

**Tioga County
Request for Proposals
(RFP 2016-1)**

Risk Assessment and Audit of Compliance

Release Date: May 9th, 2016 by 4:00 PM EST

**Proposal Submission Deadline: June 7th, 2016
by 3:00 PM EST**

**Tioga County Law Department
56 Main Street
Suite 204
Owego, NY 13827**

This communications serves to apprise you and your firm of the aforementioned Request for Proposals for a Risk Assessment and Audit of Compliance to establish a baseline objective assessment of risk, to identify threats and vulnerabilities pertaining to Tioga County information security and to evaluate Tioga County's compliance with County policies and Federal and State information security requirements. We invite you and your firm to respond to this Request for Proposal. Please review carefully all sections of the Request for Proposal, paying particular attention to the closing date and time listed within the body of the Request for Proposal. It is anticipated that if an award is made through and by this RFP process, the awarded vendor will be presented with a contract to provide all or some of the services detailed in this RFP.

Firms responding to this Request for Proposal shall submit a Proposal in hardcopy format **by June 7th, 2016 by 3:00 PM EST** to the following address:

Judith M. Quigley
Tioga County Attorney
56 Main Street
Suite 204
Owego, New York 13827
(607)687-8253 (voice)
(607)223-7003 (FAX)
quigleyj@co.tioga.ny.us

If you do not intend to submit a Proposal, please e-mail or FAX the No Response Form found in APPENDIX E of this RFP.

If you do intent to submit a Proposal, please e-mail or FAX the Intent to Submit Form found on APPENDIX F of this RFP no later than May 23rd, 2016 by 4:00 PM EST.

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Section 1 – Invitation to Submit Proposal

1.1. Purpose

Tioga County (County) is soliciting proposals to perform an objective Risk Assessment and Audit of Compliance. Prospective Respondents must offer a proposal that will meet the scope of work, qualifications, and general description of work activities identified in this Request for Proposals (RFP 2016-1). The proposal must set forth a breakdown of the specific services proposed, the estimated time for completion, the hourly rate to be charged to the County, a proposal for progress payments and a **NOT TO EXCEED total project cost**.

In responding to this RFP, Respondents must follow the prescribed format as outlined in Section 3. By so doing, each Respondent will be providing the County comparable data and thus be assured of fair and objective treatment in the County review and evaluation process.

1.2 Point of Contact (POC)

The individual identified below, is the sole point of contact regarding this RFP from the date of distribution until the selection of the successful Respondent

Judith M. Quigley
Tioga County Attorney
56 Main Street
Suite 204
Owego, New York 13827
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(607)223-7003 (FAX)
quigleyj@co.tioga.ny.us

1.3 Presentation and Clarification of the County's Intentions

As a result of this RFP, the County intends to enter into a contract with the selected Respondent to supply the services described in Section 2. However, this intent does not commit the County to award a contract to any responding Respondent, or to pay any costs incurred in the preparation of the proposal in response to this request, or to procure or contract for any services. The County reserves the right, in its sole discretion, to (a) accept or reject in part or in its entirety any proposal received as a result of this RFP if it is in the best interest of the County to do so; (b) award one or more contracts to one or more qualified Respondents if necessary to achieve the objectives of this RFP and if it is in the best interest of the County to do so.

1.4 Time Line

The schedule of events for this RFP is anticipated to proceed as follows:

- This RFP will be distributed May 9th, 2016 by 4:00 PM EST.
- All requests for RFP clarifications must be submitted in writing to the POC at the email address provided in section 2 and received no later than 4:00 PM EST on May 26th, 2016.
- All questions will be answered and documented in writing, on or before June 2nd, 2016 by 4:00 PM EST as an addendum to the RFP. These will be sent out to all Respondents who received the original RFP and who have completed and submitted an “Intent to Submit” form (Appendix F).
- Final RFP submissions must be received by 3:00 PM EST on June 7th, 2016 at the address shown in Section 3.1. The right to withdraw will expire on this date and time.

Section 2 – Scope of Work

2.1 Description of Facilities

Tioga County’s data network provides service for approximately 450 users and a handful of outside agencies. The county has nine buildings, seven of which are connected via a private fiber-optic network, one connected via a point-to-point T1, and one via a point-to-point wireless solution. The network infrastructure of the County is a routed layer 3 network using Cisco Catalyst equipment, with high-capacity (2 gigabit or greater) interconnects between buildings, and gigabit service to clients, supplemented by a Cisco-based wireless access solution. The county runs a converged data network with a new (installed 2015) ShoreTel VoIP phone system. Edge protection of the network is provided by a Barracuda spam and web firewall, a SIP firewall for phone services, as well as a Cisco ASA series firewall solution from the general Internet. The County last conducted a full refresh of network equipment at the end of 2013. The County’s data is primarily housed on a 20 terabyte VMware vSphere cluster, supporting roughly 35 virtual servers that are backed up utilizing a hot-offsite backup model. Most servers are running Windows Server 2012 R2, with some older servers running Windows 2008 Server and a handful of specialized Linux-based appliances. All desktops in the County Active Directory system are on Windows 7. In addition, the County is in the process of migrating its financial system from an IBM iSeries solution to the Windows-based MUNIS package from Tyler Technologies.

2.2. County Statistics

Tioga County is comprised of nine towns and six villages. The village of Owego is the county seat. According to the 2010 Census, Tioga County's population is 51,125 with a median age of 42.5. Tioga County Government employs approximately 450 people and has 2 departments. It is administered by a Legislature consisting of nine elected district representatives. The Chairperson of the Tioga County Legislature serves as the county Chief Executive officer.

2.3 Detailed Scope of Work

2.3.1 Objective and Deliverables:

Perform an objective *Risk Assessment* and *Audit of Compliance* against Tioga County's Comprehensive Security Policy. The key deliverable will be a detailed final report assessing the County's risk. The report will identify areas where the County is not in compliance with the internal *Comprehensive Security Policy* and department level policies and procedures. The assessment should consist of the following:

1. Review of Comprehensive Security Policy and departmental level policy and procedure documents.
2. Evaluate compliance with applicable County Policy within each department and for the County as a whole.
3. Evaluate compliance with HIPAA/HITECH by County Departments that are "Covered Entities" and/or "Business Associates" as those terms are defined in HIPAA/HITECH. This portion of the services to be provided must comply with the Risk Assessment requirements of HIPAA and HITECH.
4. Interviews of key staff members. Review documentation from each department that demonstrates compliance with the policy. Document noncompliance.
5. Review and assess documentation, practices and procedures required by the policy.
6. Observe, document, and evaluate practices and procedures and document where those differ from the *Comprehensive Security Policy*.
7. Provide an overall County compliance assessment as well as an assessment of individual departments.

