



TOWN OF NORTH HEMPSTEAD

REQUEST FOR PROPOSALS

FOR

Third Party Administrator for Workmen's Compensation Claims and Services

**TNH058-2015
TOWN OF NORTH HEMPSTEAD**

**220 Plandome Road
P.O. Box 3000
Manhasset, NY 11030-2327
(516) 869-6311**

***Supervisor*
Judi Bosworth**

***Town Board*
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Angelo P. Ferrara
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**Issue Date: 11/5/2015
Proposals Due: 12/3/2015
RFP No. TNH058-2015**

TOWN OF NORTH HEMPSTEAD

REQUEST FOR PROPOSALS

I. INTRODUCTION

A. General Information

The Town of North Hempstead is, through the Finance Department, requesting proposals from private vendors interested in administering management and claims administration for all workers' compensation claims incurred by employees of the Town of North Hempstead. The Requestor, the Town of North Hempstead, is a self-insured municipal corporation, and wishes to enter into an agreement for a term of three (3) year with the option to be extended for two additional years.

1.3. Statement of Purpose

The Town of North Hempstead employs approximately 400 full time employees and 400 part time/seasonal employees (generally hired for summer months).

The scope of this RFP is to administer compensation claim and case management services for the eligible employees of the Town of North Hempstead. This will include third party claims administration and other services that the Requestor believes will benefit the Town with respect to reducing costs associated with providing workers' compensation benefits.

The Requestor expects proposals to provide innovative and effective ways to control costs and provide an efficient program. Vendors should provide a complete description of their proposed services and components detailing how they will benefit the Town's Program.

With respect to the claims handling, the Requestor requires all proposers submit separate pricing for both the new claims with dates of accident after the effective date of the program and the open "tail" claims which they will receive. Further, the Requestor requires all proposers submit a pricing plan that provides for case management for both the prospective claims and for the transferred claims.

The following conditions apply to this RFP:

- There is no express or implied obligation for the Town to reimburse responding firms for any expenses incurred in preparing proposals in response to this request, and the Town will not reimburse such expenses.
- To be considered, one printed copy and one copy in electronic format of the proposal must be received by the Procurement Division at 220 Plandome Road, Manhasset, New York 11030 by 11:00 a.m on December 3, 2015. The Town reserves the right to reject any or all

proposals submitted.

- During the evaluation process, the Town reserves the right, where it may serve the Town's best interest, to request additional information or clarification from a proposer, or to allow corrections on non-material errors or omissions or waive non-material requirements. At the discretion of the Town, firms submitting proposals may be requested to make oral presentations as part of the evaluation process. If conducted, oral presentations will be scheduled with each proposer being considered.
- The Town reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected.
- Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Town and the firm selected.
- It is anticipated the selection of a firm will be completed on December 2015. Following notification of the selected firm it is expected an agreement will be executed between both parties by January 1, 2016.
- The Town reserves the right, as best serves its interest, to change any of the projected dates set forth in this RFP, including, but not limited, to the due date for receipt of proposals.

The Town reserves the right to reject all proposals.

B. Subcontracting

No subcontracting shall be permitted without the express permission of the Town.

II. SCOPE OF SERVICES

Requirements

A. General

In order to facilitate the REQUESTOR'S evaluation of (a) the quality of comparable services provided by interested vendors, (b) the qualifications and experience of key managerial and technical staff, and (c) the timeliness and efficiency with which the services will be provided, each interested vendor must submit a detailed vendor or company description:

1. Written descriptions of up to three projects having a scope, size and complexity comparable to those of the REQUESTOR'S project described herein (public, self-insured entities are preferred).

2. Resumes of key managerial and/or technical staff to be assigned to the process, along with descriptions of the backgrounds (licenses, educational background, etc.) of those who the VENDOR proposes will administer the Town's workers' compensation claims, and manage the protocols and processes that are being put into place.
3. A detailed project plan and schedule that, at a minimum:
 - a. Identifies each major phase and milestone in the overall development and installation of the services, beginning with receipt of Notice to Proceed from the REQUESTOR and ending with completion and acceptance;
 - b. Identifies any and all services, software and/or hardware (if any required) over and above that which has been identified in this solicitation, that the offer or deems to be necessary and required for the successful completion of the project described herein. All pricing information for such additional services, hardware and/or software shall be given in an addendum to the basic Price Proposal as required herein.
 - c. Provides a pricing schedule for any and all work that may need to be completed that is outside the scope of the RFP or contract.
4. A contact list for five clients (preferably other municipalities within the New York metropolitan area) from whom the interested vendor has installed and configured identical or nearly identical third party administration for workers' compensation claims within the past five years. The client contact list will contain the client's business name, the name of the client's project manager for that client's case management system, the project manager's telephone number and e-mail address.
5. Provide a summary of your company describing your experience in claims administration and your overall philosophy for successful claims management. Provide specific examples of the success of your claims philosophy, preferably with municipal clients.
6. Provide resumes of the personnel who would be assigned to the account for all areas of expertise (i.e. Claims Manager, Legal Counsel, Senior Management, etc.)
7. Provide a listing of additional fees over and above the standard claims processing protocols, including but not limited to, the cost of medical reviews, pharmacological reviews, additional investigations into special funds monies, additional pursuit of third party liens, additional FICA reimbursement work, etc. Please provide a list of all the personnel titles that will be doing this work, whether the work is a flat fee or whether it is an hourly charge (by title of person completing the work) and the actual cost. If the cost is available by hourly charge and by flat fee, please provide both options.
8. Provide a statement as to how the Town can utilize your claims processing initiatives in order to improve all aspects of risk management with the Town.
9. Provide the Town with solutions on how to decrease claims experience i.e. supervisor training, safety training, site risk analysis.

Interested VENDORS are advised that, with respect to the evaluation of competing proposals, the REQUESTOR will ascribe greater significance to documented, successful, and recently completed projects of comparable scope and complexity with public entities.

