance markets (Exchange) that will give millions of Americans and small businesses access to affordable coverage. An Exchange must be operational in each state by January 1, 2014. States must demonstrate Exchange readiness by January 1, 2013. An Exchange must be ready to begin accepting applications by October 2013.

On September 29, 2010, New York State received a \$1 million award from the U.S. Department of Health and Human Services (HHS), Office of Consumer Information and Insurance Oversight through the State Planning and Establishment Grants for the Affordable Care Act's Exchanges, Funding Opportunity Announcement (FOA) No. IE-HBE-10-001 ("Planning Grant"). The Planning Grant is being used for initial planning activities related to the potential implementation of the New York Health Benefit Exchange. Major goals for the initial planning year include the following:

- (1) compile and evaluate background research from current research platforms and private funding by January 2011;
- (2) engage stakeholders in the evaluation, planning and development process throughout the one-year planning period;

- (3) evaluate the extent to which New York can integrate and build on existing programs, as appropriate;
- (4) identify and utilize existing resources and capabilities, as appropriate, throughout the one-year planning period and determine need for additional resources;
- (5) design Exchange governance structure and draft legislation, if required;
- (6) evaluate financial accounting, auditing, and reporting requirements and potential pathways to securing compliance;
- (7) identify existing technical infrastructure resources and needs;
- (8) create a business operations plan and policies for Exchange; and
- (9) identify legislation and regulations needed to create, promote, and regulate the Exchange.

The planning activities the State is conducting have been augmented by an information technology (IT) gap analysis project funded by the New York State Health Foundation. Through this project, Social Interest Solutions and the Lewin Group conducted an eligibility and enrollment systems inventory and examined the State's existing IT assets and deficiencies, in terms of the investments and action steps that will be required to transition from New York's current health coverage IT environment to one that is "consumer-centric" and compliant with ACA standards and emerging federal guidance.

New York was chosen as one of seven "Early Innovator" (EI) states on February 16, 2011. The State received a grant award of \$27.4 million over two years to design and implement the information technology (IT) infrastructure needed to operate the Exchange, including eligibility and enrollment systems. As an EI state, New York will share components it develops with other states to use as they develop their Exchanges.

HHS has additionally issued a federal rule on April 19, 2011, whereby states can apply for 90% federal funding for enhanced or new Medicaid eligibility systems, required to appropriately integrate with the new Exchange IT infrastructure.

On June 23, 2011, the New York State Assembly passed the Governor's Program Bill which would establish the Exchange as a new public benefit corporation. The Bill, which is pending action in the New York State Senate, calls for establishment of the New York Benefit Exchange and requires the Exchange to conduct or cause to be conducted a series of studies on key policy decisions related to the establishment and operation of the Exchange. The Bill can be found at: [http://www.healthcarereform.ny.gov/health\\_insurance\\_exchange/](http://www.healthcarereform.ny.gov/health_insurance_exchange/).

On August 12, 2011, the New York State Department of Health was awarded a \$10.7 million Level One Establishment Grant under the U.S. Department of Health and Human Services (HHS), Office of Consumer Information and Insurance Oversight's (now CCIIO) (FOA No. IE-HBE-11-004). The federal grant funds will support the on-going planning of the Exchange, including:

- 1) Consultant policy studies of issues relevant to the design of New York's Health Benefit Exchange;
- 2) Continued stakeholder outreach and forums;
- 3) Program and policy information technology analysts and technical consultant experts to support the work developing the information system for New York's Health Benefit Exchange;
- 4) Providing assistance to individuals, small businesses, coverage appeals and complaints; and
- 5) Core staff to begin operation of New York's Health Benefit Exchange.

The narrative of the grant application can be found at [http://www.healthcarereform.ny.gov/health\\_insurance\\_exchange/exchange\\_establishment\\_grant.htm](http://www.healthcarereform.ny.gov/health_insurance_exchange/exchange_establishment_grant.htm) . Potential bidders should note that any Contractor selected under this procurement would be precluded from bidding on any RFP for the actual operation of the Exchange.

### **C. DETAILED SPECIFICATIONS**

#### **1. Who May Bid**

A qualified bidder should have at least three years organizational and individual staff experience in the following areas or demonstrate the capability to establish a contractual relationship(s) with a subcontractor(s) having such experience:

- Expertise and experience analyzing health policy issues and working with relevant datasets; and/or
- Expertise and experience working with health benefit exchanges or similar health coverage mechanisms or entities; and/or
- Expertise and experience advising state government agencies on health and insurance related matters.

Eligible bidders are those entities that have NO affiliation or contractual relationship with a health care provider or licensed health insurer, its affiliates, its subsidiaries or its parent organization, or can demonstrate a mechanism acceptable to the Department to assure that there is not a conflict of interest in undertaking the studies. **All proposals must include an attestation verifying the bidder's "no conflict" status.** (See Conflict of Interest language in Section D.1.A. "Transmittal Form"). Subcontractors will be considered, and subcontractors must meet the same requirements as the principal bidder and must be approved by DOH.

#### **2. Policy Studies and Reporting Requirements**

While the ACA affords great flexibility for states to make adjustments to Exchange implementation and operation, it is apparent that each decision will have far reaching consequences, impacting both the residents of New York and the success of the Exchange.

Several studies are needed to inform the direction and establishment of the Exchange, to ensure that the Exchange will be viable and successfully serve the needs of New York consumers and businesses.

The Governor's Program Bill requires the Exchange to conduct or cause to be conducted a series of studies to inform policy decisions related to the Exchange. While some studies are already underway using HHS Exchange Planning Grant funding and through technical assistance provided by the Robert Wood Johnson Foundation, the Department is in need of consultant services to assist in the conduct of the studies described below. These studies must be completed on or before April 1, 2012, unless the DOH determines that needed federal guidance is not available, in which case it will have the authority to re-establish the due date(s) for the report(s).

Bidders may choose to bid on one or more studies. Up to \$576,000 is available to fund these studies. Responses will be scored separately in accordance with the criteria set forth in Section D below. The Department reserves the right to award each study separately, or together with other studies, and there is no guarantee that the Department will award all six studies. While some studies are already underway using HHS Exchange Planning Grant funding and through technical assistance provided by the Robert Wood Johnson Foundation, the Department is in need of consultant services to assist in the conduct of the studies described below.

### **Study #1 Essential Benefits for the New York Health Benefits Exchange**

The contractor will conduct a study exploring the following options regarding the benefit package to be offered by the Exchange. In making its findings and recommendations, the contractor shall also consider the individual and small group markets outside of the Exchange, approaches to prevent marketplace disruption and avoid adverse selection, and the goal of maximizing consistency inside and outside of the Exchange:

- A) Whether any benefits currently required under New York State Insurance Law or regulations promulgated thereunder that are not identified as essential health benefits by the Secretary, should no longer be required in policies or contracts sold either through the Exchange or to similarly situated individuals and groups outside of the Exchange.
- B) The cost to the State of extending any benefits currently required under New York State Insurance Law or regulations promulgated thereunder, to policies and contracts sold through the Exchange.
- C) Mechanisms to finance any costs pursuant to section 1311(d)(3)(B)(ii) of the federal act of extending any benefits required under New York State Insurance Law or regulations promulgated thereunder to policies and contracts sold through the Exchange and the advantages and disadvantages of each mechanisms.
- D) Whether the essential health benefits required by the Secretary of Health and Human Services to be included in policies and contracts sold through the Exchange should be sold to similarly situated individuals and groups purchasing coverage outside the Exchange.

Please see Attachment 11 for a “Plan Management and NAIC SERFF Integration Potential” report that is relevant background to this scope of work.

### **Study #2: Insurance Markets**

The contractor shall research and make recommendations on the advantages and disadvantages of the following various options for the exchange. In making its findings and recommendations, the contractor shall also consider the impact of such changes on insurer participation, consumer choice, and the ability of the Exchange to influence the quality and delivery of health care services.

- A) Whether insurers participating in the exchange shall be required to offer all health plans sold in the exchange to individuals or small groups purchasing coverage outside of the Exchange.
- B) Whether the individual and small group markets should be placed entirely inside the Exchange.
- C) Recommendations for how to monitor and deter adverse selection between benefit tiers within the Exchange.
- D) Whether to revise the definition of “small employer” outside the Exchange to be consistent with the definition as it applies within the Exchange.

Please see Attachment 12 for background information on New York Health Insurance Exchange Plan Management JAD Session materials that are relevant to this scope of work.

### **Study #3 Purchasing Role of the Exchange**

The contractor shall conduct a study of and make findings and recommendations on the advantages and disadvantages of the Exchange serving as an active purchaser, a selective contractor, or clearinghouse of insurance.

As part of this study, the contractor will provide recommendations regarding the criteria that should be used by the State to select qualified health plans for participation in the Exchange should the State determine that the Exchange will function as an active purchaser or selective contractor.

Please see Attachment 11 for a “Plan Management and NAIC SERFF Integration Potential” report that is relevant background to this scope of work.

### **Study #4 Medicaid Benchmark Benefits**

The contractor shall conduct a study of and make findings and recommendations on the benchmark benefits identified by the Secretary of Health and Human Services to be provided to persons newly eligible for Medicaid under the Affordable Care Act. Such study, findings, and recommendations shall explore matters including but not limited to:

- A) Whether any benefits required under New York State Public Health or Social Services Law or regulations promulgated thereunder that are not identified as benchmark benefits by the Secretary should continue to be required as covered benefits available to newly eligible Medicaid beneficiaries inside the Exchange.
- B) The costs to the State of continuing any benefits required under New York State Public Health or Social Services Law or regulations promulgated thereunder that are not identified by the Secretary as benchmark benefits to newly Medicaid-eligible individuals through the exchange.
- C) Mechanisms to finance any costs pursuant to the federal act of extending any benefits required under the public health law or the social services law or regulations promulgated thereunder to policies and contracts sold through the Exchange.

Please see Attachment 13 for a Department of Health “Comparison of Benefits Chart” that is relevant background information to this scope of work.

### **Study #5 Healthy New York and the Family Health Plus Employer Partnership**

The contractor shall conduct a study and make recommendations on the impact of the establishment and operation of the Exchange on the Healthy New York Program established pursuant to Section 4326 of New York State Insurance Law, and the Family Health Plus Employer Partnership Program established pursuant to Section 369- ff of New York State Social Services Law.

### **Study #6 Health Savings Accounts**

The contractor shall research and make recommendations on whether and to what extent Health Savings Accounts should be offered through the Exchange.

## **D. PROPOSAL REQUIREMENTS**

Bidders should submit the number of proposals as outlined in Section F.3.

The Technical and Cost proposals must be packed in separate, sealed envelopes and marked legibly. These should be packed together into a third package, sealed and marked accordingly with proper bidder name and address. Outer proposal packages should be clearly labeled with the name and number of the RFP as listed on the cover of this document.

No proposals will be accepted via fax or e-mail. It is the bidder’s responsibility to see that proposals are delivered to the proper address prior to the date and time specified.

### **1. Technical Proposal Requirements**

No cost information can be included in the Technical Proposal. A complete technical proposal will consist of the following components, in the order listed, and should be:

- Printed on 8 ½ x 11 inch paper, double-sided;
- Prepared using 11 point font or larger; and

- Submitted in 3-ring binders with tab divider between major sections

- A. Transmittal Form – ONE per proposal
- B. Table of Contents – ONE per proposal
- C. Proposal Narrative(s) – Up to SIX per proposal
- D. Vendor Responsibility Attestation – ONE per proposal

A. Transmittal Form

One transmittal form should be submitted by the bidder. This form, and all attestations contained therein, will apply to all studies proposed by the bidder.