The format of the final report should align with *45 CFR Parts 160, 162, and 164, Security Standards; Final Rule*, specifically with *Appendix A to Subpart C of Part 164 – Security Standards: Matrix*. A tabular assessment of the aforementioned matrix should be presented with objective scores and comments for each area assessed. Additionally, a detailed narrative describing the assessment methodology and results should be submitted as part of the final report. Recommendations for improving processes, practices, and procedures should be presented in the report.

2.3.2 Goals:

1. Identify key risk areas and assess the level and potential impact of risk.
2. Identify areas where Tioga County is not in compliance with the Comprehensive Security Policy.
3. Make recommendations for processes to be improved so that departments can improve processes and procedures and comply with the policy.

2.3.3 Scope of Study

The following departments will be evaluated:

Coroner
County Clerk
District Attorney
Economic Development and Planning
Elections
Emergency Management
Fire
Historian
Information Technology
Legal/Safety
Legislature
Mental Health
Personnel
Probation
Public Defender
Public Health
Public Works
Real Property
Sheriff and Jail
Social Services
Treasurer
Veterans

2.3.4 Report Format Example – Tabular Presentation:

Administrative Safeguards		
Standard	Score	Comment
Security Management Process		
Risk Analysis		
Risk management		
Sanction Policy		
Information System Activity Review		
Assigned Security Responsibility		
Workforce Security		
Authorization and/or Supervision		
Workforce Clearance Procedure		
Termination Procedures		
Information Access Management		
Access Authorization		
Access Establishment and Modification		
Security Awareness and Training		
Security Reminders		
Protection from Malicious Software		
Log-in Monitoring		
Password Management		

2.3.5 Approach and Key Questions – Example:

Following are some examples of key questions, but these should by no means be considered as a comprehensive list:

1. Risk Analysis. Are County practices in compliance with the Policy?
2. Information System Activity Review. Are County practices in compliance? Is there comprehensive documentation of compliance available at both department and County level?
3. Assigned Security Responsibility. Is the County in compliance? What documentation is available?
4. Access Authorization. Is detailed historical documentation available?
5. Departmental Security Training. Has training occurred and is there detailed documentation of compliance available?
6. Security Reminders. Is there documentation of Security Reminders?
7. Log-In Monitoring. Is there forced compliance with this policy?
8. What steps are being taken to monitor for network intrusion?
9. Is the County in compliance? Is historical documentation of compliance available?

10. Applications and Data Criticality Analysis. Is the County in compliance? What documentation is available?
11. Password Policy. Is this in compliance?

Section 3 – Specific Proposal Requirements

3.1. Submission of Respondent’s Proposal(s)

- A. Acceptance Period and Location:** To be considered, Respondents must submit a complete response to this RFP. Respondents not responding to all information requested in this RFP or indicating exceptions to those items not responded to may have their proposals rejected as being non-responsive.

Sealed proposals must be **received** at the address below on or before 3:00 PM Eastern Standard Time, on June 7th, 2016.

Judith M. Quigley
Tioga County Attorney
56 Main Street
Suite 204
Owego, New York 13827

Refer to Section 3 for further detail regarding response formats and requirements. There will be no public opening of the proposals.

- B. Withdrawal Notification:** Respondents receiving this RFP who do not wish to submit a proposal should reply with the “No Response Form” (Appendix E of this RFP) to be received by the indicated contact on the form. This RFP is the property of the County and may not be reproduced or distributed for purposes other than proposal submission without the written consent of the Tioga County Attorney.
- C. Required Copies:** Respondents must submit one (1) signed original Proposal and (7) complete copied sets of the signed original Proposal. Proposal should be clearly marked as “Proposal for Risk Assessment and Audit of Compliance”. The Respondent will make no other distribution of proposals. An official authorized to bind the Respondent to its provisions must sign the Proposal.
- D. Pricing Period:** For this RFP, the proposal must remain valid for a minimum of 120 days past the due date for receipt of the RFPs.

E. Economy of Preparation: Proposals should be prepared as simply as possible and provide a straightforward, concise description of the Respondent's capabilities to satisfy the requirements of the RFP. Expensive bindings, color displays, promotional material, etc. are not necessary or desired. Emphasis should be concentrated on accuracy, completeness, and clarity of content. All parts, pages, figures, and tables should be numbered and clearly labeled. Vague terms such as "Respondent complies" or "Respondent understands" should be avoided.

3.2. Response Date

To be considered, sealed proposals must arrive on or before the time and date specified in Section 3.1.A. Requests for extension of the submission date will not be granted. Respondents mailing proposals should allow ample delivery time to assure timely receipt of their proposals.

3.3. Clarifications of RFP and Questions

Questions that arise prior to or during proposal preparation must be submitted in writing or via email (no questions via telephone will be accepted) pursuant to the instructions in Section 1 of this RFP and must be **received** no later than on or before 4:00 PM Eastern Standard Time, on May 26th, 2016. Questions and answers will be provided as an Addenda, on or before 4:00 PM Eastern Standard Time, on June 2nd, 2016, to all Respondents who have returned a "Intent to Submit Form" found at APPENDIX F of this RFP by May 23rd, 2016 at 4:00 PM EST. **The questions and answers must be acknowledged in the RFP response.** No contact will be allowed between the Respondent and any other member of the County with regard to this RFP during the RFP process unless specifically authorized in writing by the POC. Prohibited contact may be grounds for Respondent disqualifications.

3.4. Addenda to the RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be provided to all Respondents that returned an "Intent to Submit Form" found at APPENDIX F by May 23rd, 2016 at 4:00 PM EST. **An acknowledgement of such addenda, if any, must be submitted with the RFP response.**

3.5. Organization of Proposal

This section outlines the information that must be included in your proposal. Please respond with your information in the same order as the items in this Section

A. Transmittal Letter. Each response to the RFP should be accompanied by a letter of transmittal not exceeding one (1) page that summarizes key points of the proposal and which is signed by an officer of the firm authorized to commit the Respondent to the obligations contained in the proposal. The transmittal letter should also include a phone number, fax number and e-mail address for the Respondent's contact person.