B. New Claims Requirements

1. Provide a summary of how a claim is handled by your company during the first 48-hours after receipt by your office.
2. Describe the various cost containment programs your company has utilized in other municipal accounts. List specific examples of where the program was utilized and the success of the cost containment.
3. Describe what procedures your company has in place to minimize the Town's exposure on large, catastrophic claims.
4. Describe the overall makeup of the claims processing unit that would be assigned to the Town's program.
5. Describe how your company reviews and processes medical bills.
6. Has your company implemented any Medical Management or Managed Care Programs for other clients in New York City, Nassau or Suffolk Counties? If so, please describe.
7. Describe your company's methodology for determining and setting appropriate reserves for workers' compensation claims. How often are these reserves reviewed?
8. Provide your company's policies and procedures on the automatic close out of workers' compensation claims with no activity.

C. Open "Tail" Claims Requirements

Describe in detail how your company would handle the transition of Open Claims and all deferred payment cases. Describe the potential benefits to the Town in assuming the responsibility for these open claims currently administered by the previous administrator.

D. Communication and Computers

1. Provide a description of your Claims Management Computer System.
2. Does the Town have the capability to access claims information through a remote interface with your computer system? If so, please describe in detail.
3. Will the Town or any of its offices have to make special technological arrangements to interface with the system? What kind of arrangements and what level of expertise will be required to do the work?
4. Provide sample reports of the standard reports available to the Town.

E. Representation and Other Requirements.

1. The Town reserves the absolute right to terminate the services at any time.
2. The successful proposer shall maintain full and complete books and records of accounts in accordance with accepted accounting practices and such other records as may be prescribed by the Town Comptroller, including a contemporaneous record of work indicating in brief summary, a description of the work performed. Such books and records shall be retained for a period of six (6) years and shall at all times be available for audit and inspection by the Town Comptroller, the Town's auditors or a duly designated Town representative.

3. The successful proposer will promptly provide a response to any requests from the Town's Records Access/FOIL Officer.
4. The successful proposer shall also comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time, and shall comply with the terms and conditions of the Business Associate Agreement attached to the Town's standard terms and conditions included in this RFP Attachment C.
5. The successful proposer shall, to the fullest extent provided by law, defend and indemnify and save harmless the Town from claims, suits, action, damages and costs of every nature, kind, name and description resulting from the negligent performance of the services. Such defense and indemnity shall not be limited by reason of enumeration of any insurance coverage provided by the firm. Negligent performance of service shall include, in addition to negligence founded upon tort, negligence based upon the firm's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing shall create or give third parties any claim or right of action against the firm or the Town beyond those provided by law.
6. The successful proposer shall procure and maintain during the term of any agreement resulting from this RFP, with a carrier holding an "A" rating from AM Best Company, or its equivalent, and furnish certificates of insurance evidencing its procuring, the following insurance policies:
 - (a) a policy of professional liability insurance having a general aggregate limit of liability of at least \$2,000,000.00.
 - (b) Commercial general liability insurance covering the liability of the firm, and indemnifying and holding harmless the Town, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of the services with a combined single limit (bodily injury/property damage) of One Million Dollars (\$1,000,000). The Town shall be named as additional insured on said policy;
 - (c) Workers' compensation insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 57(2); and
 - (d) Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 220(8).

III. SCOPE OF SERVICES

The Administration of Workers' Compensation Claims services offered by the firm's proposal should specifically address the following:

1. General Duties

All companies who submit proposals must be prepared to meet the following Scope of Services:

1. Provide claims administration services for workers' compensation cases.
2. Maintain files and records for all claims files including adjuster claim notes.
3. Maintain records necessary for the defense of the claims at Workers' Compensation Board hearings.
4. Aggressively pursue relief from the Special Funds (i.e.: WCL §§15-8, 25-A, 14-6, etc.) and identify, and conduct, subrogation activities and pursue third party liens.
5. Provide necessary notification to all excess carriers on claims which threaten the self-insured retention levels.
6. Provide claim loss and management reports on a monthly, quarterly and annual basis. These reports must be issued on both a paid and incurred basis. Executive summaries must also be provided as requested by the Town.
7. Provide safety/risk management training as required or requested by the Town.

2. Claims Services

1. Examine and review all workers' compensation claims submitted. Create and maintain a file for each claim. Determine, analyze and evaluate the claim, determine validity and compensability, and advise the Town of your findings.
2. Estimated value for each case and set the appropriate reserve.
3. Conduct early intervention and preliminary investigations on all claims to determine their validity.
4. Ensure that all submitted claims for medical services and medications meet authorized WCL fee schedules.
5. Utilize appropriate medical personnel to review claimant's treatment plans and ensure that the treatments are related to the claimed injury.
6. Review all prescription medications claimed by the employee or former employee to make sure that the prescriptions paid by the Town are related to the claimed injury.
7. Prepare and file all required forms with the New York State Workers' Compensation Board, and all forms relating to other local, state or federal requirements, including, but not limited to HIPAA and the Health Care Reform Act of 2000 (HCRA).
8. Regularly contact and maintain communication with the Attorney representing the Town at Workers' Compensation Board hearings. Attorney's representing the Town will be selected and/or approved by the Town.
9. Prepare the files for the defense of the claim at Workers' Compensation Board hearings.
10. Schedule independent medical exams when necessary and assign medical case management when necessary.
11. Review claims to determine if additional investigations such as surveillance are necessary and assign such investigation with Town approval.

12. Provide monthly quarterly and annual reports as requested by the Town Comptroller's office, and/or department of Human Resources.
13. Provide the Town with budgetary projections on the cost of the workers' compensation program.
14. The vendor must also be prepared to provide recommendations to the Town, including where appropriate, financial and actuarial analyses, for lump-sum settlements of workers' compensation cases. The Town may choose to undertake a program to seek lump sum settlements of long term claims under WCL §32.
15. The vendor must submit a proposal for the review of all existing cases in order to design a comprehensive plan for lump sum settlements in appropriate cases. Such proposal's cost should be included in an addendum to the price proposal sheet.
16. Act as training agent to Town personnel providing a monthly meeting to discuss Town claims and provide direction and recommendations for reducing losses.