The Transmittal Form will be evaluated as part of the Compliance Evaluation screening. Failure to comply may result in disqualification of the bidder's proposal. The Transmittal Form should include:

1. The bidder's complete name and address,
2. The legal structure of the entity submitting the offer;
3. The Federal Employer Identification Number (FEIN);
4. The Charities Registration Number, if a non-profit entity; and
5. The name, mailing address, email address, fax number and telephone number for both the authorized signatory and the person the Department should contact regarding the proposal;

and the following bidder attestations:

- a. the bidder accepts the contract terms and conditions contained in this RFP including any exhibits and attachments;
- b. the bidder has received and acknowledged all Department amendments to the RFP, as may be amended;
- c. 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;
- d. the bidder (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department;
- e. the proposal of the bidder will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals;
- f. the bidder either:
  1. includes a disclosure of any potential conflict of interest, including but not limited to, all business, financial, or beneficial relationships or interests in any

affiliation or contractual relationship with any health care provider, health insurer, its affiliates, its subsidiaries or its parent. In cases where such a relationship(s) and/or interest(s) exists, (ii) the bidder must describe how an actual or potential conflict of interest and/or disclosure of confidential information relating to an award under this FAS will be avoided, and (iii) the bidder guarantees knowledge 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; OR

2. states there is no conflict(s) of interest.
- g. The bidder does/does not propose to utilize the services of a subcontractor(s). If the proposal includes the services of a subcontractor(s), the bidder should include, in an appendix to the Transmittal Form, a subcontractor summary for each subcontractor, including:
1. Complete name of the subcontractor;
  2. Complete address of the subcontractor;
  3. A general description of the type and scope of work the subcontractor will be performing;
  4. Percentage of work the subcontractor will be providing;
  5. A statement confirming that the subcontractor 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;
  6. written confirmation that the subcontractor agrees to comply with all commitments agreed to by the bidder in performing the contracted work as well as agreement with the project and the costs and a commitment to perform work indicated in the time period specified; and
  7. The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or handicap.
- h. The bidder agrees to the assignment of the contract to the public benefit corporation, or any other similarly authorized legal entity created by the State of New York for the establishment of the New York Benefit Exchange, at the direction of the Department, in accordance with the same contract terms and conditions, including but not limited to price.

## B. Table of Contents

All pages in the proposal should be numbered and the Table of Contents should delineate each of the subsections described in Section D.1.C and D.1.D, below.

## C. Proposal Narrative(s)

A separate proposal narrative should be submitted by the bidder for EACH study proposed (**i.e., up to six narratives per proposal**). Each proposal narrative should be no longer than 20 double-spaced pages, not including resumes of the staff assigned or samples of reports provided in responses to subsections c. and d. below. For purposes of scoring, evaluators will be instructed to cease reading the proposal narratives at the

end of the 20 page limit, exclusive of the resumes and sample reports described above.

The bidder's proposal narrative for each study proposed should include all of the following:

- a. A description of the bidder's organizational capacity and staffing qualifications, including experience providing large-scale health policy studies, particularly as they relate to the establishment of a health insurance exchange or similar entity. This section should demonstrate how your organization will successfully meet the requirements of the study;
- b. A detailed description of your proposed study method, including the sources of data to be used in conducting the study and formulating recommendations;
- c. The qualifications of the staff that would be assigned to conduct the study and estimated share of time each would allocate to this project. The bidder should include the resumes of assigned staff;
- d. A description of your organization's experience in completing similar studies. The bidder should provide the name, title and contact information for references for the three most recent related projects. Bidders may also choose to include a sample report;
- e. A detailed timeline showing each step in the study process and the dates for key deliverables;
- f. A proposed outline of the report that your organization would produce for the study; and
- g. For all subcontractors that it intends to use in fulfilling the requirements of the study, the role and relevant experience of the subcontractor(s) should be clearly defined and described.

#### D. Vendor Responsibility Attestation

See Section F.9 and Attachment 5.

## **2. Cost Proposal Requirements**

A complete cost proposal consists of the following components:

- A. Bid Form – ONE per proposal
- B. M/WBE Utilization Plan – ONE per proposal

### A. Bid Form

The Department seeks a cost-effective bid. Using the Bid Form in Attachment 2, a separate bid price must be submitted for each study the bidder proposes from the list in Section C.2. POLICY STUDIES AND REPORTING REQUIREMENTS, above. The bid price for each study must reflect all costs, including but not limited to, those associated with personnel, travel, materials and services, and miscellaneous expenses. Personnel, materials and services costs related to each

project should be included in the costs for each of the studies. No cost information should be in the technical proposal.

Bidders must include a blended price per hour for potential additional work over and above the fixed price per deliverable in the instance that a modification in project scope is required. This price will be the same hourly rate for all additional work in any studies awarded to a bidder(s) through this RFP. Change in scope of work will require approval by the Office of the State Comptroller.

Payment will be based on a fixed price per deliverable, based on the bidder's bid price per deliverable. At the Department's discretion, the fixed price per deliverable may be adjusted to account for modifications in scope of work.

#### B. M/WBE Utilization Form

See Section F.16 and Attachment 6.

### **E. METHOD OF AWARD VENDOR SELECTION**

#### **1. Technical Evaluation**

A Technical Evaluation Committee will separately evaluate and score each bidder's Proposal narrative(s). Up to 70 points will be awarded for the evaluation of the bidder's Proposal Narrative. The highest scoring bidder will receive the full points available. The evaluation of the bidder's technical approach will be based on the responses provided in the proposal and responses to any clarifying questions. Information from the Cost Proposal or the evaluation of the Cost Proposal will not be available to the Technical Evaluation Committee during their evaluation.

*Detailed evaluation criteria will not be disclosed to bidders.*

Up to 5 points may be deducted from the technical score if the proposal does not conform to the prescribed format described in Section D.1 of the RFP.

The technical raw scores will be normalized as follows:  $(X/Y)*Z$  [(X divided by Y)] times Z) where:

- X is Total Weighted Raw Score of proposal being scored;
- Y is Total Weighted Raw Score of highest scoring Technical proposal; and
- Z is Technical points available.

#### **2. Cost Evaluation**

Each Bidder's Cost Proposal will be scored using the scale described below. Up to 30 points will be awarded for the evaluation of the Bidder's Cost Proposal. The lowest Bidder will receive the full points available.

Cost will be calculated as  $(A/B)*C$  [(A divided by B)] times C) where:

- A is Total Price of lowest price Cost proposal;

- B is Total Price of Cost proposal being scored; and,
- C is Cost points available.

### **3. Total Combined Score**

To arrive at the Total Combined Score, the Department will combine the Bidder's Technical Score and Cost Score. The maximum score a Bidder can receive is 100 points.

In the event of a tie, the determining factor(s) for award, in the following order of importance, will be:

1. Lowest cost;
2. Minority/Women-owned Business Enterprise (M/WBE) utilization;
3. Past Experience
4. References

Should there be insufficient funding to award all six studies, the Department will use a pre-determined ranking of the studies to determine which studies are funded. The Department reserves the right to award less than six studies.

### **4. Notification of Award**

After evaluation and selection of the successful bidder, all bidders will be notified in writing of the selection or non-selection of their proposals. The name of the successful bidder will be disclosed. Press releases pertaining to this project shall not be made without prior written approval by the State and then only in conjunction with the issuing office.

## **F. ADMINISTRATIVE**

### **1. Issuing Agency**

This Request for Proposal (RFP) 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.

### **2. Inquiries**

Prospective bidders may submit questions relating to the RFP in writing by email to the designated contact listed on page i of the RFP. Each question should cite the particular RFP part and section to which it refers. Questions must be received by the Department on or before 3:00pm Eastern Time on the date specified in the schedule of key events on the cover page of the RFP.

Questions and answers, as well as any RFP updates and/or modifications, will 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 page of this RFP.

There will be no bidder's conference in conjunction with this RFP.

### **3. Submission of Proposals**

Interested bidders should submit:

Technical Proposal: two (2) signed originals, ten (10) bound copies in hardcopy format and one (1) electronic copy in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only; and

Cost Proposal: two (2) signed originals, six (6) copies in hardcopy format and one (1) electronic copy in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only.

Original proposals should be marked as such. Where signatures are required, the original of the proposals should be signed in ink.

No electronic or email submissions will be accepted. All copies must be received by the Department of Health no later than 3:00 p.m. Eastern Time by the date specified on the cover sheet of this RFP. In case of any discrepancy between the electronic and the hard copy documents the hard copy shall supersede.

Responses should be clearly marked “New York Health Benefit Exchange Policy Studies and Reporting Requirements, FAU #1110041006” and directed to:

Joseph Zeccolo  
Office of Health Insurance Programs  
NYS Department of Health  
Corning Tower, Room 2019  
Albany, NY 12237

It is the bidders' responsibility to see that bids are delivered to Room 2019 in the Corning Tower prior to the date and time of the bid due date. Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to room 2019 will not be considered.

### **4. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO:**

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

- oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
  9. Change any of the scheduled dates;
  10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
  11. Waive any requirements that are not material;
  12. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
  13. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
  14. Utilize any and all ideas submitted in the proposals received;
  15. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 120 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.

## 5. Payment

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

Judith Arnold  
Director, Division of Coverage and Enrollment  
Office of Health Insurance Programs  
NYS Department of Health  
Corning Tower, Room 1619  
Albany, NY 12237

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](http://www.osc.state.ny.us/epay/index.htm), by Email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-486-1255. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

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

NYS Office of the State Comptroller  
 Bureau of Accounting Operations  
 Warrant & Payment Control Unit  
 110 State Street, 9<sup>th</sup> 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.

The contractor shall receive fifty percent of the agreed upon fixed price per study upon the DOH acceptance of a draft report. The remaining fifty percent of the fixed price per study shall be paid to the contractor upon the DOH acceptance of the final report. The DOH shall complete its review of the draft and final reports in a timely manner and the acceptance or such reports shall not be unreasonably delayed.

**6. Term of Contract**

This agreement shall be effective upon approval of the NYS office of the State Comptroller.

While the anticipated completion date for each study is April 1, 2012, the contract(s) resulting from this RFP will be effective on or about January 20, 2012 through January 19, 2013, with the option of a one-year extension in the event that DOH determines that needed federal guidance is not available, in which case it will have the authority to re-establish the due date(s) for the studies (reports) within this contract period.

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.

**Anticipated Start and End Dates Per Policy Study**

<b>Policy Study</b>	<b>Anticipated Start Date</b>	<b>Anticipated End Date*</b>
1. Essential Benefits for the New York Health Benefits Exchange	January 20, 2012	April 1, 2012
2. Insurance Markets	January 20, 2012	April 1, 2012
3. Purchasing Role of Exchange	January 20, 2012	April 1, 2012
4. Medicaid Benchmark Benefits	January 20, 2012	April 1, 2012
5. Healthy NY and Family Health Plus Employer Partnership	January 20, 2012	April 1, 2012
6. Health Savings Accounts	January 20, 2012	April 1, 2012

\*New York's Health Benefit Exchange bill, which is pending action in the New York State Senate, requires that the Exchange conduct or cause to be conducted these studies by April 1, 2012, unless the DOH determines that needed federal guidance is not available, in which case it will have the authority to re-establish the due date(s) for the report(s).

## **7. Debriefing**

Once an award has been made, bidders may request a debriefing of their proposals in accordance with State Finance Law. Requests must be received no later than ten (10) business days from date of award or non-award announcement.

## **8. Protest Procedures**

In the event unsuccessful bidders wish to protest the award resulting from this RFP, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found on the OSC website at: [http://www.osc.state.ny.us/agencies/gbull/g\\_232.htm](http://www.osc.state.ny.us/agencies/gbull/g_232.htm).

## **9. Vendor Responsibility Questionnaire**

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

## **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.

These forms are included as Attachments 8 and 9.

## **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:

- a. 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;
- b. 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;
- c. 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;
- d. 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;
- e. 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;
- f. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. modifies the governance of the New York State Commission on Public Integrity
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. establishes the Advisory Council on Procurement Lobbying.

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

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

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York State Commission on Public Integrity regarding

procurement lobbying, the Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Commission on Public Integrity.

## **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.

## **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/>

## **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.

Winning bidders 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.

Winning bidders 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 offeror non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Web links to these forms are included in Attachment 7.