B. Table of Contents. Include a Table of Contents at the beginning, which clearly outlines the contents of your proposal.

C. Company Information. Provide information related to your company and any companies you are proposing to use as sub-contractors. Specifically address the following:

1. Year the company was organized
2. Identification of company ownership
3. Functions and location of your nearest regional office to Tioga County. Identify the location of your company's headquarters.
4. Any conflicts of interest that may affect the County's potential selection of or entering into an agreement with your organization.
5. Respondents must fill out and submit with their proposals APPENDIX D, Standard Contractor's Questionnaire and APPENDIX C, Certification Regarding Debarment, Suspension, and Responsibility.

D. Experience. Provide information that clearly demonstrates your organization's prior experience and background (both business and technical) in engagements similar to this project. This section must include:

1. A list of all public sector clients, the dates of engagement for each client. Include the name and address of the client, and the approximate annual budget.
2. Approximate number of Employees and Sub-Contractors which will be utilized to fill this RFP.
3. A summary of all legal action in the past 3 years, that resulted in a decision against the vendor and any pending legal actions.
4. A summary of all contracts terminated prior to completion within the past 3 years.
5. Resumes for the key personnel to be involved in providing services to the County.

E. Respondent's Proposal. Respondent must submit a detailed Project Narrative and Work Plan that describes:

1. Its expertise and that of its proposed personnel and how its management procedures will ensure quality work is performed.
2. How its proposed services and proposed work plan will meet the tasks and deliverables as described in Section 2 of this RFP.
3. Proposed quality control mechanisms that ensure a high level of quality and commitment to excellence.
4. Estimated dates of commencement and completion of work as proposed.

F. Cost Proposal. Respondents must detail the proposed compensation for the services. The proposal must set forth a breakdown of the specific services proposed, the estimated time for completion, the hourly rate to be charged to the County, a proposal for progress payments and a **NOT TO EXCEED total project cost**. So that cost proposals may be judged equally, pricing must be submitted on the attached Appendix B, "Cost Proposal Pricing Table".

G. Insurance Certificates. Each Respondent must supply a copy of their current Certificate of Insurance showing the insurance coverage at or above those described in Section 4 of this RFP or a letter stating that Respondent will comply with the insurance coverage requirements of Section 4 if awarded the contract.

H. Exceptions to Standard Tioga County Contract. For all exceptions to the Standard Tioga County Contract, the Respondent must indicate on a separate sheet labeled "Exceptions Taken to the Standard Contract", the section number of any requirement to which an exception is being taken and an explanation of their position. It is not intended that new contract wording be proposed by the Respondent, but rather that the Respondent explain their position so that the conflict can be evaluated. If no exceptions are noted, the Respondent is presumed to have agreed with all sections of the standard contract.

I. Exceptions to the Scope of Work Outlined in Section 2 of the RFP. For all exceptions to the Scope of Work outlined in Section 2 of the RFP, the Respondent must indicate on a separate sheet labeled "Exceptions Taken to the Scope of Work Outlined in Section 2 of the RFP", the section number of any requirement to which an exception is being taken and an explanation of their position. It is not intended that the Scope of Work will change as proposed by the Respondent, but rather that the Respondent explain their position so that the exception can be evaluated. If no exceptions are noted, the Respondent is presumed to have agreed with all sections of the Scope of Work.

- J. Exceptions to General Information for the Respondent.** For all exceptions to Section 4, the Respondent must indicate on a separate sheet labeled “Exceptions Taken to the General Information for the Respondent”, the section number of any requirement to which an exception is being taken and an explanation of their position.
- K. Certification.** Proposals should include a letter from an authorized corporate officer certifying the accuracy of the information provided and guaranteeing the proposed prices.

3.6. Method of Evaluation

- A. Evaluation Committee:** Selected personnel from the County will form the evaluation committee for this RFP. It will be the responsibility of this committee to evaluate all properly prepared and submitted proposals for the RFP and make a recommendation for award.
- B. Evaluation and Selection Criteria:** All responsive and responsible submitted proposals shall be subject to evaluation deemed appropriate for the purpose of selecting the Respondent with whom a contract may be signed. Responses to this RFP will be evaluated according to criteria that the County deems pertinent to these services, which may include, but may not be limited to, the following:
 - 1. Proposed fees
 - 2. Understanding of the Project
 - 3. Degree of Relevant Experience
 - 4. Technical Competence
 - 5. References
 - 6. Capacity and Availability to Perform the Services
 - 7. Other pertinent criteria
- C. Contract Approval Process:** Respondents must be aware that any contract resulting from this RFP is subject to prior approval by the Tioga County Law Department and Tioga County Legislature.

3.7 Oral Presentation

Respondents who submit a proposal may also be required to make an oral presentation of their proposal to the County. These presentations will provide an opportunity for the Respondent to clarify their proposal to ensure a thorough mutual understanding. At the same time, the

County is under no obligation to offer any Respondent the opportunity to make such a presentation.

3.8 Investigations

The County reserves the right to conduct any investigations necessary to verify information submitted by the Respondent and/or to determine the Respondent's capability to fulfill the terms and conditions of the RFP contract document. The County reserves the right to visit a prospective Respondent's place of business to verify the existence of the company and the management capabilities required to administer this agreement. The County will not consider Respondents that are in bankruptcy or in the hands of a receiver at the time of tendering a proposal or at the time of entering into a contract.

Section 4 – General Information for the Respondent

4.1 Reservation of Rights

The County reserves the right to refuse any and all proposals, in part, or in their entirety, or select certain products from various Respondent proposals, or to waive any informality or defect in any proposal should it be deemed to be in the best interest of the County. The County is not committed, by virtue of this RFP, to award a contract, or to procure or contract for services. The proposals submitted in response to this request become the property of the County. If it is in its best interest to do so, the County reserves the right to:

- A. Make selections based solely on the proposals or negotiate further with one or more Respondents. The Respondent selected will be chosen on the basis of greatest benefit to the County as determined by an evaluation committee.
- B. Negotiate contracts with the selected Respondents
- C. Award a contract to more than one Respondent.

4.2 Contract Negotiation

Negotiations may be undertaken with those Respondents whose proposals prove them to be qualified, responsible, and capable of fulfilling the requirements of this RFP. The contract that may be entered into will be the most advantageous to the County, price and other factors considered. The County reserves the right to consider proposals or modifications thereof received at any time before a contract is awarded, if such action is in the best interest of the County. Attached as RFP Appendix A is a copy of the Standard Tioga County Contract which contains mandatory provisions.