IV. FEE STRUCTURE

1. Please provide a detailed cost proposal for all proposed services to be provided to the Town of North Hempstead.
2. Please identify all services which are included in the basic fee and those services which would have an additional charge.

V. TIME REQUIREMENTS

A. Proposed Calendar

The following is a list of key dates up to and including the date proposals must be submitted:

RFP issued	November 5, 2015
Due Date for proposal submissions	December 3, 2015

B. Notification and Contract Dates

Contract date	January 1, 2016
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- C. The Town reserves the right, as best serves its interest, to change any of the projected dates set forth in this RFP, including, but not limited to, the due date for receipt of proposals.

VI. PROPOSAL REQUIREMENTS

A. General Requirements

1. Inquiries

Written inquiries concerning the RFP and its subject must be made to Maria Gomes, Procurement Coordinator, at contracts@northhempsteadny.gov, by no later than 11/16/2015, noon time. Answers to inquiries will be posted to the Town's website by no later than 11/19/2015, noon time, and distributed to potential proposers.

2. Submission of Proposals

The following material is required to be received by the Due Date for a proposing firm to be considered.

a. The Proposal shall include:

i. Title Page

Title page showing the RFP subject; the firm's name; name, address and telephone number of the contact person; and the proposal date.

ii. Technical Proposal

A signed letter of transmittal stating the proposer's understanding of the services to be performed, a statement why the firm believes it to be best qualified to perform the engagement, the firm's past history in providing such services for municipalities, biographical information of those personnel that would provide services to the Town under an agreement and **a statement that the proposal is a firm and irrevocable offer. Such technical proposal must include, in addition to the above, all information and documentation described in Section II(B) above.**

iv. Completed price proposal attached as Attachment A

v. Fully completed Proposer's Qualification Statement attached as Attachment B, including the Statement of Understanding, Disclosure Statement, Non-Collusive Proposal Certification, Insurance Certification and Acknowledgement of Receipt of Addenda. The contract will be executed by the Town and the selected candidate only after an evaluation of each proposal and a selection of a firm.

vi. Statement that the proposer accepts and agrees to the form

contract contained in Attachment C, including the Business Associate Addendum included therein, and acknowledging that these terms and conditions will be supplemented based on the proposals received and cannot be viewed by the proposers as the exclusive terms that the Town will require in any contract to be entered into.

- b. The completed proposal should be sent to the following address in a sealed envelope marked "Request for Proposals: Employee Assistance Program (EAP) Services - TNH058-2015.

Maria Gomes, Procurement Coordinator
Town of North Hempstead
220 Plandome Road
Manhasset, New York 11030

B. Guidance on Completing a Proposal Submission

The purpose of a proposal submission is to demonstrate the qualifications, competence and capacity of the firms seeking to provide services to the Town. As such, the substance of proposals will carry more weight than the form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement.

The Technical Proposal should address all points outlined in the RFP. The Technical Proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the RFP requirements.

VII. SELECTION OF FIRM

Proposal elements, as described above, will be reviewed and evaluated for completeness and responsiveness according to pre-determined standards and selection criteria. Proposals will be deemed responsive only if the Proposer responds to and meets all of the requirements of this RFP. Proposers may be invited for interviews to discuss project requirements and proposal elements in more detail should the selection committee request such. The Town reserves the right to award all or any part of this project, and to waive any technical irregularities or omissions, or to cancel this RFP and solicit new proposals if, in the Town's sole judgment, the best interests of the Town will be served. The Town has an interest in holding in-person meetings with personnel of the successful provider on a regular basis. In order to evaluate proposals with consideration toward accomplishing this goal, proposer, whether located in Nassau or Suffolk counties, should identify staff based within Nassau or Suffolk counties.

The selection committee will evaluate each proposal and use the following for scoring each submission:

1. Contract Requirements and Proposed Solution **25%**

- a. Overall responsiveness of the proposal;
- b. Demonstration of a clear understanding of the requirements portion of the RFP;
- c. Clear description of the scope of work needed to satisfy the defined RFP requirements,
- d. Acceptability and efficacy of proposed analysis, management and implementation methods and procedures and supporting systems for ongoing project management and implementation support, previous engagements of similar scope and quality, description of recommendations and alternative approaches that the Town might use to improve its management process including rationale for the recommendations or alternative approaches.

2. Proposer Profile: Organization, Capacity, Staffing, Resumes

25%

Complete substantiation of the organizational structure and capacity to provide and support the proposed services defined in Section 1, Number 2, Scope of Services, resumes of the proposed personnel (quality / demonstrated skills of proposed personnel); clear description of potential resource utilization methods and approach.

3. Related Experience

25%

Prior public sector experience in workers compensation claims management, qualifications and related experiences of the Proposer including references, organizational and technical capacity, and outcome/results of services provided to other similar clients of similar size; comprehensive description of why the Proposer can perform the tasks defined in the RFP.

4. Cost of Overall Project

25%

The Town will consider any other relevant factors as determined by the selection committee.

5. Selection Process

Responses will be evaluated by a Selection Committee. The Town and/or its Selection Committee reserve the right to:

1. Reject any and all proposals
2. Request additional information as the Town and/or its Selection Committee may deem necessary
3. Waive any and/all nonmaterial irregularities pertaining to this selection and/or submission of responses
4. Disqualify any and/or all firms and reject any and/or all Proposals for failure to comply with this RFP or to promptly provide additional requested materials or information

5. Choose a firm other than the lowest bidder.
6. Cancel this RFP

Respondents will be notified if they have been selected for further consideration. The Town reserves the right to interview, or call for a presentation from any firm submitting a response. The Town also reserves the right to discuss the Proposals with any or all respondents. Nothing in this RFP is intended to be, nor should anything herein be construed as an offer of engagement.

