

ONEIDA COUNTY
WORKERS' COMPENSATION DEPARTMENT

ONEIDA COUNTY OFFICE BUILDING, 800 PARK AVENUE, UTICA, NY 13501

PHONE: (315) 798-5688 FAX: (315) 798-5924

Michael L. Lally

Oneida County
Board of Legislators
Gerald J. Fiorini, Chairman

Workers' Compensation
Committee
Michael Waterman, Chairman

February 1, 2013

FN 20 13 - 043

GOVERNMENT OPERATIONS

WAYS & MEANS

Honorable Gerald J. Fiorini
Oneida County Board of Legislators
800 Park Avenue
Utica, New York 13501

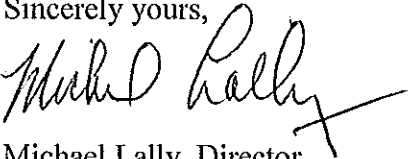
Dear Chairman Fiorini:

Pursuant to Local Law #10 of 1991 which gave the Board of Legislators the power to enter into a contract with a third party administrator for the administration of the Oneida County Self-Insurance Plan, the Workers' Compensation Committee recently requested a proposal for the same.

The proposals we received as a result of the RFP process have been thoroughly reviewed by our designated broker, Kelly Green of Bailey, Haskell & LaLonde and by me. As a result of this review process, it is my recommendation that we retain the services of NCACOMP Inc. as our third party administrator. Attached is a contract for March 15, 2013 and ending March 14, 2016.

I respectfully request that you forward this contract to the proper committees and then to the full board for action at the February 13, 2013 meeting. Thank you for your consideration.

Sincerely yours,



Michael Lally, Director
Workers' Compensation Department

Cc: Harris Samuels
Assistant County Attorney

ONEIDA COUNTY
WORKERS' COMPENSATION DEPARTMENT

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Michael L. Lally

Workers' Compensation
Committee

Michael Waterman, Chairman

Oneida County
Board of Legislators
Gerald J. Fiorini, Chairman

January 25, 2013

Honorable Gerald J. Fiorini
Oneida County Board of Legislators
800 Park Avenue
Utica, New York 13501

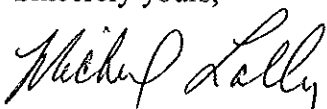
Dear Chairman Fiorini:

The Oneida County Governmental Operations Committee on Workers' Compensation met last night to consider my recommendation to enter into a contract with NCAComp Inc. for Third Party Administration.

At the conclusion of our meeting, the Committee unanimously voted to accept my recommendation and passed a docket recommending that the Board of Legislators pass a resolution at their next meeting on February 13, 2013 to contract with the services of NCAComp Inc. for Third Party Administration.

I respectfully request that a resolution be prepared in this regard for Ways and Means and Full Board consideration at the February 13, 2013 meeting. Thank you for your consideration.

Sincerely yours,



Michael Lally, Director
Workers' Compensation Department

Cc: Harris Samuels
Assistant County Attorney

Oneida Co. Department: _____

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____

ONEIDA COUNTY BOARD
OF LEGISLATORS

Name of Proposing Organization:

NCA Comp Inc.

Title of Activity or Service:

Third Party Administration

Proposed Dates of Operation:

MARCH 15, 2013 to March 16, 2016

Client Population/Number to be Served: *Approximately 5,000*

Summary Statements

1) Narrative Description of Proposed Services

To administer, manage and supervise all workers' compensation claim functions in full compliance with NYS Law.

2) Program/Service Objectives and Outcomes:

Maintain complete claim files, Investigate claims, medical review, legal representation & prepare all workers' comp checks.