## **15. Piggybacking**

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

## **16. M/WBE Utilization Plan for Subcontracting and Purchasing**

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

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

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

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

## G. APPENDICES

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

- ❑ APPENDIX A - Standard Clauses for All New York State Contracts
- ❑ APPENDIX B-1 – Responses to Written Questions
- ❑ 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 X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

## **H. LIST OF ATTACHMENTS**

1. Transmittal Form
2. Bid Form
3. Lobbying Form
4. No-Bid Form
5. Vendor Responsibility Attestation
6. M/WBE Procurement Forms
7. Links to N.Y.S. Taxation and Finance Contractor Certification Forms ST-220-TD and ST-220-CA
8. State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term
9. State Consultant Services Form B, Contractor's Annual Employment Report
10. Sample Standard State Contract with Appendices
  - Appendix A – Standard State Clauses
  - Appendix X – Modification to State Agreement Form
  - Appendix D – General Specifications
  - Appendix H – HIPAA
  - Appendix G – Notices
11. New York State Health Insurance Exchange (NY-HX) Early Innovator Project Plan Management and NAIC SERFF Integration Potential
12. Background Information on New York Health Insurance Exchange Plan Management JAD Session
13. Draft Benefit Comparison Benchmarks and Cost Sharing Charts

Attachment 1

Transmittal Form

**Consultant Services Related to the New York Health Benefit Exchange Policy Studies and Reporting Requirements**

TRANSMITTAL FORM

FAU #1110041006

Bidder Name: \_\_\_\_\_

Bidder Address: \_\_\_\_\_

\_\_\_\_\_

FEIN: \_\_\_\_\_

DUNS #: \_\_\_\_\_

Type of Legal Business Entity: \_\_\_\_\_

Charities Registration Number, if Not-for-Profit: \_\_\_\_\_

Contact Person Information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Studies Included in Proposal (Check all that apply):

- \_\_\_\_\_ 1. Essential Benefits
- \_\_\_\_\_ 2. Insurance Markets
- \_\_\_\_\_ 3. Purchasing Role of Exchange
- \_\_\_\_\_ 4. Medicaid Benchmark Benefits
- \_\_\_\_\_ 5. Healthy NY and Family Health Plus Employer Partnership
- \_\_\_\_\_ 6. Health Savings Accounts

Attestations (check ALL boxes signifying agreement):

- I certify that the bidder accepts the contract terms and conditions contained in this FAS including any exhibits and attachments;
- I certify that the bidder has received and acknowledged all Department amendments to the FAS, as may be amended;
- I certify 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;
- I certify that the bidder (i) does not qualify its proposal, or include any exceptions from the FAS and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department;

- I certify that the proposal of the bidder will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals;
- I certify that the bidder agrees to the assignment of the contract to the public benefit corporation, or any other similarly authorized legal entity created by the State of New York for the establishment of the New York Benefit Exchange, at the direction of the Department, in accordance with the same contract terms and conditions, including but not limited to price.

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.1.A.f. 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(s) of interest exist for the above named bidder.

Subcontractor 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.1.A.g; **OR**
- I certify that the proposal submitted by the above named bidder does not propose to utilize the services of any subcontractor.

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

\_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**ATTACHMENT 2**

**NEW YORK STATE  
DEPARTMENT OF HEALTH**

**BID FORM**

PROCUREMENT TITLE: Consultant Services Related to the New York Health Benefit Exchange Policy Studies and Reporting Requirements

FAU #1110041006

Bidder Name: \_\_\_\_\_

Bidder Address: \_\_\_\_\_  
\_\_\_\_\_

Bidder Fed ID No: \_\_\_\_\_

\_\_\_\_\_ bids a total price per study being proposed as follows:  
(Name of Offerer/Bidder)

<b>Policy Study Name</b>	<b>Bidding: Yes/No*</b>	<b>Bidder's Not-to-Exceed Price Per Study Proposed</b>
1. Essential Benefits		\$
2. Insurance Markets		\$
3. Purchasing Role of Exchange		\$
4. Medicaid Benchmark Benefits		\$
5. Healthy NY and Family Health Plus Employer Partnership		\$
6. Health Savings Accounts		\$

Blended Hourly Rate for Additional Work: \$ \_\_\_\_\_

\* The answers in this column should coincide with the studies checked on the Transmittal Form and the number of technical proposal narratives submitted.

ATTACHMENT 3

**NEW YORK STATE  
DEPARTMENT OF HEALTH**

**LOBBYING FORM**

PROCUREMENT TITLE: Consultant Services Related to the New York Health Benefit Exchange Policy Studies and Reporting Requirements

FAU #1110041006

Bidder Name:

Bidder Address:

Bidder Fed ID No:

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 questions 1.a through 1.c. If no, proceed to question 2.a:

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

No

Yes

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

No  Yes

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

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_  
(Add additional pages as necessary)

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

No  Yes

2b. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding:

\_\_\_\_\_  
(Add Additional Pages as Necessary)

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

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(e-mail Address)

**ATTACHMENT 4**  
**NEW YORK STATE**  
**DEPARTMENT OF HEALTH**  
**NO-BID FORM**

PROCUREMENT TITLE: Consultant Services Related to the New York Health Benefit Exchange Policy Studies and Reporting Requirements

FAU #1110041006

Bidders choosing not to bid are requested to complete the portion of the form below:

\_\_\_\_\_ We do not provide the requested services. Please remove our firm from your mailing list.

\_\_\_\_\_ Please retain our firm on your mailing list. We are unable to bid at this time because:

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(e-mail Address)

FAILURE TO RESPOND TO BID INVITATIONS MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE.

**Attachment 5**

Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in Section F.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.state.ny.us> within the last six months.
- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: \_\_\_\_\_

Print/type Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Attachment 6

**New York State Department of Health**

**M/WBE PROCUREMENT FORMS**

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

**To be submitted with Proposal:**

1. Bidders Proposed M/WBE Utilization Plan

**To be submitted by winning bidder only:**

2. Minority Owned Business Enterprise Information
3. Women Owned Business Enterprise Information
4. M/WBE Utilization Plan
5. M/WBE Letter of Intent to Participate
6. M/WBE Staffing Plan

**New York State Department of Health**  
**BIDDERS PROPOSED M/WBE UTILIZATION PLAN**

<b>Bidder Name:</b>	
<b>RFP Title:</b>	<b>RFP Number</b>

**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

## 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
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> (   )   -		<b>\$ _____</b>
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> (   )   -		<b>\$ _____</b>
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> (   )   -		<b>\$ _____</b>

# New York State Department of Health

## 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
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> (   )   -		<b>\$</b> _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> (   )   -		<b>\$</b> _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> (   )   -		<b>\$</b> _____

# New York State Department of Health

## SUBCONTRACTING UTILIZATION PLAN

Agency Contract: Department of Health Telephone: \_\_\_\_\_  
 Contract Number: \_\_\_\_\_ Dollar Value: \_\_\_\_\_  
 Date Bid: \_\_\_\_\_ Date Let: \_\_\_\_\_ Completion Date: \_\_\_\_\_

Contract Awardee/Recipient: \_\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone \_\_\_\_\_

Description of Contract/Project Location: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Subcontractors Purchase with Majority Vendors:

Participation Goals Anticipated: \_\_\_\_\_ % MBE \_\_\_\_\_ % WBE  
 Participation Goals Achieved: \_\_\_\_\_ % MBE \_\_\_\_\_ % WBE

Subcontractors/Suppliers:

Firm Name and City	Description of Work	Dollar Value	Date of Subcontract	Identify if MBE or WBE or NYS Certified

<b>Contractor's Agreement: My firm proposes to use the MBEs listed on this form</b>			
Prepared By: (Signature of Contractor)	Print Contractor's Name:	Telephone #:	
Grant Recipient Affirmative Action Officer Signature (If applicable):			

FOR OFFICE USE ONLY	
Reviewed By:	Date:
MWBE Firms Certified: _____	Not Certified: _____
CBO: _____	MCBO: _____

**New York State Department of Health**

**MWBE ONLY**

**MWBE SUBCONTRACTORS AND SUPPLIERS  
LETTER OF INTENT TO PARTICIPATE**

To: \_\_\_\_\_ Federal ID Number: \_\_\_\_\_  
(Name of Contractor)

Proposal/ Contract Number: \_\_\_\_\_

Contract Scope of Work: \_\_\_\_\_

---

The undersigned intends to perform services or provide material, supplies or equipment as: \_\_\_\_\_

---

Name of MWBE: \_\_\_\_\_

Address: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Designation:

MBE - Subcontractor

WBE - Subcontractor

MBE - Supplier

WBE - Supplier

Joint venture with:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Fed ID Number: \_\_\_\_\_

MBE

WBE

Are you New York State Certified MWBE? \_\_\_\_\_ Yes \_\_\_\_\_ No

The undersigned is prepared to perform the following work or services or supply the following materials, supplies or equipment in connection with the above proposal/contract. (Specify in detail the particular items of work or services to be performed or the materials to be supplied): \_\_\_\_\_

\_\_\_\_\_

at the following price: \$ \_\_\_\_\_

The contractor proposes, and the undersigned agrees to, the following beginning and completion dates for such work.

Date Proposal/ Contract to be started: \_\_\_\_\_

Date Proposal/ Contract to be Completed: \_\_\_\_\_

Date Supplies ordered: \_\_\_\_\_ Delivery Date: \_\_\_\_\_

The above work will not further subcontracted without the express written permission of the contractor and notification of the Office. The undersigned will enter into a formal agreement for the above work with the contractor ONLY upon the Contractor's execution of a contract with the Office.

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of M/WBE Contractor

\_\_\_\_\_ Printed/Typed Name of M/WBE Contractor

**INSTRUCTIONS FOR M/WBE SUBCONTRACTORS AND SUPPLIERS LETTER OF INTENT TO PARTICIPATE**

This form is to be submitted with bid attached to the Subcontractor's Information Form in a sealed envelope for each certified Minority or Women-Owned Business enterprise the Bidder/Awardee/Contractor proposes to utilize as subcontractors, service providers or suppliers.

If the MBE or WBE proposed for portion of this proposal/contract is part of a joint or other temporarily-formed business entity of independent business entities, the name and address of the joint venture or temporarily-formed business should be indicated.

# New York State Department of Health

## M/WBE STAFFING PLAN

Check applicable categories:

Project Staff   
  Consultants   
  Subcontractors

Contractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

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

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
Date

## Attachment 7

### SALES TAX FORMS CA-220 AND TD-220

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

[http://www.tax.ny.gov/forms/form\\_number\\_order\\_st\\_y.htm](http://www.tax.ny.gov/forms/form_number_order_st_y.htm)

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

[http://www.tax.ny.gov/forms/form\\_number\\_order\\_st\\_y.htm](http://www.tax.ny.gov/forms/form_number_order_st_y.htm)

**Attachment 8 State Consultant Services Form A**

**State Consultant Services**

**FORM A**

**OSC Use Only**

Reporting Code:  
 Category Code:  
 Date Contract Approved:

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

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

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

Name of person who prepared this report:

Title:

Phone #:

Preparer's signature:

Date Prepared: / /

Page of  
 (use additional pages if necessary)

## Instructions

State Consultant Services

### Form A: Contractor's Planned Employment

and

### Form B: Contractor's Annual Employment Report

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

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

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

### **Completing the Reports:**

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

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

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

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

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

**State Consultant Services**  
**FORM B**

**OSC Use Only**  
Reporting Code:  
Category Code:

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

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

Scope of Contract (Chose one that best fits):

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

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

Name of person who prepared this report:

Title:

Phone #:

Preparer's signature:

Date Prepared: / /

Page of (use additional pages if necessary)

**Attachment 10**

SAMPLE STANDARD NYS CONTRACT LANGUAGE AND APPENDICES

**MISCELLANEOUS / CONSULTANT SERVICES**

STATE AGENCY (Name and Address): .

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE:12000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:

TO:

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

FUNDING AMOUNT FOR CONTRACT  
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

MUNICIPALITY NO. (if applicable):

STATUS:

CONTRACTOR IS ( ) IS NOT ( ) A  
SECTARIAN ENTITY

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

( ) IF MARKED HERE, THIS CONTRACT'S  
RENEWABLE FOR  1  ADDITIONAL  
ONE-YEAR PERIOD(S) AT THE SOLE  
OPTION OF THE STATE AND SUBJECT  
TO APPROVAL OF THE OFFICE OF THE  
STATE COMPTROLLER.