All materials submitted in accordance with this RFP will become and remain the property of the Town and will not be returned. All Proposals shall be considered public records, but may be deemed and treated as “closed” or “exempt” by the Town, at the sole discretion of the Town, pursuant to the Town’s understanding and interpretation of the laws of the State of New York. All proposal material may become open records. The Town cannot guarantee confidentiality of any materials during the evaluation process or at any other time. Thus, Proposals and communications exchanged in response to the RFP should be assumed to be subject to public disclosure.

Each respondent, in seeking, receiving or possessing this RFP and/or in submitting a response does release, indemnify and hold the Town and its various employees, representatives and agents harmless from and against all claims and demands of any and all loss, cost, damage, or liability of whatever nature, which may be asserted against or imposed against the Town as a result of issuing this RFP, making any revisions thereto, conducting this selection process and subsequent negotiations, and making a final recommendation and/or entering into a contract. The Town of North Hempstead will not be liable for nor pay costs incurred by the respondent in preparation of a response to this RFP or any other costs involved, including travel and time for interviews.

The Town may also take into account any other factors it deems necessary in evaluating each proposal.

A. Right to Reject Proposals

Submission of a proposal indicates acceptance by the firm of the conditions contained in the RFP unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Town and the firm selected. The Town reserves the right without prejudice to reject any or all proposals.

B. Minimum Service

The selection of a Consultant will not guarantee any minimum amount of services under the contract.

ATTACHMENT A

PRICE PROPOSAL

Please provide on a separate page the fee proposal your firm proposes to charge for the Services described in this RFP.

The undersigned further stipulates that the information in this attachment and the proposer's fee proposal is, to the best of its knowledge, true and accurate.

Signature

Name of Proposer

Title of Person Signing

Sworn to and subscribed on

this _____ day of _____, 20____

(Notary Public)

ATTACHMENT B

BIDDER'S QUALIFICATION STATEMENT

INSTRUCTIONS:

The Bidder's Qualifications Statement consists of the following documents:

1. Statement of Understanding;
2. Disclosure Form;
3. Noncollusive Bidding Certification;
4. Certification of Insurance (*to be completed by an authorized insurance agent*);
5. Acknowledgement of Receipt of Addenda Form.

and

Please complete **ALL FIVE** forms and submit with the Bid/Proposal.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY BID/PROPOSAL THAT FAILS TO INCLUDE COMPLETE AND ACCURATE ORIGINALS OF ALL FOUR FORMS INCLUDING ALL APPROPRIATE ACKNOWLEDGMENT(S) AND BEARING THE SIGNATURE OF A NOTARY PUBLIC.

STATEMENT OF UNDERSTANDING

By signing in the space provided below, the undersigned certifies, under penalty of perjury, as follows:

1. I am duly authorized to submit this Bid/Proposal on behalf of the below listed sole proprietorship/company/partnership/corporation.
2. I have read and understands all terms and conditions pursuant to this RFP.
3. I have the capacity to and will abide by all terms and conditions pursuant to this RFP.
4. I agree to accept payment in accordance with the requirements of the RFP; and
5. I agree that the proposed submitted to the Town shall be irrevocable and that I will, if the proposal is accepted, enter into a contract with the Town of North Hempstead pursuant to the terms and conditions set forth in the RFP.
6. I certify that my sole proprietorship/company/partnership/corporation will carry all types of insurance specified in the contract.

I further stipulates that the information in this Proposal is, to the best of its knowledge, true and accurate.

Signature

Name of Bidder

Title of Person Signing

Sworn to and subscribed on

this _____ day of _____, 20____

(Notary Public)

DISCLOSURE FORM

The signatory of this questionnaire certifies under oath the truth and correctness of all Statements and of all answers to interrogatories hereinafter made.

Provide answers to each of the following and supporting documentation, where necessary:

1. **Adverse Equal Opportunity Determinations:** Identify all adverse determinations against your Company/Corporation/Partnership, or its employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints concerning violations of state, Federal or municipal equal opportunity laws or regulations.

2. **Convictions and Unscrupulous Practice:** Has your Company/Corporation/Partnership, or any of its employees present or past, or anyone acting on its behalf, ever been cited for unscrupulous practice, or been convicted of any crime or offense arising directly or indirectly from the conduct of your Company/Corporation/Partnership's business, or has any of your Company/Corporation/Partnership's officers, director or persons exercising substantial policy discretion ever been convicted of any crime or offense involving business/financial misconduct or fraud? If so, describe the convictions and surrounding circumstances in detail.

3. **Pending or Threatened Actions/Suits:** Describe any past or present action, suit, proceeding or investigation pending or threatened against your Company/Corporation/Partnership including, without limitation, any proceeding known to be contemplated by government authorities, private parties, or current or former clients.

4. **Criminal Misconduct:** Has your Company/Corporation/Partnership, or any of its employees, or anyone acting on its behalf, been indicted or otherwise charged in connection with any criminal matter arising directly or indirectly from the conduct of your Company/Corporation/Partnership's business which is still pending, or has any of the Company/Corporation/Partnership's officers, directors or persons exercising substantial policy discretion been indicted or otherwise charged in connection with any criminal matter involving business or financial misconduct or fraud which is still pending? If so, describe the indictments or charges and surrounding circumstances in detail.