3) Program Design and Staffing

Account MANAGER, Claims Supervisor, (2) adjusters

Total Funding Requested: *\$ 421,050* Account #

Flat rate of 140,350 per year for 3 years

Oneida County Dept. Funding Recommendation:

To be funded by Premiums charged to members

Proposed Funding Sources (Federal \$/ State \$/County \$):

Cost Per Client Served:

Past Performance Data:

O.C. Department Staff Comments:

SELF-INSURED WORKERS' COMPENSATION

ADMINISTRATIVE AGREEMENT

THIS AGREEMENT, is made this fifteenth day of February 2013, by and between Oneida County Self-Insurance Plan hereinafter referred to as the Client having its office for the transaction of business in Utica, New York, and NCAComp, Inc., a domestic corporation organized under the laws of the State of New York, having an office for the Transaction of business in Buffalo, New York, hereinafter referred to as the Service Representative.

WITNESSETH

WHEREAS, Client is a Self-insurance Plan created pursuant to Article 5 of the Workers' Compensation Laws of the State of New York, and desires to provide for claim and administrative services in connection with self-insurance program and investigation and handling of claims arising under the Workers' Compensation Laws in connection with the past, present or future self-insured operations of the Client in said state, and:

WHEREAS, the Service Representative is engaged in the business of providing the desired services.

NOW, in consideration of the mutual promises herein contained, the parties agree as follows:

ARTICLE I

TERM: The Client hereby retains the Service Representative to perform the services hereinafter enumerated for the term of three (3) years beginning March 15, 2013 and ending March 14, 2016, and agrees to pay the Service Representative the fees and remuneration hereinafter provided for; and the Service Representative hereby accepts such retainer and agrees to perform such services for the Client for the duration of such term and agrees to accept in full payment for such services,

said fees and remuneration. This agreement may be renewed for an optional Year 4 and Year 5, if mutually agreed upon by Client and Service Representative.

ARTICLE II

SERVICES TO BE PROVIDED: The services to be performed by the Service Representative to the extent they are required in connection with the Client's operations in the State of New York are:

1. To administer, manage and supervise all workers' compensation claim functions in full compliance with all State laws and all State Rules and Regulations.
2. Making periodic visits to the State Self-Insurance Office as necessary to discuss the general status of Client's self-insurance.
3. Preparation and filing of all claim forms required by the Workers' Compensation Law, including, but not limited to, claims with the Special Funds under WCL Section 15-8, 14-6, 25-a, and claims involving supplemental benefits under Section 25-a(9).
 - a. When in receipt of timely notice of claim from Client, preparation and timely filing of C-2 forms with the Workers' Compensation Board of New York as required by law. When required by the Workers' Compensation Board, to complete timely electronic claim filing of C-2 forms.
4. Maintaining complete claim files.
5. Investigating claims under the New York Workers' Compensation Law as Service Representative deems appropriate. All costs of such investigations shall be charged to the claim file. These costs will not be incurred without the consent and approval of the Client.
6. Preparing and mailing compensation payment drafts or checks.
7. Preparing and providing monthly or quarterly reports of accidents which have been reported to the Service Representative by the Client, together with cost summaries, whenever requested by the Client.
8. Implementing Client's instructions to refer to and cooperate with legal counsel, designated by the Client on selected claims for handling in either administrative or court

proceedings, with the cost thereof being borne by the Client; and arranging for representation at Workers' Compensation hearings before Administrative Law Judges of the Workers' Compensation Board by licensed or legal representative with the cost of such representation being paid as a claim file expense.

9. Withdrawing representation for the Client in those claims where the Service Representative cannot adequately represent the interests of multiple employers with respect to a single claimant and the Client is likely to be adversely affected by the Service Representative's multiple representation, where upon the Client will retain legal counsel of its choice, at its own expense, to serve as the employer's representative in all such claims.
10. In the event of an appeal, retaining qualified counsel to execute said appeal and provide representation, if necessary at Board Panel hearings with such expenses to be treated as a claim file expense.
11. In the event of an appeal to an Appellate Court, the Service Representative will recommend legal counsel to the Client. The expenses for preparation and filing of the appeal, printing of the record, presenting argument to the court, and miscellaneous legal expenses are to be borne by the Client and paid as a claim file expense.
12. Provide and/or coordinate medical case management when the Service Representative and the Client deem it is in the Client's best interest. Case management expenses are to be paid as a claim file expense.
13. Provide and/or coordinate vocational rehabilitation when the Service Representative and the Client deem it is in the Client's best interest. Vocational rehabilitation expenses are to be paid as a claim file expense.
14. Arrange for the review of all medical bills for conformance with the New York WC fee schedule and reducing these bills to the proper amount when the fee schedule is exceeded. Fees for this service shall be paid by Client as an administrative expense or as a claim file expense.
15. Obtain PPO pricing discounts when available for the benefit of the Client. PPO savings fees are a percentage of the savings obtained and are paid as an administrative expense or as a claim file expense.