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

**BID OPENING DATE:**

**APPENDICES ATTACHED AND PART OF THIS AGREEMENT**

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

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

Contract No.:

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

_____	.	_____
CONTRACTOR	.	STATE AGENCY
	.	
	.	
	.	
_____	.	_____

By: _____	.	By: _____
	.	
_____	.	_____
Printed Name	.	Printed Name
	.	
Title: _____	.	Title: _____
	.	
Date: _____	.	Date: _____

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

\_\_\_\_\_  
 STATE OF NEW YORK )  
 )SS.:  
 County of \_\_\_\_\_)

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

\_\_\_\_\_  
 (Signature and office of the individual taking acknowledgement)

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

STATE OF NEW YORK  
AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

II. Payment and Reporting

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

.

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

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

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

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

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

### III. Term of Contract

- A. Upon approval of the Commissioner of Health, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.

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

#### IV. Proof of Coverage

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

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
  1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
  3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.
- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
  1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  2. DB-120.1 – Certificate of Disability Benefits Insurance OR
  3. DB-155 – Certificate of Disability Benefits Self-Insurance

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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**STANDARD CLAUSES FOR NYS  
CONTRACTS**

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such

consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the

United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the

foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return

thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-

owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such

certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

**Agency Code 12000  
APPENDIX X**

Contract Number: \_\_\_\_\_ Contractor: \_\_\_\_\_

Amendment Number X-\_\_\_\_\_

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

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

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

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

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

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

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

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

\$ \_\_\_\_\_ From \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_.

This will result in new contract terms of:

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



APPENDIX D  
GENERAL SPECIFICATIONS

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

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

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

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

I. Non-Collusive Bidding

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

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

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

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

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

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

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

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

## N. YEAR 2000 WARRANTY

### 1. Definitions

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

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

### 2. Warranty Disclosure

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

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

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

3. Warranty Statement

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

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

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

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

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

O. No Subcontracting

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

P. Superintendence by Contractor

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

Q. Sufficiency of Personnel and Equipment

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

R. Experience Requirements

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

S. Contract Amendments

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

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

T. Provisions Upon Default

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

U. Termination Provision

Upon termination of this agreement, the following shall occur:

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

V. Conflicts

If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as

to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT

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

It is the intention of the New York State Department of Health to fully execute the mandate of Executive Law, Article 15-A and provide Minority and Women Owned Business Enterprises with equal opportunity to bid on contracts awarded by this agency in accordance with the State Finance Law.

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

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

X. Contract Insurance Requirements

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

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

Y. Certification Regarding Debarment and Suspension

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

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

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

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

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

Z. Confidentiality Clauses

- 1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any

such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.

2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.
6. All subcontracts shall contain provisions specifying:
  - a. that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and

- b. that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

AA. Provision Related to Consultant Disclosure Legislation

- 1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15<sup>th</sup> 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, 11<sup>th</sup> Floor, Albany NY 12236 ATTN: Consultant Reporting - or via fax at (518) 474-8030 or (518) 473-8808; and
  - c. The NYS Department of Civil Service, Alfred E. Smith Office Building, Albany NY 12239, ATTN: Consultant Reporting.

BB. Provisions Related to New York State Procurement Lobbying Law

- 1. The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

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

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

DD. Lead Guidelines

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

## Appendix H

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

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

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

- F. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
  - G. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
  - H. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
  - I. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
  - J. Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
  - K. Business Associate agrees to comply with the security standards for the protection of electronic protected health information in 45 CFR § 164.308, 45 CFR § 164.310, 45 CFR § 164.312 and 45 CFR § 164.316.
- III. Permitted Uses and Disclosures by Business Associate
- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
  - B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
  - C. Business Associate may disclose Protected Health Information as Required By Law.
- IV. Term and Termination
- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by

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

- B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.
- C. Effect of Termination.
  - 1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - 2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this AGREEMENT to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations

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

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

VI. Miscellaneous

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

## Appendix G

### NOTICES

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

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

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

#### **State of New York Department of Health**

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

#### **[Insert Contractor Name]**

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

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

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

# **ATTACHMENT 11**

DRAFT

**New York State Health Insurance Exchange (NY-HX)  
Early Innovator Project**

# Plan Management and NAIC SERFF Integration Potential

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September 2011

# DRAFT

## DOCUMENT REVISION HISTORY

Date	Version	Description
July 11, 2011	Draft 0.1	Initial Draft
July 13, 2011	Draft 0.2	Edits/Revisions Provided
July 13, 2011	Draft 0.3	Minor Edits Provided
July 14, 2011	Draft 0.4	Minor Edits
July 14, 2011	Draft 0.5	Minor Edits
Aug 1, 2011	Draft 0.6	Revisions from DOH and SID comments
Aug 2, 2011	Draft 0.7	Minor revision from DOH and SID
Sept 26, 2011	Draft 0.8	Added HIOS reference

# DRAFT

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## Introduction

Plan Management is one of six Health Insurance Exchange business areas identified in guidance documentation from the Centers for Medicare and Medicaid Services (CMS). New York has completed two iterations of Plan Management Joint Application Design (JAD) and visioning sessions as part of its requirements gathering and modeling effort. Demonstrations of legacy systems have also been incorporated into this process, including a review of the National Association of Insurance Commissioners (NAIC) System for Electronic Rate and Form Filing (SERFF) system. Consensus among JAD session participants is that SERFF could potentially play a significant role in the Plan Management functionality for the New York Exchange as well as other Exchanges nationally.

The purpose of the document is to discuss how SERFF could be leveraged to provide important functionality for the Plan Management business area of the Health Insurance Exchange. Benefits of this approach are discussed along with high-level integration requirements.

## What is SERFF?

The original intention of SERFF, defined in the early 1990s, was to provide a cost-effective method for handling insurance policy rate and form filings between regulators and insurance companies. After several technology iterations, SERFF today is a feature rich Web portal through which both insurance companies and state regulators process filings for health, accident, life, and property and casualty insurance coverage. It facilitates communication, management, analysis, and electronic storage of documents and supporting information required for review and approval of regulatory filings.

Currently all 50 states, the District of Columbia, Puerto Rico, and over 3000 insurance companies, third-party filers, rating organizations, and other companies use SERFF on a regular basis. Twenty-five states require their insurers to use SERFF. In 2010, 565,475 filings were processed by SERFF, a growth of 208% over the previous five years.

In the State of New York, insurers are not mandated to file through the SERFF system, yet more than 98% of all accident and health filings are submitted this way.

## New York Perspective on Health Insurance Exchange Plan Management

New York's initial Plan Management requirements gathering and modeling efforts focused on the development of a use case model and "To Be" Plan Management business processes. These were developed in a facilitated environment with subject matter experts (SME) from involved agencies, including the Department of Health and State Insurance Department. Output from this analysis will be used to develop an ongoing list of functional requirements which will drive the design and development of Exchange Plan Management. Since we expect guidance from the federal government to evolve, New York has adopted an "agile", iterative development lifecycle approach that is well-suited to projects lacking concise requirements definition at project outset.

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Figures 1 and 2 provide a high-level overview of the Exchange Use Case model. Figure 1 presents the high-level use case model for the six Exchange business areas. Figure 2 shows a more detailed use case model for the Plan Management business area only.