5. **Conflicts of Interest:** disclose any of the following, and describe any procedures your Company/Corporation/Partnership has, or would adopt, to assure the Town that a conflict of interest would not exist in the future):

(a) Any material financial relationships that your Company/Corporation/Partnership or any Company/Corporation/Partnership employee has that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

(b) Any family relationship that any employee of your Company/Corporation/Partnership has with a member, employee, or official of the Town or that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

(c) Any other matter that your Company/Corporation/Partnership believes may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

6. **Financial Disclosure:** Submit with this Disclosure Statement Form, any one of the following three items:

- (a) a financial statement, prepared on an accrual basis, in a form which clearly indicates: Bidder's (1) assets, liabilities and net worth; (2) date of financial statement; and (3) name of firm preparing statement.
- (b) a letter of credit reference from a recognized bank or financial institution; or
- (c) a certified copy of a credit report from a recognized credit bureau, such as Dun and Bradstreet or TRW.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY PROPOSAL THAT FAILS TO INCLUDE COMPLETE DISCLOSURE STATEMENT FORM.

Dated at _____, this _____ day of _____, 20____.

(Signature, if Individual)

By: _____ (Seal, if corporation)

(Signature)

Print Name: _____

(Legal Business Name of Company/Partnership/Corporation)

Print Title: _____

[MANDATORY AFFIDAVIT(S) AND ACKNOWLEDGMENT APPEARS ON FOLLOWING PAGE]

-----**(Affidavit for Individual)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is an authorized representative of the Bidder/Proposer; b) he/she has read all statements and answers to this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) the attached letter of credit/certified copy of credit report or financial statement, taken from his/her books, is a true and accurate statement of his/her financial condition as of the date thereof; and b) all of the foregoing qualification information is true, complete, and accurate.

-----**(Affidavit for Partnership)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is a member of the partnership of _____, b) he/she has read all statements and answers this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) he/she is familiar with the books of said partnership showing its financial condition; c) the attached letter of credit/certified copy of credit report or financial statement, taken from the books of said partnership, is a true and accurate statement of the financial condition of the partnership as of the date thereof; and d) all of the foregoing qualification information is true, complete and accurate.

-----**(Affidavit for Corporation)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is _____ of _____ (Full Legal Name of Corporation); b) he/she has read all statements and answers this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) he/she is familiar with the books of said corporation showing its financial condition; c) the attached letter of credit/certified copy of credit report or financial statement, taken from the books of said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof; and d) that all of the foregoing qualification information is true, complete and accurate.

-----**(Acknowledgement)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that he/she is _____ of _____ (Name of Bidder) that he/she is duly authorized to make the foregoing affidavit and that he/she makes it on behalf of () himself/herself: () said partnership; () said corporation.

Sworn to before me this _____ day of _____, 20_____, in the Town of _____, State of _____.

(Notary Public)

My commissioner expires:

NONCOLLUSIVE PROPOSAL CERTIFICATION

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

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

I, hereby certify under the penalties of perjury that the foregoing statement is true.

By: _____	_____
Proposer's Signature	Date
_____	_____
Print Name	Title
_____	_____
Legal Name of Individual or Business Name of Company/Partnership/Corporation	Proposer's Federal Tax Identification # (Do Not Use SS#)
_____	_____
Address	Email Address

[MANDATORY ACKNOWLEDGMENT APPEARS ON FOLLOWING PAGE]

-----**(Acknowledgment for Individual)**-----

STATE OF)
) ss.:
TOWN OF)

On _____, 20____ before me personally came _____ to me known, and known to me to be the individual(s) described in, and who executed the foregoing NONCOLLUSIVE PROPOSAL CERTIFICATION, and duly acknowledged to me that s/he executed the same.

(Notary Public)

My commission expires:_____

-----**(Acknowledgment for Partnership)**-----

STATE OF)
) ss.:
 TOWN OF)

On _____, 20____ before me personally came _____ to me known, who, by me duly sworn, did depose and say that deponent resides at _____; that deponent is a member of the partnership described in and which executed the foregoing NONCOLLUSIVE PROPOSAL CERTIFICATION; deponent is authorized to sign the foregoing NONCOLLUSIVE PROPOSAL CERTIFICATION.

(Notary Public)

My commission expires:_____

------(Acknowledgement for Corporation)-----

STATE OF)
SS.:
TOWN OF)

On _____, 20____ before me personally came _____ to me known, who, by me duly sworn, did depose and say that deponent resides at _____ that deponent is the _____ of the corporation described in, and which executed the foregoing NONCOLLUSIVE PROPOSAL CERTIFICATION, that deponent knows the seal of the corporation, that the seal affixed to the NONCOLLUSIVE PROPOSAL CERTIFICATION, is the corporate seal, that its was affixed by order of the board of _____ the corporation; and that deponent signed deponent's name by like order.

(Notary Public)

My commission expires:_____

INSURANCE CERTIFICATION

TO BE COMPLETED BY AN AUTHORIZED INSURANCE AGENT

INSTRUCTIONS:

Please complete this Insurance Certification and attach copies of proof of insurance as follows:

- (a) **Commercial General Liability/Automobile Liability:** ACCORD-25 FORM.
- (b) **Worker's Compensation:** Certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 57 (2) evidencing proof of workers' compensation insurance *or* proof of Bidder not being required to secure same.
- (c) **Disability Benefits Insurance:** Certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 220 evidencing proof of disability benefits insurance *or* proof of Bidder not being required to secure same.

This form and all supporting documentation must be submitted with this Bid/Proposal even if said information is on-file with the Town in connection with another bid, project or contract.

(Name and Address of Bidder)

Name of Bid: _____ Bid

Number: _____

(1) Commercial General Liability with completed operations (plus X.C.U. when applicable), to which the Town of North Hempstead has been added as additional insured, and Automobile Liability: \$ 2,000,000.00 Combined single limit (bodily and personal injury/property damage).

Insurance Carrier (Commercial General Liability): _____

Policy Number(s): _____

(2) Worker's Compensation:

Insurance Carrier: _____ Policy

Number(s): _____

(3) The above insurance is effective with New York State admitted insurance companies, and is A rated or equivalent to A rated.