16. Create customized reports for client when requested to do so. Any necessary charges for this service will be passed through Service Representative to Client at cost without markup.
17. All computer reports, documents, claim files, and records provided for and referred to herein and maintained by the Service Representative are confidential and shall remain the property of the Client. The Service Representative agrees to turn over to the Client all Client records pertaining to this Agreement at the completion of this agreement. Client shall pay any expenses of transferring data to Client at the end of this Agreement.
18. Maintain bonding in accordance with prudent practices and supply Client with evidence of bonding upon request.
19. The services herein provided for will also be performed in connection with any existing self-insured claims.
20. When Service Provider is also the Broker of Record on the Client's excess workers' compensation insurance policy, to make the required reports to the excess carrier including the first report of injury. When Service Provider is not the Broker of Record on the Client's excess workers' compensation insurance policy, to make required reports to the excess carrier including the first report of injury, only when Client has provided Service Provider with a copy of the policy in force.
21. When specific or aggregate excess claims are established, to make periodic reimbursement requests to the excess carrier on behalf of the Client.
22. The Client acknowledges its obligation to comply with the mandatory insurer reporting as set forth in Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, known as "MMSEA". The Service Provider agrees to act as the Client's reporting agent for purposes of complying with the MMSEA for all claims reported by the Client to the Service Provider. The Client consents to the disclosure of all reportable information by the Service Provider for purposes of MMSEA mandatory insurer reporting.
23. The Service Provider agrees to allow the Client to inspect and audit any and all records, documents and claim files pertaining to the administration of this program upon request.

ARTICLE III

THE CLIENT AGREES:

1. To promptly report to the Service Representative all accidents coming to its attention involving any of its employees in New York. These reports shall be on forms as directed by the New York Workers' Compensation Board or on other forms as the parties may agree.
2. To pay to the Service Representative an annual fee of \$140,350 for the workers' compensation claims service described in Article II.
 - a. Optional pricing for Year 4: \$144,560
 - b. Optional pricing for Year 5: \$148,897
3. To pay Service Provider for other services as follows:
 - a. Bill Review and PPO services as described in Article II, at the following rates:
 - i. Bill review and re-pricing at New York State fee schedule: \$1.25 per line
 - ii. PPO access and re-pricing below fee schedule: 25% of savings
 - b. Nurse Case Management services as described in Article II, at the rate of \$90 per hour.
4. To pay all allocated loss adjustment expenses (ALAE) which shall be paid from the claim file. The selection of all outside vendors are subject to the approval of the Client.
5. Reasonable additional charges may be made by the Service Representative for complying with new regulations or new reporting requirements that may be adopted by the Workers' Compensation Board or any other regulations adopted by any other government agency which requires the Service Representative to invest in new software and/or hardware or which results in any other material increase in the cost of performing Service Representative's duties hereunder. Service Representative shall notify the Client at least 30 days prior to imposing charges.
6. To provide sufficient funds in the claims account to enable Service Representative at all times to pay Claims and Loss Adjustment Expenses in accordance with the terms and conditions of this Agreement.
7. To authorize and hereby does authorize Service Representative to withdraw from the claims account such funds as may be necessary to enable Service Representative to pay claims, claim file expenses and the Service Representative Fee.

8. Service Representative is providing administrative services only under this Agreement and Client remains responsible for all payments due to third parties regarding claims whether to employees, medical providers or others.
9. In the event Client is in default of its financial obligations to Service Provider, Service Provider shall have the right to cancel this Agreement on 30 days written notice to Client, notwithstanding any other provisions herein. Any such cancellation shall not affect Client's obligations to make full payment for all services rendered and expenses incurred prior to cancellation.
10. Interest or other types of credits earned on balances on accounts established for payment of claims and other expenses associated with this agreement are the property of the Service Provider.