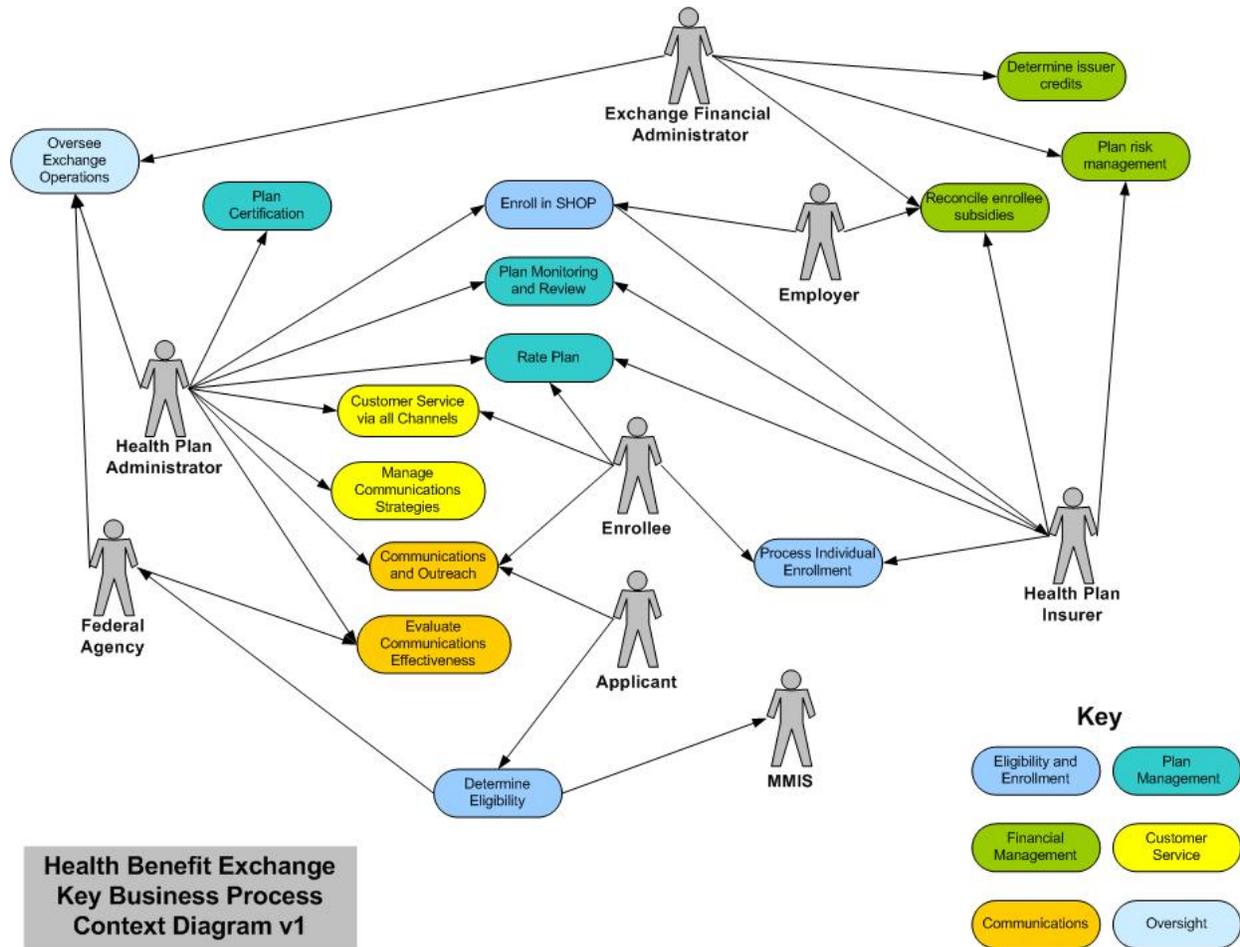


Figure 1- Exchange Use Case Model Showing the Six Key Business Areas

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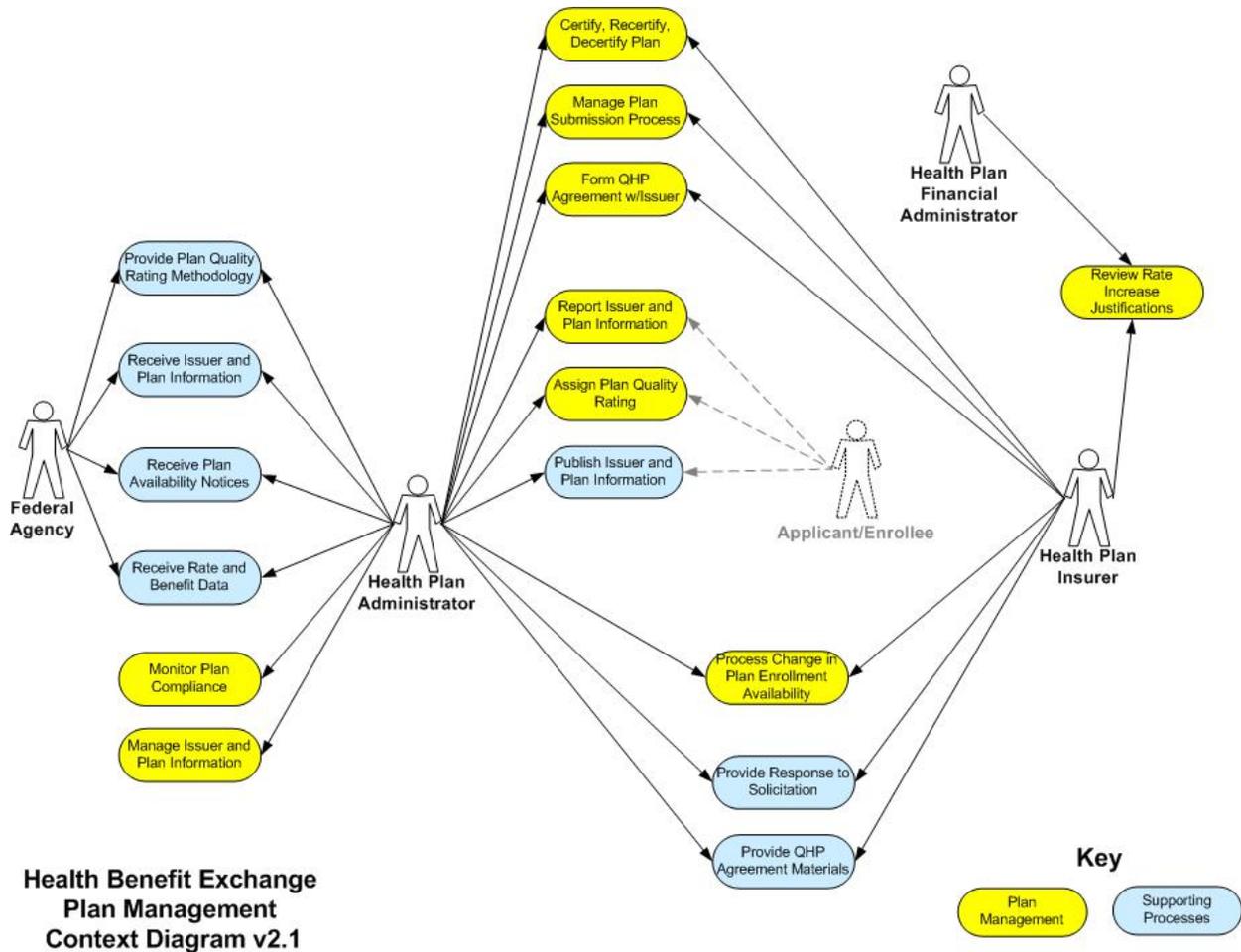


Figure 2- Exchange Use Case Model for Plan Management Only

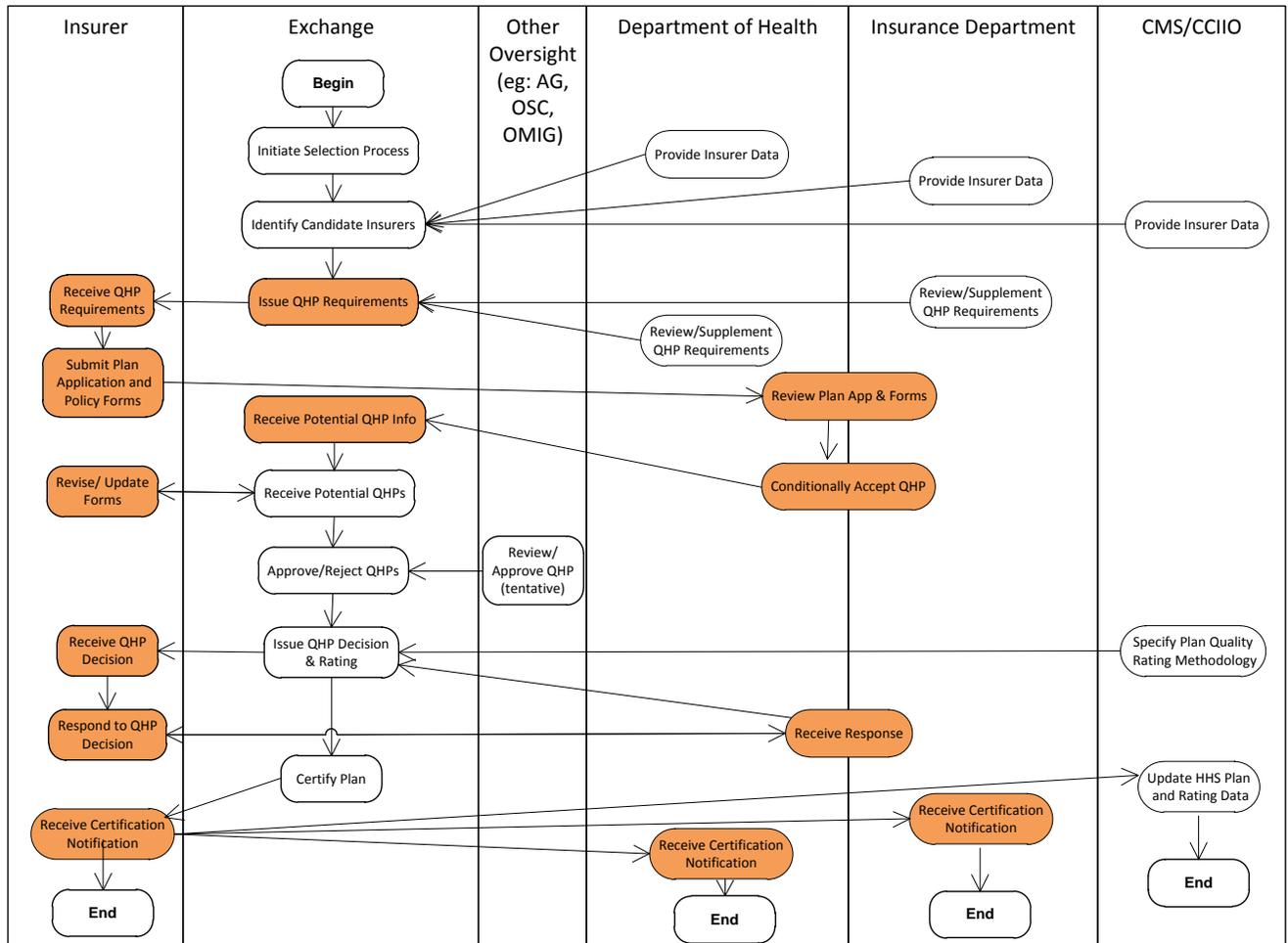
To complement the Exchange Use Case Model, New York also developed six “To Be” business process flows for Plan Management. These were developed by combining guidance from CMS’s Plan Management Blueprint- Exchange Business Architecture Supplement document with input obtained from SMEs participating in a series of Plan Management JAD sessions. Demonstrations and overview discussions of legacy systems with potential Plan Management applicability were also conducted.

One of the systems demonstrated and discussed was SERFF. There was consensus among JAD session participants that SERFF could play a significant role in Exchange Plan Management. Based on this assumption, the six “To Be” Plan Management business process flows were reassessed and updated to reflect SERFF support of Exchange Plan Management requirements.

Provided below are the six Plan Management “To Be” process flows developed by New York. Processes that could potentially be fully or partially supported by SERFF are shaded in a “salmon” color.

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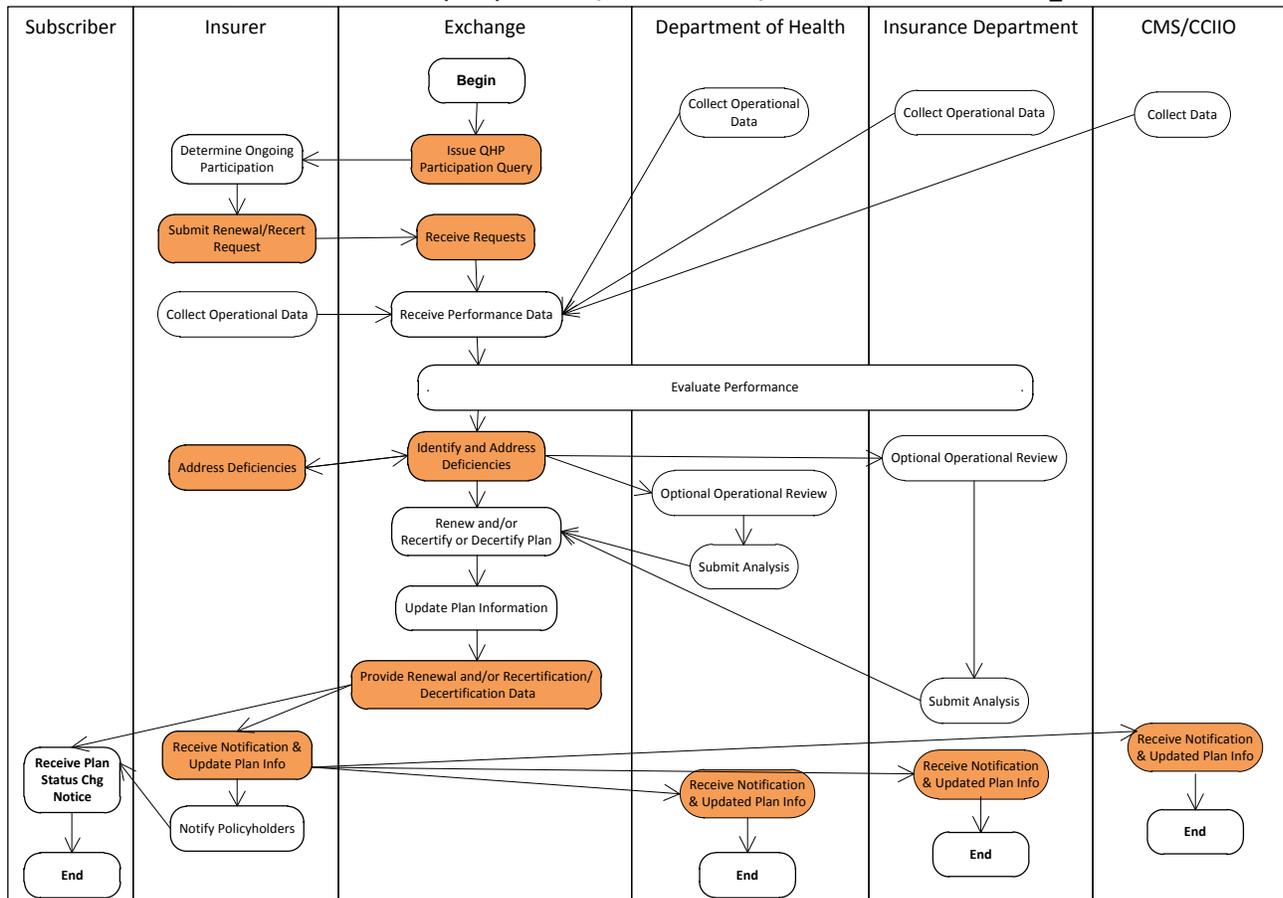
## "To-Be" Plan Selection Process v6 07-07-11\_SERFF



\* Processes with potential SERFF support are shaded.