Negotiations do not include further revisions to the mandatory provisions depicted in Appendix A. Respondents must take exception as instructed in Section 3.5 if necessary. Any exceptions will be evaluated by the Tioga County Law Department prior to proposal rating.

In addition, the selected Respondent will be required to execute a Business Associate's Agreement with Tioga County. Attached as RFP Appendix G is a copy of the standard Business Associate's Agreement.

4.3 Acceptance of Proposal Content

The contents of the proposal of the successful Respondent may become contractual obligations, should a contract ensue. Failure of a Respondent to accept these obligations may result in cancellation of the award. The awarded respondent will be required to provide Tioga County with a Word version of its final proposal.

4.4 Prime Responsibilities

The selected Respondent will be required to assume responsibility for all services offered in its proposal whether or not provided by them. The selected Respondent will be liable, both individually and severally, for the performance of all obligations under the awarded contract and will not be relieved of liability for non-performance of any of its subcontractors. Further, Tioga County shall approve all subcontractors and will consider the selected Respondent to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

4.5 Contract Payment

Actual terms of payment will be the result of agreements reached between Tioga County and the Respondent selected.

4.6 News Release

News releases pertaining to this RFP or the services to which it relates will not be made without prior approval by the County.

4.7 Notification of Respondent Selection

All Respondents who submit proposals in response to this RFP will be notified by the POC of acceptance or rejection of their proposal.

4.8 Independent Price Determination

A. By submission of a proposal, the Respondent certifies, and in case of a joint proposal, each party thereto certifies as to its own organization, that in connection with the proposal:

- 1) The prices in the proposal have been arrived at independently without consultation, communications, or agreement, with any other Respondent or competitor for the purpose of restricting competition; and
- 2) No attempt has been made or will be made by the Respondent to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

B. Each person signing the proposal certifies that:

- 1) They are the person in the Respondent's organization responsible within that organization for the decision as to prices being offered in the proposal and they have not participated and will not participate in any action contrary to A (1) or (2) above; or
- 2) They are not the person in the Respondent's organization responsible within that organization for the decision as to prices being offered in the proposal but that he/she has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated and will not participate, in any action contrary to A (1) and (2) above, and that as their agent, does hereby so certify; and that he has not participated, and will not participate in any action contrary to A (1) and (2) above.

C. A proposal will not be considered for award if the sense of the statements required in the proposal has been altered so as to delete or modify A (1) or (2) above.

4.9 Incurring Costs

The County is not liable for any costs incurred by Respondent prior to the effective date of the contract.

4.10 Material Submitted

All right, title and interest in the material submitted by the Respondent as part of a proposal shall vest in Tioga County upon submission of the Respondent's proposal to Tioga County

without any obligation or liability by Tioga County to the Respondent. Tioga County has the right to use any or all ideas presented by a Respondent.

Tioga County reserves the right to ownership, without limitation, of all proposals submitted. However, because Tioga County could be required to disclose proposals under the New York Freedom of Information Law (Public Officers Law section 84-90), Tioga County will, to the extent permitted by law, seek to protect the Respondent's interests with respect to any trade secret information submitted as follows:

Pursuant to Public Officers Law section 87, Tioga County will deny public access to Respondent's proposal to the extent the information constitutes a trade secret, which if disclosed would cause substantial harm to the Respondent's competitive position, provided the Respondent identified the information it considers to be a trade secret and explains how disclosure would cause harm to the Respondent's competitive position.

4.11 Proposal Certification

The Respondent must certify that all material, supervision, and personnel will be provided as proposed, at no additional cost above the proposal price. Any costs not identified and subsequently incurred by the County must be borne by the Respondent. This certification is accomplished by having the Proposal signed by an individual who has the authority to bind the Respondent.

APPENDIX A

SAMPLE TIOGA COUNTY CONTRACT

The County contemplates that, in addition to all terms and conditions described in this RFP, final agreement between the County and the selected Respondent will include, without limitation, the terms contained in this Appendix A, Standard Tioga County Contract.

Respondents should note that, at a minimum, all the contractual provisions included in the sample contract herein will automatically be deemed part of the final Contract. Although such provisions will govern all proposals as submitted, the County may later amend such provisions. The sample contract is included so that all proposals will be governed by the same contractual terms.

THIS AGREEMENT, made this ____ day of _____, 2016, by and between TIOGA COUNTY, a municipal corporation, with offices at 56 Main Street, Owego, New York 13827, hereinafter referred to as the "COUNTY", and _____, with offices at _____, hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, the COUNTY is desirous of obtaining the services of the CONTRACTOR to perform the scope of work set forth in Section 1 hereof, and

WHEREAS, the COUNTY issued a Request for Proposal ("RFP"), and

WHEREAS, the CONTRACTOR has submitted a proposal, dated _____, to perform the requested services, and

WHEREAS, the COUNTY Legislature of the County of Tioga by Resolution Number ____ of 20____, authorized a contract for services as hereinafter described, and

WHEREAS, the CONTRACTOR is willing, able, and qualified to perform such services,

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth the parties hereto mutually agree as follows:

Section 1. SCOPE OF WORK

The CONTRACTOR shall perform the following services for the COUNTY:
(Scope of Work from RFP)

Section 2. TERM OF AGREEMENT

The term of this Agreement shall be for the period of commencing upon execution of the contract until completion of all services outlined in the Scope of Work set forth herein. All work shall be completed no later than XXXX , 2016.

This Agreement shall remain in effect for the period specified above, unless otherwise terminated pursuant to the Termination Clause of this Agreement.

Section 3. TERMINATION CLAUSE

This Agreement may be terminated by the mutual written agreement of the contracting parties.

This Agreement may be terminated by either party for convenience by giving the other party 30 days' prior written notice.

This Agreement may be terminated by the COUNTY, for substantial breach, upon the failure of the CONTRACTOR to comply with the terms and conditions of this Agreement, including the attachments hereto; upon the failure of the CONTRACTOR at any time, to comply with any applicable federal, State or local health, safety or fire code regulations. Any one of above shall be considered a substantial breach.