ARTICLE IV

RIGHT TO CANCEL: In the event Client believes the Service Representative has committed misfeasance, malfeasance or nonfeasance in respects to the performance of the duties undertaken in this Agreement, Client shall give formal notice to Service Representative citing the nature and particulars of the misfeasance, malfeasance or nonfeasance. Failure of the Service Representative to remedy the causes of the misfeasance, malfeasance or nonfeasance within 30 days shall be grounds for the Client to terminate this Agreement upon an additional 60 day written notice to the Service Representative.

ARTICLE V

GOVERNING LAW: This Agreement shall be governed by, and its provisions construed in accordance with, the laws of the State of New York.

ARTICLE VI

INVALID PROVISIONS: In the event any provision of this Agreement shall be held to be invalid, unenforceable or in conflict with applicable law, then that provision of the Agreement will be enforced to the maximum extent possible and the other provisions of this Agreement will remain in full force and effect.

ARTICLE VII

AMENDMENT AND WAIVER: No amendment or waiver of any provision of this Agreement, and no consent to any departure therefrom, shall be effective or binding unless and until set forth in a writing signed by each party, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given. No notice or any other communication given by one party hereto to the other party shall be construed to constitute approval or ratification by the other party of any matter contained or referred to in such notice, unless the same be consented to by the other party in writing.

ARTICLE VIII

ENTIRE AGREEMENT: This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties relating to the subject matter hereof, and there exists no other written or oral understandings, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person or business entity that is not a party hereto.

ARTICLE IX

NOTICES: All notices, requests and other communications concerning this Agreement from either party to the other shall be in writing and delivered either personally or by certified mail, return receipt requested. Any such notice, request or other communication shall be deemed to

have been given on the date of personal delivery or, if mailed, on the date of mailing. All communications shall be addressed as follows:

If to Service Representative:

Erin Gregory
NCAComp, Inc.
Rand Building Suite 700
14 Lafayette Square
Buffalo, NY 14203

If to Client:

Michael Lally
Oneida County Department of Workers' Compensation
800 Park Avenue
Utica, NY 13501

ARTICLE X

ASSIGNMENT: Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.

ARTICLE XI

BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of each party hereto and their respective permitted successors and permitted assigns.

ARTICLE XII

DISPUTE RESOLUTIONS: Any disputes under this Agreement shall be finally determined by a single arbitrator, to be chosen by mutual consent, in arbitration proceedings which may be brought by either party in Utica, New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association. In the event of any arbitration in any way arising out of or relating to this Agreement, each party shall pay their own costs and expenses.

The Service Provider agrees to indemnify, protect, save, and hold the Client harmless from any claims, loss, expense, or other liability resulting from the negligence of the Service Provider, or violations of the rules and regulations of the New York State Workers' Compensation Board or other applicable laws and regulations.

The Client agrees to indemnify, protect, save, and hold the Service Provider harmless from any claims, loss, expense, or other liability resulting from any actions taken by the Service Provider at the specific direction of the Client for which the Service Provider is held responsible.

ARTICLE XIII

COUNTERPARTS: This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties by their authorized agents have caused this Agreement to be executed as of the date first written above.

For: Oneida County Self-Insurance Plan

For: NCAComp, Inc.

By: _____

By:  _____

Name: Gerald J. Fiorini


Name: Steven B. Gidwitz

Title: Chairman

Title: C.O.O.

Date:

Date: 1/29/13

Approved As To Form
ONEIDA COUNTY ATTORNEY
By:  _____

ADDENDUM

THIS ADDENDUM, entered into on this ___ day of _____,
between the County of Oneida, ^{Self-Insurance Plan} hereinafter known as COUNTY, and a contractor, subcontractor,
vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as
CONTRACTOR.

WHEREAS, COUNTY and CONTRACTOR have entered into a contract, license, lease,
amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing
have recommended the inclusion of the standard clauses set forth in this Addendum to be
included in every Contract for which COUNTY is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the
following clauses which are hereby made a part of the Contract.