**Figure 3- Plan Management: To Be Plan Selection**

**“To-Be” Qualified Health Plan (QHP) Renewal/Recertification/Decertification v4 07-07-11\_SERFF**

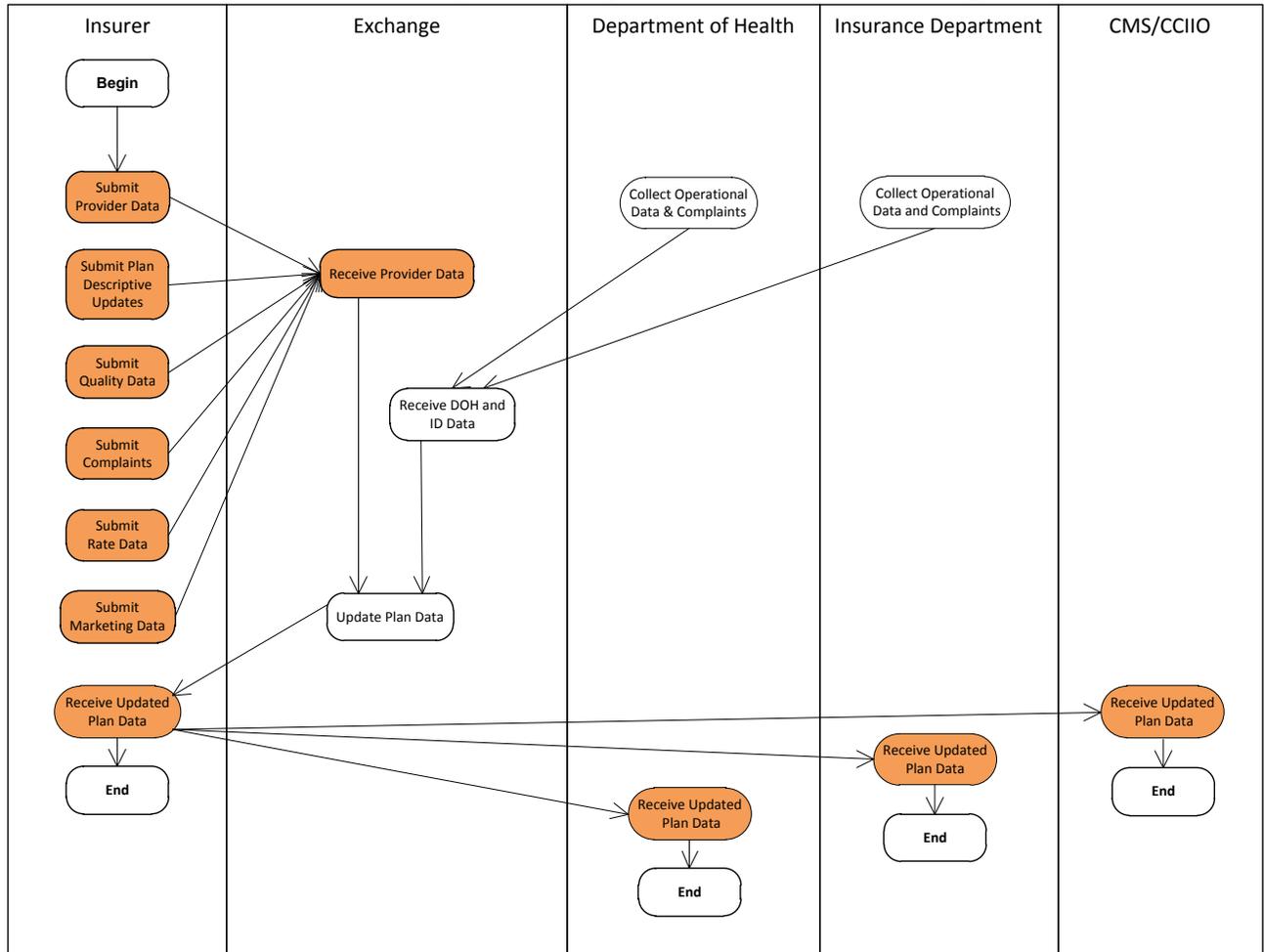


\* Processes with potential SERFF support are shaded.

**Figure 4- Plan Management: To Be QHP Renewal/Recertification/Decertification**

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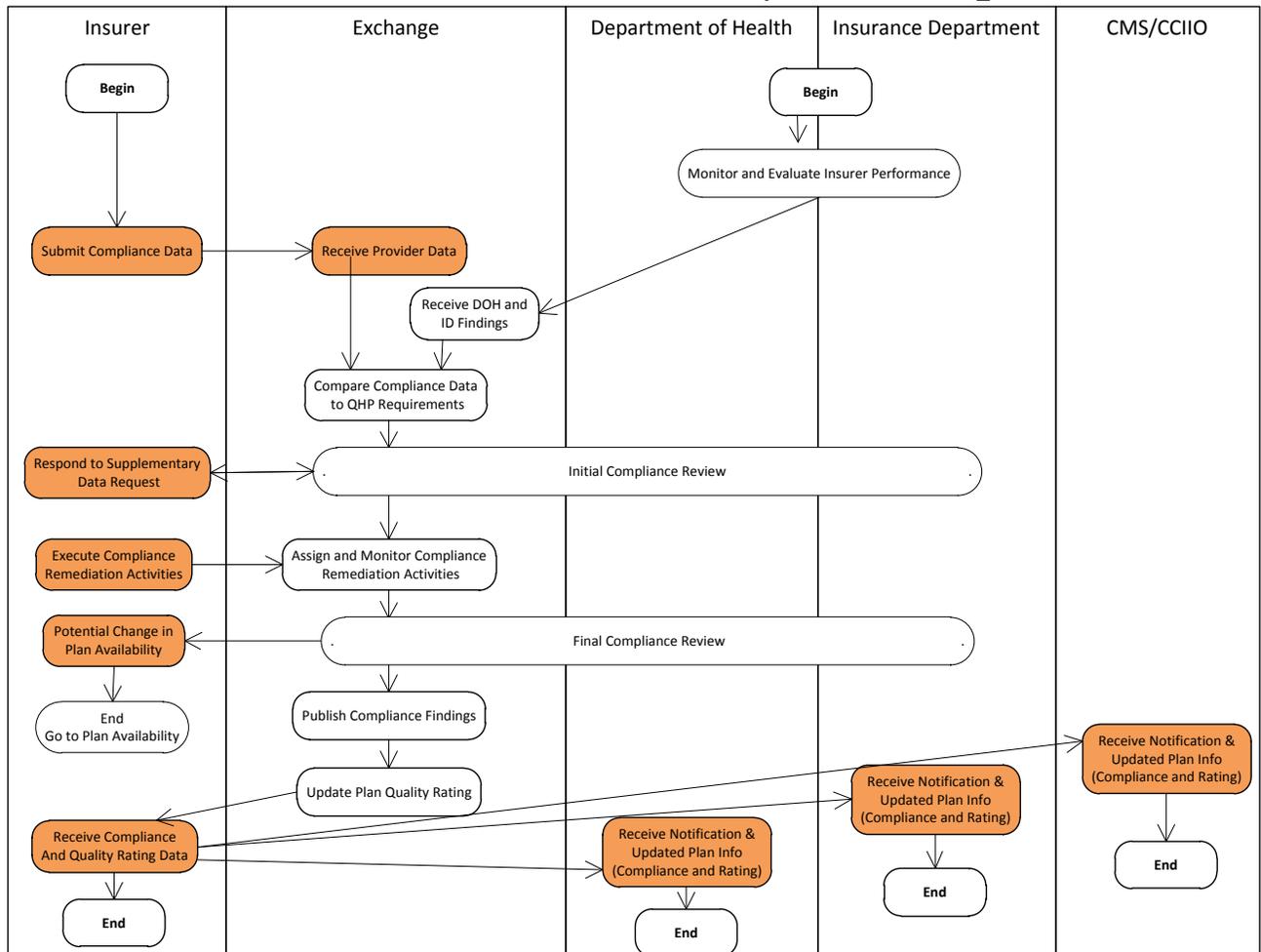
**“To-Be” Maintain Compliance and Operational Plan Data v2 07-07-11\_SERFF**



\* Processes with potential SERFF support are shaded.

**Figure 5- Plan Management: To Be Maintain Compliance and Operational Plan Data**

**“To-Be” Monitor Insurer and Plan Certification Compliance v2 07-07-11\_SERFF**

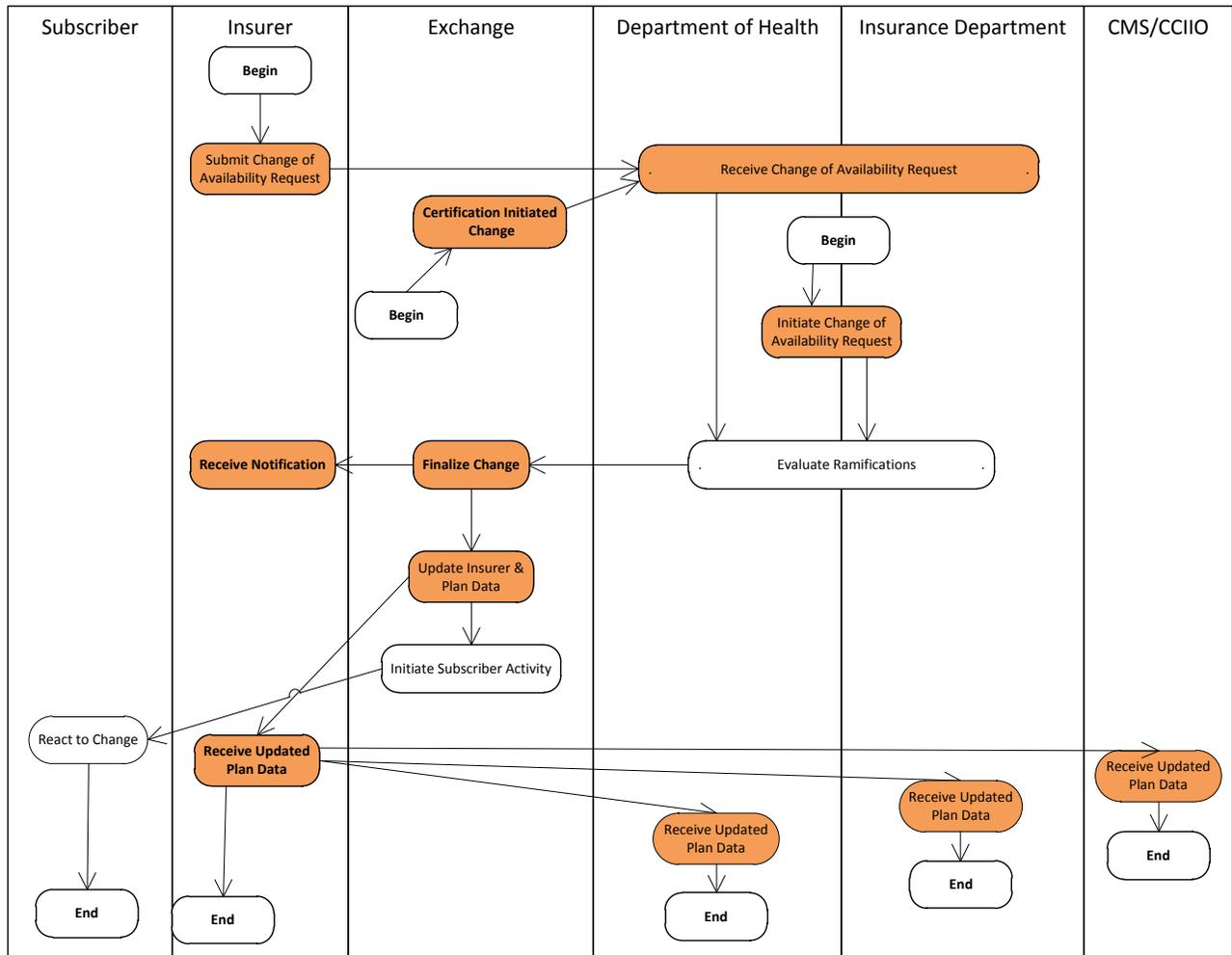


\* Processes with potential SERFF support are shaded.