Upon termination of this Agreement, the CONTRACTOR shall have no further responsibility to the COUNTY or to any other person with respect to providing services specified in this Agreement. Upon termination of this Agreement, the COUNTY shall be obligated to pay the CONTRACTOR for services satisfactorily performed in compliance with the Agreement through the date of termination. Following such payment, the COUNTY shall have no further obligations to the CONTRACTOR under this Agreement.

Any notice of termination under this Agreement will be given in writing at the addresses set forth below, specifying the reasons for termination and the effective date of termination. Such written notice will be delivered via registered or certified mail with return receipt requested or will be delivered by hand with receipt provided by the serving party. The CONTRACTOR agrees not to incur any new obligations or to claim any expenses incurred after the effective date of the termination. The effective date of termination is not to be less than thirty (30) days from the date of notice, unless substantial breach of contract is involved, in which case the effective date of termination may be immediately effective on delivery of the termination notice. In any event, the effective date of termination will not be later than the Agreement expiration date.

To the County:

Tioga County Law Department
Attn: Tioga County Attorney
56 Main Street
Suite 204
Owego, NY 13827

To the Contractor:
XXXXXX

Section 4. PAYMENT FOR SERVICES

The COUNTY agrees to pay the CONTRACTOR and the CONTRACTOR agrees to be paid, a sum in full satisfaction of all expenses and compensation due the CONTRACTOR not to exceed _____ (\$ _____), payable in the following manner:
[Set forth progress payments/retainage requirements]

Payment by the COUNTY for the sum(s) herein contracted for shall be made upon the submission of properly executed monthly invoice, supported with such information and documentation necessary to substantiate the invoice, approved by the COUNTY.

The COUNTY may audit records relating to expenses for services provided by the CONTRACTOR pursuant to this Agreement at any time during this Agreement and through and including twelve (12) months following this Agreement.

Section 5. INSURANCE AND INDEMNIFICATION

CONTRACTOR shall comply with the following General Contract and Insurance Specifications:

TIOGA COUNTY, NEW YORK General Contract and Insurance Specifications	
---	--

Project Description or Contract Number:	[Description of project]
Date Issued:	Monday, May 09, 2016 12:40 PM
Vendor name ("Contractor"):	
County Department:	County Department

Please read these specifications very carefully. These specifications are part of your contract with Tioga County. It is advisable that you forward a copy of these specifications to your insurance agent. Tioga County's waiver of any requirement(s) set forth herein shall not constitute a waiver of any other contract provision.

Part I. General Provisions

1. The Contractor shall procure and maintain during the term of this contract, at the Contractor's expense, the insurance policies listed in Part II, with limits equal to or greater than the enumerated limits.
2. Every required policy, including any required endorsements and any umbrella / excess policy, shall be primary insurance. Insurance carried by Tioga County, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by the Contractor.
3. Every required coverage type shall be on an "occurrence basis" unless otherwise specified or allowed.
4. The Contractor may utilize a combination of primary and umbrella/excess liability coverage to achieve the limits required hereunder. Excess coverage must be at least as broad as primary coverage.
5. Proof of insurance coverage shall be provided on an ACORD 25 form or acceptable equivalent. All insurance coverage and certificates must be approved by the County Department of Law or its designee prior to commencement of services.
6. The amount of self-insured retention or deductibles, if any, must be disclosed on the certificates of insurance. The contractor shall be solely responsible for any self-insured retention or deductible losses under each of the required policies.
7. Tioga County reserves the right to request a certified copy of any policy and any endorsement thereto.
8. All insurance shall be provided by insurance carriers licensed & admitted to do business in the State of New York and must be rated "A-, XI" or better by A.M. Best (Current Rate Guide).
9. If the Contractor fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon Tioga County may exercise any rights it has in law or equity, including but not limited to the following:
 - (a) immediate termination of the contract;
 - (b) withholding any / all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR
 - (c) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith. All monies so paid by Tioga County shall be repaid upon demand, or at the County's option, may be offset against any monies due to the Contractor.

Part II. Required Insurance – Minimum coverage types and amounts

1.

Coverage Type	Minimum Limits												
<p><u>Commercial General Liability (CGL)</u> <u>per standard ISO form or equivalent with no modification of coverage for contractual liability</u></p> <ul style="list-style-type: none"> All endorsed policy exclusions shall be disclosed by submittal of forms Tioga County shall be named Additional Insured, on a primary, noncontributory basis. The additional insured coverage shall be provided per ISO forms CG 2010 and CG 20 37 or equivalents and the insurance shall not contain any exclusion for bodily injury or property damage arising from completed operations. Additional Insured form(s) shall be attached to the Certificate of Insurance. 	<table> <tr> <td>General Aggregate</td> <td>\$2,000,000</td> </tr> <tr> <td>Products & Completed Operations Aggregate</td> <td>\$2,000,000</td> </tr> <tr> <td>Personal & Advertising Injury</td> <td>\$1,000,000</td> </tr> <tr> <td>Each Occurrence</td> <td>\$1,000,000</td> </tr> <tr> <td>Fire Damage</td> <td>\$300,000</td> </tr> <tr> <td>Medical Expense</td> <td>\$10,000</td> </tr> </table>	General Aggregate	\$2,000,000	Products & Completed Operations Aggregate	\$2,000,000	Personal & Advertising Injury	\$1,000,000	Each Occurrence	\$1,000,000	Fire Damage	\$300,000	Medical Expense	\$10,000
General Aggregate	\$2,000,000												
Products & Completed Operations Aggregate	\$2,000,000												
Personal & Advertising Injury	\$1,000,000												
Each Occurrence	\$1,000,000												
Fire Damage	\$300,000												
Medical Expense	\$10,000												
<p><u>Automobile Liability (Comprehensive Form)</u> Must cover owned, non-owned, leased and hired vehicles.</p>	<p>\$1,000,000 Combined Single Limit</p>												
<p><u>Professional Liability</u></p> <ul style="list-style-type: none"> If “Claims Made” coverage, must be maintained continuously for a minimum of three (3) years after contract termination. Also, retroactive date must precede the date of the contract for jail medical services Shall not contain restrictions for <ul style="list-style-type: none"> ✓ Contractual liability ✓ Express warranties or guarantees ✓ Personal injury 	<p>\$1,000,000 Each Claim \$1,000,000 Annual Aggregate</p>												
<p><u>Data Breach Liability</u></p>	<p>\$1,000,000 Each Occurrence</p>												
<p><u>Umbrella / Excess Liability (Following Form)</u></p> <ul style="list-style-type: none"> To extend over CGL, Auto 	<p>\$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate</p>												
<p><u>Workers’ Compensation and Employer’s Liability</u> If you have no employees (sole proprietor) a NYS Workers’ Compensation Board issued waiver of the Workers’ Compensation requirement is acceptable</p>	<p>Part 1 – Statutory Part 2 – (Unlimited in NYS) \$500,000 Each Accident \$500,000 Disease Policy Limit \$500,000 Disease Each Employee</p>												

2. The certificate shall:

- indicate coverages and minimum amounts required in part II.1

- provide that the coverage(s) shall not be cancelled, terminated or materially changed (including an aggregate insurance limits reduction) unless prior 30 day written notice has been given to the Tioga County. Attach applicable endorsement to the certificate.