(4) Policy cancellation or non-renewal shall be effective only upon thirty (30) days prior notice by certified mail to:

Town of North Hempstead, Office of the Town Attorney, 220 Plandome Road, P.O.B. 3000, Manhasset, New York 11030

Authorized Insurance Agent's Signature and Title: _____

Name, Insurance Affiliation and Address:

Dated _____

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM

The bidder hereby acknowledges that he/she has received and that he/she has considered in the preparation of his/her proposal, all requirements in the following Addenda to this RFP:

Note: This acknowledgement shall be signed by the person executing the Statement of Understanding.

Insert additional pages, as necessary.

ADDENDUM NUMBER	DATE OF ADDENDUM	ACKNOWLEDGEMENT

☐ **NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS PROPOSAL.**

ACKNOWLEDGEMENT:

IMPORTANT NOTICE:

THIS FORM MUST BE COMPLETED AND SUBMITTED BY ALL PROPOSERS. IF NO ADDENDA ARE RECEIVED, CHECK THE “NO ADDENDUM” BOX ABOVE AND SIGN THE ACKNOWLEDGMENT.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT AND PROPOSAL THAT FAILS TO INCLUDE THIS ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM

ATTACHMENT C
STANDARD TOWN TERMS AND CONDITIONS

1. Compensation

(a) Claim Forms, Claim Form Review and Approval. Payments shall be made to the Consultant in arrears and shall be expressly contingent upon (i) the Consultant submitting a claim form (the “Claim Form”) in a form satisfactory to the Town, that (a) states with reasonable specificity the services provided and the payment requested as consideration for such services, (b) certifies that the services rendered and the payment requested are in accordance with the terms of this Agreement, and (c) is accompanied by documentation satisfactory to the Town supporting the amount claimed, and (ii) review, approval and audit of the Claim Form by the Town and/or the Comptroller.

(b) Timing of Payment Claims. The Consultant shall submit claims no more frequently than once a week and no later than one (1) months following the Town’s receipt of the services that are the subject of the claim. Any claims submitted in violation of this clause 3(c) shall not be due and payable by the Town and the Consultant hereby expressly waives any and all rights thereto.

(c) No Duplication of Payments. Payments for the Services shall not duplicate payments for any work performed or to be performed under any other agreements made between the Consultant and any funding source including the Town.

2. Termination

(a) The Town reserves the absolute right to terminate the Agreement at any time by service of a written notice sent by certified mail to the address set forth above. The Town will be responsible for payment of any portion of the Services completed prior to termination and satisfactory to the Town’s Comptroller.

(b) Contractor Assistance Upon Termination. In connection with the termination or impending termination of this Agreement, the Contractor shall, regardless of the reason for termination, take all actions reasonably requested by the Town (including those set forth in other provisions of this Agreement) to assist the Town in transitioning the Contractor’s responsibilities under this Agreement. The provisions of this Section shall survive the termination of this Agreement.

(c) Accounting Upon Termination. Within thirty (30) days of the termination of this Agreement, the Contractor shall provide the Supervisor with a complete accounting up to the date of termination of all monies received from the Town, and shall immediately refund to the Town any unexpended balance remaining as of the time of termination.

(d) Reimbursement Upon Termination. Payment to the Contractor following termination shall not exceed authorized expenditures made prior to termination, and may be suspended by the Town pending the Contractor’s reasonable compliance with the terms and provisions of (b) and (d) above.

3. Representations

The Contractor warrants and represents as of the effective date of this Agreement:

(a) it has full corporate right, power and authority to enter into this Agreement, and to

perform the acts required of it hereunder; and

(b) when executed and delivered by Contractor, this Agreement will constitute the legal, valid and binding obligation of Contractor, enforceable against such party in accordance with its terms.

4. Refusal to Testify

If any person when called to testify before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a municipal department, or other municipal agency which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the State of New York, or any political subdivision thereof, a public authority, or with any public department, agency or office of the state, or of any political subdivision thereof, or of a public authority, refuses to answer any relevant question concerning such transaction or contract even though offered immunity against the use of his (its) answer and evidence derived therefrom in any subsequent criminal case in which he (it) is a defendant, then any such person or any firm, partnership, or corporation of which he (it) is a member, partner, director, or official shall be disqualified for a period of five years after such refusal from submitting bids to, receiving awards from, or entering into any contracts with the Town of North Hempstead or any department or agency or official thereof. If such a person refuses to answer any relevant question as aforesaid, then this Agreement may be cancelled and terminated by the Town without the Town incurring any penalty or damages by virtue of such cancellation or termination. Any monies owed for goods delivered or work done prior to cancellation shall be paid.

5. Amendments

This Agreement may only be amended or modified by written agreement duly executed by the Parties.

6. Independent Contractor

The Contractor is an independent contractor of the Town. The Contractor shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a "Contractor Agent"), be (a) deemed a Town employee, (b) commit the Town to any obligation, or (c) hold itself, himself, or herself out as a Town employee or Person with the authority to commit the Town to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

7. Indemnification

- (a) To the fullest extent permitted by law, the Contractor:
 - (i) shall indemnify and hold harmless the Town, and its officers, employees, agents, and servants (collectively, the “Indemnified Parties”), from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys’ fees and disbursements), and damages (collectively, “Losses”), including Losses attributable to acts or omissions of the Contractor or Contractor’s Agents, if any, arising out of or in connection with this Agreement, except, however, that the Contractor shall not be held liable for occurrences resulting from the negligence of the Town.
 - (ii) shall, upon the Town’s demand and at the Town’s direction, promptly and diligently defend, at the Contractor’s sole risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more of the Indemnified Parties and which arise out of the negligent performance of the Contractor, or its independent contractors, if any, in connection with this Agreement, and the Contractor shall pay and satisfy any judgment, decree, loss, or settlement in connection therewith.
 - (iii) shall, and shall cause the Contractor’s Agents to, cooperate with the Town in connection with the investigation, defense, or prosecution of any action, suit, or proceeding arising out of or in connection with this Agreement.
- (b) The obligations of the Contractor pursuant to Section 7(a) hereof shall not be limited by reason of enumeration of any insurance coverage provided under this Agreement.
- (c) Nothing in this Section 7 or elsewhere in this Agreement shall create or give to third parties any claim or right of action against the Town beyond that which legally exist regardless of the provisions of this Agreement.
- (d) The Contractor’s indemnification obligation hereunder shall survive the expiration or termination of this Agreement.