**Figure 6- Plan Management: To Be Monitor Insurer and Plan Certification Compliance**

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## "To-Be" Change in Plan Availability Process v3 07-07-11\_SERFF

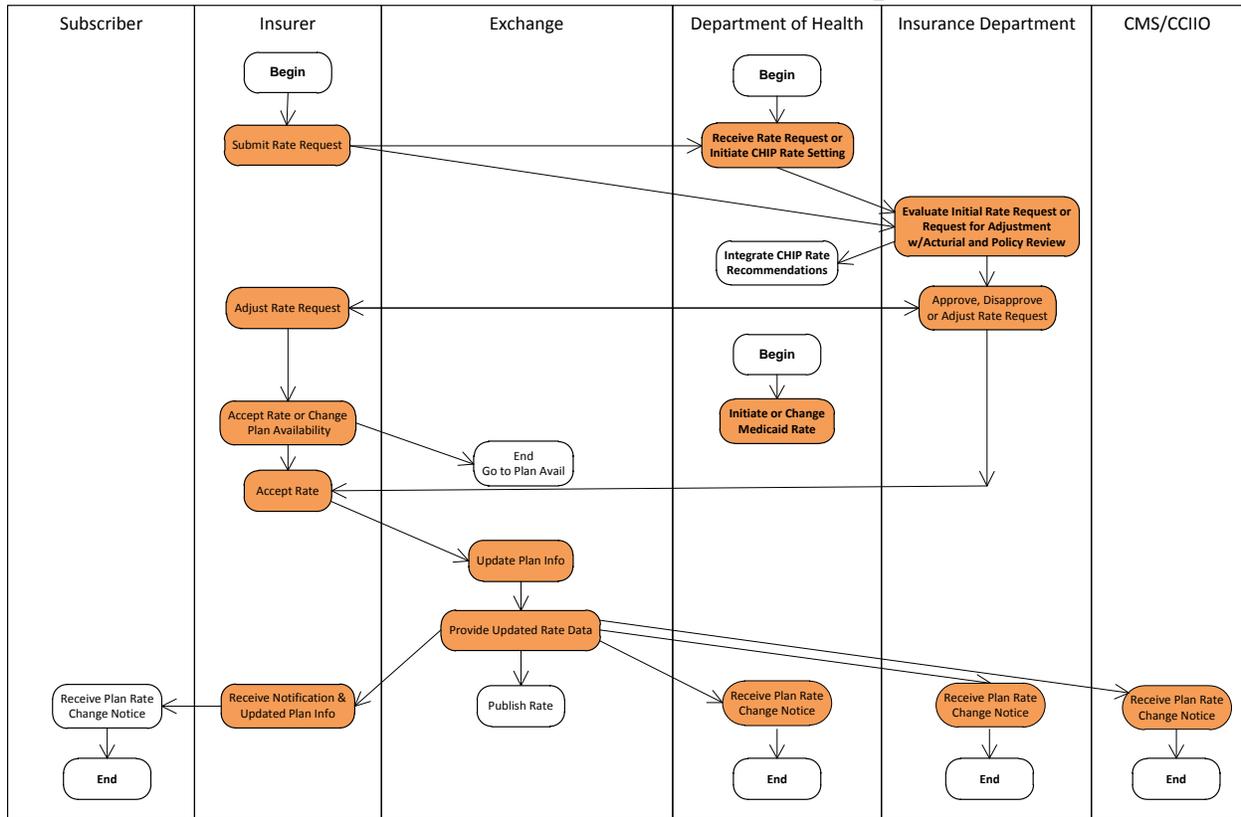


\* Processes with potential SERFF support are shaded.

**Figure 7- Plan Management: To Be Change in Plan Availability**

# DRAFT

**“To-Be” Rate Review Process v4 7-7-11\_SERFF**



\* Processes with potential SERFF support are shaded.

**Figure 8- Plan Management: To Be Rate Review**

## SERFF-Centric Plan Management Concept of Operations

New York's Plan Management "To Be" analysis suggests that SERFF has the potential to provide a significant portion of Exchange Plan Management functionality. A preliminary Concept of Operations for a SERFF-centric Exchange Plan Management solution is outlined below. The purpose of this outline is to demonstrate one approach. We expect that significant refinement of the concept could occur once additional stakeholders assess all possibilities and options.

- 1) **Plan Selection** - SERFF will serve as the system used by all insurers to submit and manage plans considered for QHP status. Insurers will not be direct users of state-based Exchange systems for Plan Management purposes. To this end, insurers will conduct all business through SERFF, such as:
  - submitting form and rate filings
  - revising form and rate filings
  - submitting operational, quality, performance, marketing, and other data
  - receiving communications from states – i.e. QHP qualification decision and quality rating
  - responding to regulatory communications from states
  - sending communications/notifications to states – i.e. notice of plan availability
- 2) **Plan Submission**- Via SERFF, insurers will submit plans for commercial applications as well as for consideration for QHP certification. For the latter, SERFF will allow insurers to flag those plans to be considered for QHP certification and submit additional information this consideration requires. For example:
  - Statement that plan is available outside of the Exchange
  - Details as to how plan meets benefit requirements
- 3) **Rate Review** - Via SERFF, states will submit fixed and state-set rates for public programs like CHIP and Medicaid, and the system will support the processing of these rate filings.
- 4) **Plan Selection and Renewal/Recertification/Decertification** - Plans submitted for QHP consideration will undergo the certification and review in SERFF and be rated in SERFF. Similarly, plans undergoing renewal/recertification will undergo a preliminary review in SERFF.
- 5) **All Plan Management processes** - Since insurers will receive notifications through SERFF – and other parties need to know same/similar information – SERFF will serve as the common communication vehicle for all plan selections/certifications, recertifications, renewals, decertifications, rate changes, and other relevant changes to QHPs.
- 6) **Maintain Compliance and Operational Plan Data** – For this process :
  - Insurers will submit operational and compliance data to SERFF. This includes:
    - i. Provider data
    - ii. Plan descriptions and description updates
    - iii. Quality data
    - iv. Complaint data
    - v. Rate data

## DRAFT

- vi. Geographic service area
  - States will submit operational and compliance data to the Exchange.
  - Operational and compliance data from both insurers and the state will be assembled and reviewed via the Exchange.
- 7) **Maintain Compliance and Operational Plan Data** - Marketing data - insurers will submit marketing data and materials to SERFF. We understand this capacity currently exists.

Figures 9 and 10 illustrate schematically the lifecycle of a Qualified Health Plan (QHP) and a SERFF-centric Exchange Plan Management solution which supports the lifecycle.

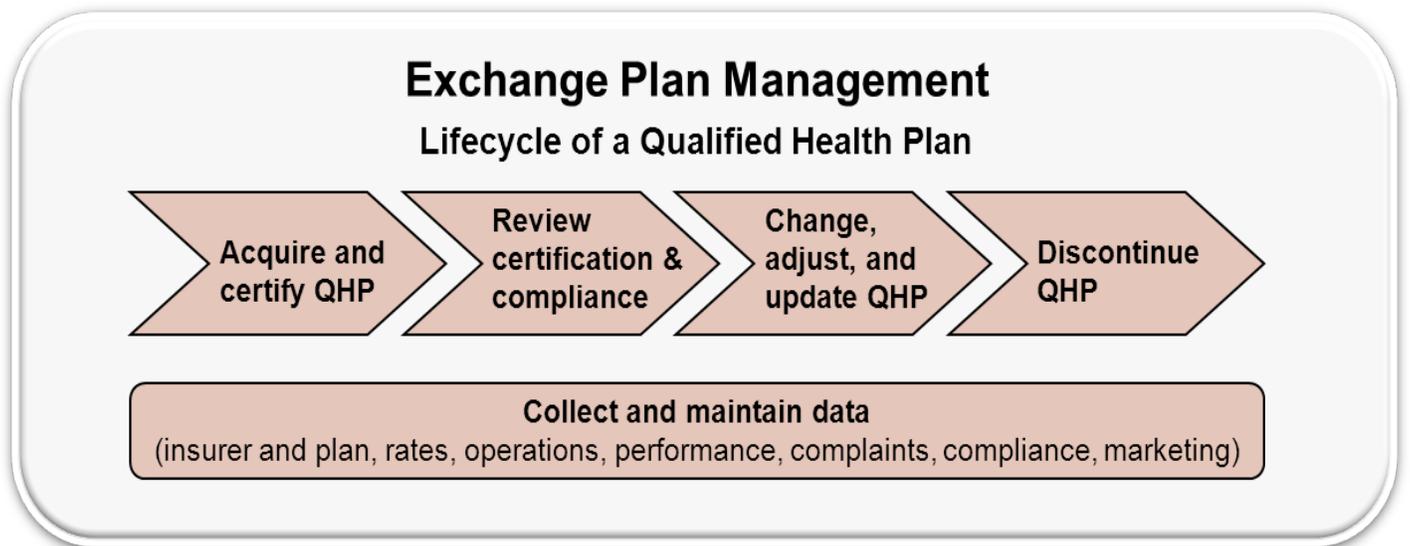
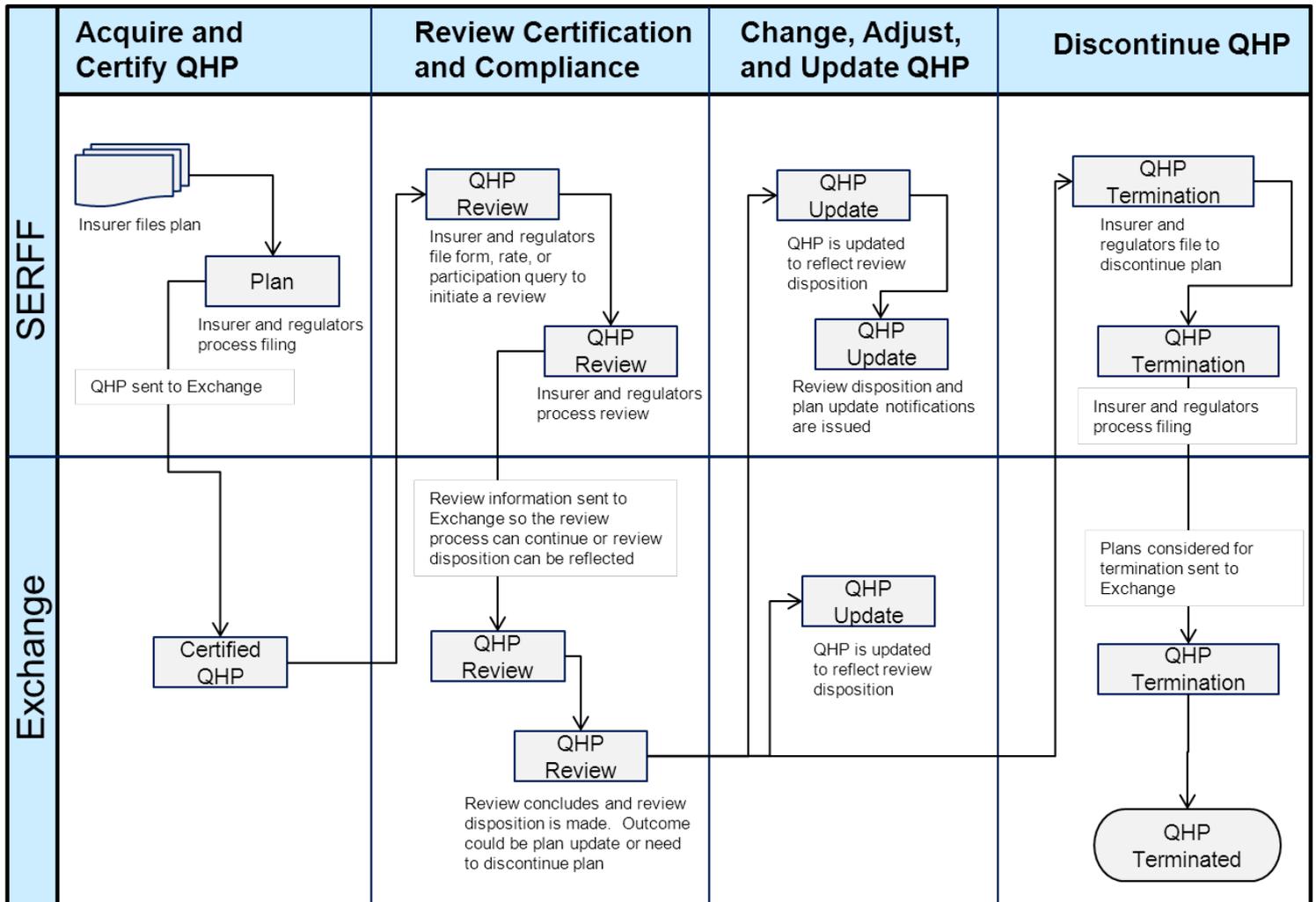


Figure 9



**Collect and Maintain Data**

It is anticipated that data needed for the QHP lifecycle will be recorded in the SERFF and Exchange systems.