3. The Additional Insured & Certificate Holder should read:

County Of Tioga, its elected officials, appointees, employees and designated volunteers

Attn: Law Department

56 Main Street, Owego, NY 13827

Part III. Defense and Indemnification

The Contractor shall indemnify and save harmless the County, its officers, agents, servants and employees from and against all liability, damages, punitive damages, costs or expenses, causes of actions, suits, judgments, losses, and claims of every name not described, including attorney's fees and disbursements, brought against the County which may arise, be sustained, or occasioned directly or indirectly by any person, firm or corporation arising out of or resulting from the performance of the services by the Contractor, its agents or employees, the provision of any products by the Contractor, its agents or employees, arising from any act, omission or negligence of the Contractor, its agents or employees, or arising from any breach or default by the Contractor, its agents or employees under the Agreement for Comprehensive Medical and Mental Health Services for Inmates of the Tioga County Jail . Nothing herein is intended to relieve the County from its own negligence or misfeasance or to assume any such liability for the County by the Respondent.

Part IV. Safety

Tioga County specifically reserves the right to suspend or terminate all work under this contract whenever Contractor and/or contractor's employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of contractor's employees, subcontractor's employees, county employees or member(s) of the general public on county property. This reservation of rights by Tioga County in no way obligates Tioga County to inspect the safety practices of the Contractor.

If Tioga County exercises its rights pursuant to this part, the contractor shall be given three days to cure the defect, unless Tioga County, in its sole and absolute discretion, determines that the service cannot be suspended for three days due to Tioga County's legal obligation to continuously provide contractor's service to the public or Tioga County's immediate need for completion of the Contractor's work. In such case, Contractor shall immediately cure the defect.

If the Contractor fails to cure the identified defect(s), Tioga County shall have the right to immediately terminate this contract. In the event that Tioga County terminates this contract, any payments for work completed by the Contractor shall be reduced by the costs incurred by Tioga County in re-bidding the work and /or by the increase in cost that results from using a new contractor.

Section 6. AMENDMENTS

This Agreement may be modified or amended only in writing duly executed by both parties. Any modification or amendment shall be attached to and become a part of this Agreement. All Notices

concerning this Agreement shall be delivered in writing to the parties at the principal addresses as set forth above unless either party notifies the other of a change in address.

Section 7. INDEPENDENT CONTRACTOR

For the purpose of this Agreement, the CONTRACTOR is and shall in all respects be considered an independent contractor. The CONTRACTOR, its individual members, directors, officers, employees and agents are not and shall not hold themselves out nor claim to be an officer or employee of the COUNTY nor make claim to any rights accruing thereto, including, but not limited to, Worker's Compensation, unemployment benefits, Social Security or retirement plan membership or credit.

The CONTRACTOR shall have the direct and sole responsibility for the following: payment of wages and other compensation; reimbursement of the CONTRACTOR's employee's' expenses; compliance with Federal, state and local tax withholding requirements pertaining to income taxes, Workers Compensation, Social Security, unemployment and other insurance or other statutory withholding requirements; and all obligations imposed on the employer of personnel. The COUNTY shall have no responsibility for any of the incidences of employment.

Section 8. EXECUTORY NATURE OF AGREEMENT

This Agreement shall be deemed executory only to the extent of the funding available and the COUNTY shall not incur any liability beyond the funds annually budgeted therefor.

Section 9. NO ASSIGNMENT WITHOUT CONSENT

The CONTRACTOR shall not, in whole or in part, assign, transfer, convey, sublet, mortgage, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Agreement, or any part thereof to any person or entity without the prior written consent of the COUNTY.

Section 10. RIGHT TO INSPECT

Designated representatives of the COUNTY shall have the right to monitor the provision of services under this Agreement which includes having access at responsible times and places to the CONTRACTOR's employees, reports, books, records, audits and any other material relating to the delivery of such services. The CONTRACTOR agrees to maintain and retain all pertinent records related to this Agreement for a period of ten (10) years after final payment.

Section 11. Non-Discrimination

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, or any person or inmate served under this Agreement because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, marital status or any other class of person protected against discrimination by state or federal statute.

Section 12. CONTRACTOR QUALIFIED, LICENSED, ETC.

The CONTRACTOR represents and warrants to the COUNTY that it and its employees are duly and fully qualified under the laws of the State of its incorporation and of the State of New York, to undertake the activities and obligations set forth in this Agreement, that it possess as of the date of its execution of this Agreement, and it will maintain throughout the term thereof, all necessary approvals, consents and licenses from all applicable government agencies and authority and that it has taken and secured all necessary board of directors and shareholders action and approval.

Section 13. CONFIDENTIAL INFORMATION

“Confidential Information” means any and all non-public, medical, financial and personal information in whatever form (written, oral, visual or electronic) possessed or obtained by either party. Confidential Information shall include all information which (i) either party has labeled in writing as confidential, (ii) is identified at the time of disclosure as confidential, (iii) is commonly regarded as confidential in the health care industry, or (iv) is Protected Health Information as defined by HIPAA.

CONTRACTOR agrees to comply with all applicable laws and regulations, including HIPAA and the HITECH Act, to the extent applicable, in meeting their obligations under this Agreement.

CONTRACTOR agrees to maintain the confidentiality of any Confidential Information, including Protected Health Information and to implement all necessary and appropriate safeguards to prevent any unlawful use or disclosure of any Confidential Information.

CONTRACTOR agrees to report to the COUNTY any use or disclosure of Confidential Information in violation of this Agreement, HIPAA or any other federal, state or local law or regulation.