1. Executor or Non-Appropriation Clause.

The County shall have no liability or obligation under this Contract to the Contractor or to
anyone else beyond the annual funds being appropriated and available for this Contract.

**2. Oneida County Board of Legislators: Resolution #249 Solid Waste Disposal
Requirements.**

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the
Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste
Authority, all waste and recyclables generated within the Authority's service area by
performance of this Contract by the Contractor and any subcontractors. Upon awarding of this
Contract, and before work commences, the Contractor will be required to provide Oneida County
with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and
recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by
the Contractor and any subcontractors in performance of this Contract will be delivered
exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. Certification Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal Grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
 2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
 3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
1. The Contractor certifies that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contracts under a public transaction, violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicated or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
 - d. Have not within a three-year period preceding this Contract had one or more public transactions (Federal, State, or local) for cause or default; and
 2. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

- c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
1. The Contractor will or will continue to provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - b. Establishing an on-going drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Contractor's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation, and employee assistance program; and
 4. The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
 - c. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (a);
 - d. Notifying the employee in the statement required by paragraph (a) that as a condition of employment under the Contract, the employee will:
 1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
 - e. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.
 - f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;
 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the Requirements of the Rehabilitation Act of 1973, as amended; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
 - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a),(b),(c),(d),(e),(f).

2. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.
Place of Performance (street, address, city, county, state, zip code).

14 Lafayette Square, Suite 700
Buffalo, Erie County, NY 14203

- d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F. for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
1. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to: Director, Grants Management Bureau, State Office Building Campus, Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

4. Health Insurance Portability and Accountability Act (HIPPA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 1. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 2. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 3. Utilize an adequate amount of physical hardware, including but not limited to filing cabinets, and locks on drawers, cabinets, and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:
 1. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
 2. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:
 1. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
 2. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
 3. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
 4. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of, the County agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
 5. Make available protected health information in accordance with 45 CFR § 164.524;

6. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.528;
 7. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
 8. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the Contractor on behalf of, the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
 9. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by the Contractor on behalf of, the County that the Contractor still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Contract to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
1. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 2. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 3. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. Non-Assignment Clause.

In accordance with Section 109 of the General Municipal 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 County's previous written consent, and attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

5

6. Worker's Compensation Benefits.

In accordance with Section 108 of the General Municipal 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.

7. 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, the 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, the 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. The 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.

8. 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 the 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, the 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 County of any County approved sums due and owing for work done upon the project.

9. Non-Collusive Bidding Certification.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

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 shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails and attachments, rules, regulations and codes. 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 County Comptroller, the County Attorney 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 County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above for the purposes of inspection, auditing and copying. The County 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: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. Identifying Information and Privacy Notification.

a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payees, on its invoice or claim for payment, must give the reason or reasons why the payee does not have such number or numbers.

b. Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle 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 liabilities and to generally identify persons affected by the taxes administered by the New York State 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 County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. 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 Addendum, the terms of this Addendum shall control.

13. Governing Law.

This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

14. 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 County.

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 Section 165 of the State Finance Law. Any such use must meet with approval of the County; 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 County.

15. Compliance with New York State Information Security Breach and Notification Act.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. Gratuities and Kickbacks.

a. **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

b. **Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. Audit

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to or permit the County to examine or obtain copies of any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a Federal financial assistance program from a Federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. Certification of compliance with the Iran Divestment Act.

Pursuant Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services (OGS) website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a Bidder/Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within 90 days after the determination of such violation, then the County shall take such action as may be

appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The County reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

IN WITNESS WHEREOF, the parties hereto have signed this document on the day and year first above written.

County of Oneida *Self Insurance Plan*

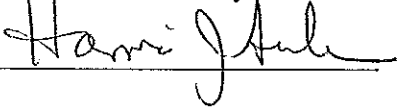
By: _____

Chairman
~~Oneida County Executive~~

Contractor
By: 

Name: *Steven Gidwitz*
COD, NCACamp, Inc.

Approved as to Form only



Oneida County Attorney