## Other Considerations: The Role of HIOS and the Content Management Portal

The Centers for Medicare and Medicaid Services (CMS) have recently developed the Health Insurance Oversight System (HIOS) and the Content Management Portal (CMP) to support a variety of functions related to the collection and dissemination of Insurers’ plan and product information.

HIOS supports several functions, including Rate Review and Plan Finder Product Data Collection. Both State Insurance Departments and Insurers use the site. The Rate Review module is used to support situations where an Insurer requests a premium rate increase at or above a set threshold level (currently 10%). Each request is submitted through HIOS, where it is reviewed and assessed by the appropriate State Insurance Department.

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The HIOS Plan Finder Product Data Collection module is used to collect Insurers' product level data. Both State Insurance Departments and Insurers access the Web service to download templates to support the data collection effort. These templates are filled in with data and uploaded back to HIOS. HIOS provides online reporting tools to review uploaded data. Once the data is loaded within HIOS it is aggregated and made public on a consumer-facing public website.

The Content Management Portal is used by Insurers to provide plan-level pricing/benefits information. Information collected through this tool is displayed on the public-facing HealthCare.gov Plan Finder website.

HIOS and CMP could potentially play a role in supporting Exchange Plan Management and Eligibility and Enrollment given both systems collect information related to an Insurer's product and plan portfolio. However, the picture is unclear as to how HIOS, CMP, SERFF, and the Exchange can coexist in a configuration that is streamlined from a business process perspective. While HIOS currently collects the SERFF plan ID number (if it exists) for HIOS plan-related records, there is little additional system integration. In the absence of more integration, Insurers, State Insurance Departments, and Exchanges could be forced to access multiple systems to input and gain a holistic view of relevant plan and product information. This could lead to excessive data reconciliation and inefficient business processes.

One approach for an optimal design is to use SERFF for all pertinent data collection associated with Insurer product and plan data. If SERFF is enhanced to support the certification process for Qualified Health Plans (QHPs), then it becomes the de facto system of record for a state's QHP inventory. This would allow SERFF to feed HIOS and CMP directly with all official plan data for a State and, thereby, eliminate the need for State Insurance Departments and Insurers to reload the same data into these two systems. Using SERFF this way, also means it can feed data to State Exchanges through a unidirectional data exchange service.

### Open Issues

1. What are CMS long term plans for HIOS and CMP given the evolving nature of State Exchanges?
2. Can SERFF be enhanced to collect all the data elements required by HIOS and CMP? If so, can a data exchange interface between SERFF and HIOS/CMP be developed?
3. What is the optimal design that minimizes the number of systems Insurers and States must access to provide and obtain relevant plan management information? Is it SERFF and HIOS as the industry-facing applications and CMP and Exchanges as the consumer-facing applications? Or is there a more optimal design solution with fewer systems and access points for Insurers and States?
4. Since not all States use SERFF, what is the optimal design to support SERFF users but still support the needs of non-SERFF users.

## Benefits of a SERFF-Centric Plan Management Solution

There are several benefits of a SERFF-centric Plan Management Exchange solution.

### For Insurers

- **Maintain a Single Access Point**- SERFF was developed to streamline and accelerate the way insurers worked with states. Instead of 50+ different ways of processing forms and rates, SERFF provided a single standard way and maximized “speed to market” for insurers and their plans. Expanding SERFF to handle the additional Exchange Plan Management requirements means insurers will not have to interface with multiple, unique state Exchanges. They will continue to have a single portal through which to file all commercial and public plans and continue to realize the benefits the SERFF system provides.

### For Governments and Regulators

- **Alignment with Exchange Goals** – The SERFF system provides a standard, reusable way for insurers and regulators to manage filings, but it also allows for state variations and does not force a ‘one size fits all’ solution. SERFF’s state specific components can be readily tailored by each participating State without the need for centralized approval. Major revisions or enhancements to SERFF are managed through the SERFF Consortium, an unincorporated group of interested states and companies, formed in response to the demand for an automated system.

This mix of standardization and flexibility is a key principle of the Affordable Care Act and state Exchanges in particular. Additionally, leveraging SERFF means insurers and states don’t have to implement new systems for a large portion of Exchange Plan Management. This reduces costs and eliminates barriers to the implementation of Health Insurance Exchanges.

- **Decreased Time to Market**- Incorporating SERFF within Plan Management will simplify Exchange development for the States and should reduce the development time for this business area. This is especially beneficial given the aggressive deployment timeline for state Exchanges.
- **Solution Leveraging**- SERFF is a mature system used by insurers and State regulators for approximately 15 years. Leveraging SERFF will reduce the development effort, exploit proven technology and processes, and reduce the problems that newer systems bring. Additionally, SERFF already has an existing Application Programming Interface (API) which can serve as the central component for SERFF/Exchange data exchange and integration.

## Recommendation

New York believes the potential of SERFF needs to be further explored. We recommend that discussions with NAIC take place to confirm our understanding of the system and to gauge NAIC’s perspective on enhancing the SERFF system to support the New York Exchange and other Exchanges nationally.

Concurrently, discussions with CMS should be initiated to determine their perspective on SERFF/Exchange integration along with the emerging HIOS and CMP systems. Additionally, discussions

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with insurers should also be initiated to evaluate their experience with and opinion of SERFF. Taken together, these discussions will help New York determine if SERFF can indeed play an important part in Exchange implementations – and to what degree.

## Appendix

### New York’s Assessment of SERFF Potential to Support Exchange Plan Management

New York’s Plan Management “To Be” analysis suggests that SERFF has the potential to provide a significant portion of Exchange Plan Management functionality. However, to fully realize this potential it is likely that additional functionality would have to be developed to meet Exchange Plan Management requirements. The table below provides a preliminary “gap analysis” of how well SERFF currently meets anticipated Exchange Plan Management functionality. This “gap analysis” will be refined as more input is gathered from SERFF users and developers.

**Table 1: Preliminary SERFF/Plan Management Gap Analysis**

#	Group	Requirement	Does SERFF currently meet this requirement?
1	Plan Selection	Allow insurers to identify filings for consideration for QHP status	Partially - SERFF was recently enhanced to correctly report PPACA-related filings to the states.
2	Plan Selection	Allow insurers to record federally required information for plans considered for QHP status	No, except in cases where federal requirements overlap existing requirements
3	Plan Selection	Allow insurers to record state required information for plans considered for QHP status	No, however SERFF does have the capacity to support state-specific filing requirements.
4	Plan Selection	Allow insurers, states, the federal government, and Exchanges to process plans considered for QHP status	Partially – SERFF does support the workflow involved in submitting, reviewing, and disposing of filings and rate requests. It’s uncertain if the workflow will also support processes specifically needed to plans considered for QHP status.
5	Plan Selection	Allow insurers and regulators to collaboratively process new policy filings	Yes
6	Plan Renewal / Recertification / Decertification	Allow insurers, states, the federal government, and Exchanges to process renewal, recertification, and decertification processes for QHPs	Partially – We understand that SERFF currently supports these workflows. It’s uncertain if the workflows will also support processes specifically needed for QHP plans.

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#	Group	Requirement	Does SERFF currently meet this requirement?
7	Plan Renewal / Recertification / Decertification	Allow insurers and regulators to collaboratively process policy reviews	Yes
8	Compliance and Operational Data	Allow insurers to submit and update provider data, plan descriptions, quality data, complaints, rate data, and geographic service area.	Partially – Insurers currently record some of this data in SERFF. It’s uncertain if SERFF supports the submission of all these types of operational and compliance data.
9	Marketing Data	Allow insurers to submit and update marketing data.	Partially – We understand that SERFF currently accepts marketing plans and materials as attachments. A review of this capacity will be needed to determine if all media are accepted.
10	Plan Certification Compliance	Allow insurers, states, the federal government, and Exchanges to initiate compliance reviews for QHPs	Uncertain – We understand that SERFF currently supports various filings. It’s uncertain if plan certification reviews are supported.
11	Plan Availability	Allow insurers, states, the federal government, and Exchanges to process plan availability reviews for QHPs	Uncertain – We understand that SERFF currently supports various filings. It’s uncertain if plan availability reviews are supported.
12	Rate Review	Allow insurers to submit rate requests	Yes
13	Rate Review	Allow states and the federal government, and Exchanges to process rate requests and reviews for QHPs	Partially – Insurers currently submit rate filings in SERFF. It’s uncertain if SERFF will support any new processes specifically needed for QHPs.
14	Rate Review	Allow states to submit fixed and state-set rates for public programs like CHIP and Medicaid and support the processing of these rate filings.	No
15	Rate Review	Allow insurers and regulators to collaboratively process rate filings	Yes
16	Data	Allow states, the federal government, and Exchanges to get data from SERFF.	Yes – SERFF
17	Data	Accept data from states, the federal	Partially- the current SERFF API can capture

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#	Group	Requirement	Does SERFF currently meet this requirement?
		government, and Exchanges (Ex. Plan updates from Exchanges, rating levels).	data from external systems. Current thinking is that SERFF Exchange data transfer would be unidirectional from SERFF to Exchange only.
18	Data	Communicate key outcomes or plan changes to insurers, states, the federal agencies, and Exchanges.	Partially – SERFF has a variety of ways to communicate – i.e. notes to reviewers and insurers, objection and response letters. Additional communication mechanisms may be needed to communicate with parties who are not currently users of the SERFF system.

### SERFF-Centric Plan Management Development and Implementation Approach

High-level development and implementation considerations for a SERFF-centric Plan Management solution include:

#### On Exchange Side

- Development of a SERFF Data Exchange service which utilizes the SERFF API and service to enable data downloads from SERFF to the Exchange.
- Development of a data model and data repository to store SERFF-originating data to support Plan Management.

#### On SERFF Side

- As outlined in Table 1 above, expansion of SERFF functionality to close Plan Management feature gaps.
- Expansion of the SERFF data model and interface to accommodate collection of insurer/plan data for public/commercial health plans accessible through State Exchanges.
- Identification of the data elements from the expanded SERFF data model that are relevant to Exchange and development of an API extension that provides this data to Exchanges upon Exchange service API calls.

## Other Considerations

Further consideration must be given to the following questions and issues as the SERFF/Plan Management integration approach is explored.

- 1) To what extent and when does the Exchange system need to store the transactions happening in SERFF? When a transaction is initiated? When it's concluded? All the steps in between? Where does the Exchange land on the spectrum between data availability (i.e. web service) versus data persistence (i.e. data interface)?
- 2) What about Paper? - Less than 2% of NY accident and health filings are paper based and do not use SERFF. These are filings that come primarily from very small insurers and those who infrequently file. Medical-related filings, however, very regularly are submitted electronically through SERFF. Although paper filings are rare, consideration must be given to this occurrence and how to handle. There is also need to understand the extent to which back-and-forth transactions happen outside of the SERFF system. Is there a paper trail which complements the electronic record and could SERFF's ability to track paper filings be used to document this process? Depending on answers, may need to add a requirement of SERFF to put in place a Document Management solution and / or to expand in areas not handled by the system and forcing parties to use paper.

**ATTACHMENT 12**

**BACKGROUND INFORMATION ON NEW YORK HEALTH INSURANCE  
EXCHANGE PLAN MANAGEMENT JAD SESSION**

**ATTACHMENT 13**

**DRAFT BENEFIT COMPARISON BENCHMARKS AND COST SHARING  
CHARTS**

***SEE THE DOH WEBSITE RFP FACE PAGE FOR ATTACHMENTS 12 AND 13***