The obligations of confidentiality under this Agreement will continue indefinitely from the effective date of this Agreement.

CONTRACTOR agrees to execute a Business Associate’s Agreement in connection with the services provided by this contract.

Section 14. FEDERAL, STATE AND LOCAL LAW AND REGULATIONS COMPLIANCE

Notwithstanding any other provision in this Agreement, the Contractor remains responsible for ensuring that any and all services provided pursuant to this Agreement comply with all pertinent provisions of Federal, State and local statutes, rules and regulations, including without limitation, Title VI of the Civil Rights Act of 1964 (CRA Title VI), Federal Executive Order 13166, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA), HIPAA and HITECH.

Section 15. LAW

This Agreement shall be governed by and under the law of the State of New York without regard or reference to its conflict of law principles. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Tioga, New York.

Section 16. NO WAIVER

In the event that the terms and conditions of this Agreement are not strictly enforced by the COUNTY, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the COUNTY from enforcing each and every term of this Agreement thereafter.

Section 17. SEVERABILITY

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

Section 18. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the County and the Contractor and supersedes any and all prior Agreements between the parties hereto for the services herein to be provided.

SIGNATURE PAGE

APPENDIX C

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND RESPONSIBILITY**

The undersigned certifies, to the best of his/her knowledge and belief, that the Contractor and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
2. Have not within a three (3) year period preceding this transaction/application/proposal/contract/agreement been convicted of or had a civil judgement 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 contract 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;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three (3) year period preceding this transaction/application/proposal/contract/agreement had one or more public transactions (Federal, State, Local) terminate for cause or default.

Date: _____

[Print Name of Contractor]

By: _____

[Signature]

[Print Name]

[Print Title/Office]

APPENDIX D

**CONTRACTOR'S QUESTIONNAIRE
TIOGA COUNTY, NEW YORK**

Respondents must complete this detailed Questionnaire and attach it to their proposal.

The information requested in this questionnaire is to assist the County in evaluating the qualifications of contractors and shall be submitted by all Respondents.

Please indicate whether you believe that any of the information supplied herein is confidential and should be exempt from disclosure under the Freedom of Information Law ____ Yes
____ No

If you checked "yes" you must identify the information you feel is confidential by placing an asterisk in front of the appropriate question number(s) and you are requested to attach an additional sheet(s) upon which the basis for such claim(s) is explained.

Project: _____

1. Contractor: _____

DBA Name, if any: _____

Address: _____

Telephone: (____) _____

Fax: (____) _____

2. Type of Company: ____ corporation incorporated in:
____ partnership
____ individual proprietor
____ joint venture consisting of _____

3. List names and titles of officers, partners or proprietors.

4. How long has the company been in business? _____

5. List any former names of the company.

Identify any affiliates of your company. For purposes by this question, your company and another are affiliates when, either directly or indirectly, one controls or has the power to control the other, or a third party or parties controls or has the power to control both.

Federal ID No. Company Name

Address

_____	_____
_____	_____

6. Has the company, any affiliate or any predecessor or any member of the company ever been included on any federal, state or municipal ineligible or debarred list? ____ Yes ____ No?

7. Has the company, any affiliate or any predecessor, been defaulted, or failed to complete a contract in the last five years? ____ Yes ____ No?

8. Within the past five (5) years has the company, any affiliate, any predecessor company or entity, or any person identified in question number 3 above been the subject of any of the following: (respond to each question and describe in detail the circumstances of each company's "Yes" answer; attach additional pages if necessary).
 - a. A judgment of conviction for any business-related conduct constituting a crime under state or federal law? ____ No ____ Yes
 - b. A criminal investigation or indictment for any business-related conduct constituting a crime under state or federal law? ____ No ____ Yes
 - c. A grant of immunity for any business-related conduct constituting a crime under state or federal law? ____ No ____ Yes
 - d. Any administrative proceeding, civil action or claim? ____ No ____ Yes
 - e. The subject of a lawsuit? ____ No ____ Yes
 - f. Issued a citation by a state or federal entity? ____ No ____ Yes
 - g. The subject of any penalty or fine(s) due to a lack of compliance with the terms of a contract? ____ No ____ Yes
 - h. A rejection of any bid or solicitation response for lack of qualifications or responsibility or because of the submission of an informal, no-responsive or incomplete bid or response? ____ No ____ Yes
 - i. A voluntary exclusion from a contracting agreement? ____ No ____ Yes

- j. Any other federal or state citations, notices, violation orders, pending administration hearings or proceedings or determination of a violation of any labor law or regulation? _____ No _____ Yes
- k. Any criminal investigation, felony indictment or conviction concerning formation of or any business association? _____ No _____ Yes
- l. Any bankruptcy proceeding? _____ No _____ Yes
- m. Any suspension or revocation of any business or professional license? _____ No _____ Yes
- n. Any citations, notices, violation orders, pending administrative hearings or proceedings or determination for violation of federal, state or local health laws, rules or regulations? _____ No _____ Yes

I hereby certify the above and attached information to be true, complete and not misleading. False or misleading statements may result in revocation of the award or contract.

Signature

Name and Title

Date

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the foregoing instrument and duly acknowledged that he/she executed the same.

Notary Public

APPENDIX E

NO RESPONSE FORM

If you choose not to respond to this RFP, please fax or e-mail this form back to Tioga County at your earliest convenience to the attention of:

Judith M. Quigley
Tioga County Attorney
56 Main Street
Suite 204
Owego, New York 13827
(607)687-8253 (voice)
(607)223-7003 (FAX)
quigleyj@co.tioga.ny.us

RFP Risk Assessment and Audit of Compliance

Company _____

Contact Phone: _____

Email: _____

Reason for No-Response:

Please check Appropriate Box

- Project Capacity
- Cannot Bid Competitively
- Cannot meet delivery requirements
- Cannot meet specifications
- Do not want to do business with Tioga County
- *Other

Remarks: _____

APPENDIX F

INTENT TO SUBMIT FORM

If you plan to submit a Proposal, please fax or e-mail this form back to Tioga County at your earliest convenience, but no later than May 23rd, 2016 by 4:00 PM EST to the attention of:

Judith M. Quigley
Tioga County Attorney
56 Main Street
Suite 204
Owego, New York 13827
(607)687-8253 (voice)
(607)223-7003 (FAX)
quigleyj@co.tioga.ny.us

RFP Risk Assessment and Audit of Compliance

Company: _____

Company Address: _____

Contact Name: _____

Contact Phone: _____

Email: _____

APPENDIX G

BUSINESS ASSOCIATE AGREEMENT

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") by and between COUNTY OF TIOGA, having its business address at 56 Main Street, Owego, New York 13827 ("Covered Entity") and [CONTRACTOR], having its business address at [ADDRESS OF CONTRACTOR], ("Business Associate"), is effective as of the date of the Service Agreement (defined below) (the "Agreement Effective Date").