8. Insurance

During the term of the Agreement, Contractor shall obtain the following insurance coverage for the underlying Services, with a carrier holding an “A” rating from AM Best Company, or its equivalent, and shall furnish proof of its procuring of the following insurance policies, or such other documents as are set forth hereunder:

- (a) Commercial general liability insurance covering the liability of the Contractor, and indemnifying and holding harmless the Town, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this Agreement with a combined

single limit (bodily injury/property damage) of One Million Dollars (\$1,000,000). The Town shall be named as additional insured on said policy;

(b) Workers' compensation insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 57(2); and

(c) Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 220(8).

The Town shall be entitled to thirty (30) days advance written notice of the cancellation or termination of any and all policies listed above at (a) through (c).

9. Compliance With Laws

(a) The Contractor shall comply with any and all applicable and relevant Federal, State and local Laws, including those relating to conflicts of interest, discrimination, and confidentiality, in connection with its performance under this Agreement. As used in this Agreement the word "Law" means any and all statutes, rules, regulations, orders, ordinances, writs, injunctions, official resolutions, official interpretations, or decrees, as the same may be amended from time to time, enacted, adopted, promulgated, released, or issued, by or on behalf of any government or political subdivision thereof, quasi-governmental authority, court, or official investigative body.

(b) Contractor shall also comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time, and shall comply with the terms and conditions of the Business Associate Agreement attached hereto and made a part hereof.

10. Inspection of Contractor's Work and Records

The Contractor shall retain all books, documents, papers, accounting records and other evidence pertaining to cost incurred for a minimum period of six (6) years after final settlement and shall make them available for inspection and audit by the Town.

11. Entire Agreement

This Agreement represents the full and entire understanding and agreement between the parties hereto with regard to the subject matter hereof and supercedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

12. No Assignment or Transfer

Contractor's rights under this Agreement shall not be subcontracted or assigned nor its obligations assumed or transferred, except Contractor shall be permitted to assign and transfer all rights and obligations of this Agreement to a newly formed New York

corporate entity provided the Contractor is a principal and majority shareholder of such corporate entity.

13. Waiver

Failure by any party to enforce at any time, for any reason, or for any period of time, any of the provisions of this Agreement, shall not be or constitute a waiver of any such provision or provisions and shall in no way affect such party's rights to later enforce such provision or provisions.

14. Headings

The headings of the Sections of this Agreement are for purposes of identification only and are not intended to limit the terms hereof or proscribe the rights and responsibilities of the Town or the Contractor provided for herein.

15. Legal Provisions Deemed Included; Severability; Construction

(a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) Each Party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against either Party as drafter.

16. Consent to Jurisdiction and Venue; Governing Law

(a) Unless otherwise specified in this Agreement or required by Law, all claims or actions with respect to this Agreement shall be resolved exclusively by a court of competent jurisdiction located in Nassau Town, New York, and the parties expressly waive any objections to the same on any grounds, including venue and *forum non conveniens*.

(b) This Agreement shall be construed and interpreted in accordance with the laws of the State of New York.

17. Limitations on Actions and Special Proceedings Against the Town

No action or special proceeding shall lie or be prosecuted or maintained against the Town upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief the Contractor shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Supervisor for adjustment and the Town shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Contractor shall send or deliver copies of the documents presented to the Supervisor under this Section to the Town Attorney (at the address specified above for the Town) on the same day that documents are sent or delivered to the Supervisor. The complaint or necessary moving papers of the Contractor shall allege that the above-described actions and inactions preceded the Contractor's action or special proceeding against the Town.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, or (ii) the time specified in any other provision of this Agreement.

18. Executory Clause

Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. The Town shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all relevant and required Town approvals have been obtained, including, if required, approval by the Town Board, and (ii) this Agreement has been executed by the Supervisor (as defined in this Agreement).

(b) Availability of Funds. The Town shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement.

19. Merger

It is understood that the Agreement represents the entire Agreement of the parties hereto, and all previous understandings are merged herein, and no modifications thereof shall be valid unless it meets the requirements of this Agreement.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is entered into effective as of January 1, 2014, by and among **the Town of North Hempstead** (herein “Covered Entity”), a municipal corporation under the laws of the State of New York having an address located at 220 Plandome Road, Manhasset, New York 11030 and **(Contractor Name)** (herein “Business Associate”), a corporation having an address at (Contractor Address), in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information (“PHI”) and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as “HIPAA”) (Covered Entity and Business Associate may be referred to herein individually as a “Party” or collectively as the “Parties”).

WITNESSETH

1. Definitions

- (a) General. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, PHI, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and Use.
- (b) Specific definitions:
 - i. Business Associate. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean North Shore University Hospital
 - ii. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Business Associate of North Hempstead.
 - iii. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of Business Associate

- (a) Business Associate agrees to:
 - i. Not use or disclose PHI other than as permitted or required by the Agreement or as required by law. Business Associate acknowledges that this Agreement does not in any manner grant Business Associate any greater rights than Covered Entity enjoys, nor shall it be deemed to permit or authorize Business Associate to use or further disclose PHI in a manner that would otherwise violate the requirements of HIPAA if done by Covered Entity;

- ii. Business Associate agrees to develop and use appropriate procedural, physical, and electronic safeguards to prevent misuse of PHI other than as provided by this Agreement. Business Associate agrees to notify Covered Entity of the location of any PHI disclosed by Covered Entity or created by Business Associate on behalf of Covered Entity and held by or under the control of Business Associate or those to whom Business Associate has disclosed such PHI;
- iii. limit any use, disclosure, or request for use or disclosure to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of HIPAA. Business Associate represents that all uses, disclosures, and requests it will make shall be the minimum necessary in accordance with HIPAA requirements. Covered Entity may, pursuant to HIPAA, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate. Business Associate acknowledges that if Business Associate is also a covered entity, as defined by HIPAA, Business Associate is required, independent of Business Associate's obligations under this Agreement, to comply with the HIPAA minimum necessary requirements when making any request for PHI from Covered Entity.
- iv. Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- v. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- vi. Make available PHI in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- vii. Make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- viii. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- ix. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- x. maintain such records of PHI received from, or created or received on behalf of, Covered Entity and shall document subsequent uses and disclosures of such

information by Business Associate as may be deemed necessary and appropriate in the sole discretion of Covered Entity. Business Associate shall provide the Covered Entity with reasonable access to examine and copy such records and documents of Business Associate during normal business hours. Business Associate agrees to fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of HIPAA and any investigation of Covered Entity regarding compliance with HIPAA conducted by the U.S. Department of Health and Human Services (“DHHS”), Office of Civil Rights, or any other administrative or judicial body with jurisdiction; and

- xi. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose PHI as necessary to perform nursing services for the Town’s Project Independence program set forth in such agreement between the Business Associate and the Covered Entity commencing January 1, 2016, to which this Agreement is attached (the “Service Agreement”) and for no other purpose whatsoever.

(b) Business Associate may use or disclose PHI as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity’s minimum necessary policies and procedures.

(d) Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity

4. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

5. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of the commencement date of the Service Agreement, and shall terminate upon the termination of the Service Agreement or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination. The Covered Entity reserves the absolute right to terminate this Agreement at any time by service of a written notice sent by certified mail to the address set forth above.

(c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI.

(d) If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, Covered Entity shall take any steps reasonably necessary to cure such breach or end such violation, and, if such steps are unsuccessful, shall either (a) terminate this Agreement, if feasible, pursuant to §12, or (b) if termination is not feasible, report the breach or violation to DHHS. If Business Associate as a covered entity, defined by HIPAA, violates the terms and conditions of this Agreement in its capacity as a business associate of another covered entity, Business Associate will be in noncompliance with the standards, implementation specifications, and requirements of HIPAA.

(e) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

6. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. This Agreement may only be amended or modified by written agreement duly executed by the Parties.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(d) Indemnification. (i) To the fullest extent permitted by law, the Business Associate:

(1) shall be solely responsible for and shall indemnify and hold harmless the Business Associate, and its officers, employees, agents, and servants (collectively, the "Indemnified Parties"), from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys' fees and disbursements), and damages (collectively, "Losses") arising out of or in connection with any acts or omissions of the Business Associate or any of Business Associate's Agents taken pursuant to or authorized by this Agreement regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same, except, however, that the Business Associate shall not be held liable when an occurrence results solely from the negligence of the Covered Entity;

(2) shall, upon the Covered Entity's demand and at the Covered Entity's direction, promptly and diligently defend, at the Business Associate's sole risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties and which arise out of or in connection with this Agreement, and the Business Associate shall pay and satisfy any judgment, decree, loss, or settlement in connection therewith; and

(3) shall cooperate with the Covered Entity, and shall cause its employees, servants, agents, and independent contractors to cooperate with the Covered

Entity, in connection with the investigation, defense, or prosecution of any action, suit, or proceeding arising out of or in connection with this Agreement.

(ii) The obligations of the Indemnitors pursuant to Section 6(d)(i) hereof shall not be limited by reason of enumeration of any insurance coverage provided under this Agreement.

(iii) Nothing in this Section 6(d) or elsewhere in this Agreement shall create or give to third parties any claim or right of action against the Covered Entity beyond that which legally exist regardless of the provisions of this Agreement.

The provisions of this Section 6(d) shall survive the termination of this Agreement.

(e) No Assignment or Transfer. The Business Associate's rights under this Agreement shall not be subcontracted or assigned nor its obligations assumed or transferred.

(f) Descriptive Headings. The headings included in this Agreement are for convenience or reference only, and shall not be considered in the construction hereof. Terms defined in the singular shall include the plural and vice versa as the context requires. All uses of the word "including" herein shall, unless otherwise indicated, be interpreted to mean "including, but not limited to."

(g) Waiver. Failure by any party to enforce at any time, for any reason, or for any period of time, any of the provisions of this Agreement, shall not be or constitute a waiver of any such provision or provisions and shall in no way affect such party's rights to later enforce such provision or provisions.

(h) Representation on Authority of Parties/Signatories

(i) The undersigned representative of the Business Associate hereby represents and warrants that the undersigned is an officer, director or agent of the Business Associate with full legal rights, power and authority to sign this Agreement on behalf of the Business Associate and to bind the Business Associate with respect to the obligations enforceable against the Business Associate in accordance with its terms.

(ii) The undersigned representative of the Covered Entity hereby represents and warrants that the undersigned is an officer, director or agent of the Covered Entity with full legal rights, power and authority to sign this Agreement on behalf of the Covered Entity and to bind the Covered Entity with respect to the obligations enforceable against the Covered Entity in accordance with its terms.

(i) Gender and Numbers; Headings. Where permitted by the context, each pronoun used in this Agreement includes the same pronoun in other genders and numbers, and each noun used in this Agreement includes the same noun in other numbers. The headings of the various sections of this Agreement are not part of the context of this Agreement, are merely labels to assist in locating such sections, and shall be ignored in construing this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands as of the day and year first above written.

Town of North Hempstead

By: _____

Its: _____

Date

(Contractor Name)

By: _____

Its: _____

Date

A P P R O V E D A S T O F O R M:

Elizabeth D. Botwin, Town Attorney

Averil Smith, Comptroller

Robert Weitzner, Commissioner
Department of Human Resources