RECITALS

A. Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of an agreement whereby Business Associate will provide certain services to or perform functions on behalf of Covered Entity (the "Service Agreement").

B. Business Associate may have access to information, some of which may be Protected Health Information ("PHI") as defined below, in fulfilling its responsibilities under the Service Agreement.

C. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104.191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "Privacy and Security Rules"); and with the requirements of Subtitle D the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery & Reinvestment Act of 2009 (Public Law 111-5) 42 U.S.C. Sections 17921-17954 ("HITECH") and other applicable laws.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. Definitions.

a. Breach means the unauthorized access, acquisition, use, or disclosure of PHI which compromises the security or privacy of PHI, except where: (1) an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information; (2) any unintentional acquisition, access, or use of PHI by an employee or individual acting under the authority of a covered entity or business associate (a) was made in good faith and within the course and scope of the employment or other professional relationship of such employee, or individual, respectively, with the covered entity or business associate; and (b) such information is not further acquired, accessed, or used or disclosed by any person; or (3) any inadvertent disclosure, by a person who is otherwise authorized to access PHI at a covered entity or business associate, to another person at the same covered entity or business associate provided that any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization.

Any acquisition, access, use or disclosure of PHI in a manner not permitted by the above paragraph is presumed to be a "Breach" unless Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised based on a risk

assessment of at least the following factors: (i) the nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the PHI or to whom the disclosure was made; (iii) whether the PHI was actually acquired or reviewed; and (iv) the extent to which the risk to the PHI has been mitigated.

b. Business Associate shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR §160.103.

c. Covered Entity shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to 45 CFR § 160.103.

d. Data Aggregation shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR § 164.501.

e. Designated Record Set shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR 164.601 and 45 CFR 164.524. Subject to the foregoing, a Designated Record set means a group of records maintained by or for a Covered Entity that is: (1) the individual's medical and billing records or (2) used in whole or in part, by or for the covered entity to make decisions about the individual, and does not include: (a) duplicate information maintained in other systems; (b) data collected and maintained for research; (c) data collected and maintained for peer review purposes; (d) psychotherapy notes; (e) information compiled in reasonable anticipation of litigation or administrative action; (f) employment records; (g) student records; and (h) source data interpreted or summarized in the individual's medical record such as pathology slides and diagnostic film.

f. Disclosure means the release, transfer, provision of access to, or divulging in any other manner, of PHI, outside Business Associate's organization, i.e., to anyone other than its employees who have a need to know or have access to the PHI.

g. Electronic Health Record is an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

h. Electronic Protected Health Information or "EPHI" means Protected Health Information, as defined herein, that is transmitted by or maintained in electronic media. For purposes of this Agreement, unless otherwise specified, any obligations of Business Associate relating to PHI shall also apply to EPHI.

i. Health Care Operations shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR § 164.501.

j. Individual shall have the same meaning as the term "Individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

k. Limited Data Set means information that excludes names, postal address (other than city, state, and zip code), telephone and fax numbers, email address, social security and medical record numbers, health plan numbers, account numbers, certificate license numbers, vehicle identifiers and

serial numbers including license plate numbers, device identifiers and serial numbers, Web Universal Resource Locators, Internet Protocol address numbers, biometric identifiers including finger and voice prints and full face photographic images and any comparable images.

l. Personal Health Record means an electronic record of Individually Identifiable Health Information on an Individual that can be drawn from multiple sources and that is managed, shared, and controlled by or for the Individual.

m. Privacy Rule shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164.

n. Protected Health Information or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual, the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual, and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR 160.103.

o. Secured PHI means PHI rendered unusable, unreadable or indecipherable to unauthorized individuals only if one or more of the following applies:

- (i) Electronic PHI has been encrypted as specified in the HIPAA Security Rule by the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key and such confidential process or key that might enable decryption has not been breached;
- (ii) Encryption processes tested by National Institute of Standards and Technology (NIST) and judged to meet this standard including:
 - (a) Valid encryption processes for data at rest consistent with NIST Special Publication 800-111, Guide to Storage Encryption Technologies for End User Devices;
 - (b) Valid encryption processes for data in motion that comply with Federal Information Processing Standards (FIPS) 140-2 including standards described in NIST Special Publications 800-2, guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations; 800-77, Guide to IPsec VPNs; or 800-113, Guide to SSL VPNs, and may include others which are FIPS 140-2 validated;
- (iii) The media on which the PHI is stored or recorded has been destroyed on one of the following ways:
 - (a) Paper, film, or other hard copy media have been shredded or destroyed such that the PHI cannot be read or otherwise cannot be reconstructed;

(b) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization, such that the PHI cannot be retrieved.

p. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.

q. Unsecured Protected Health Information means PHI that is not secured through technology or methodology that HHS has stated renders the PHI unusable, unreadable, or indecipherable to unauthorized Individuals.

r. Use means, with respect to PHI, the sharing, employment, application, utilization, transmission, examination, or analysis of such information to, from or within Business Associate's organization.

2. Obligations of Business Associate.

a. Permitted Uses. Business Associate shall use and/or disclose PHI only as permitted or required by this Agreement or as otherwise required by HIPAA, HITECH, and applicable state law. Business Associate acknowledges that sections of the Privacy Rule, the Security Rule and the HITECH Act apply directly to Business Associate in the same manner as they apply to Covered Entity and agrees to comply with such rules and regulations as applicable. Business Associate shall not use PHI in any manner that would constitute a violation of HIPAA or HITECH if so used by Covered Entity, except that Business Associate may use PHI (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, (iii) to report violations of law to appropriate federal and state authorities consistent with 45 CFR § 164.5020(1), or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity.

b. Permitted Disclosures. Business Associate shall not disclose PHI in any manner that would constitute a violation of HIPAA or HI TECH if disclosed by Covered Entity, except that Business Associate may disclose PHI (i) in a manner permitted pursuant to this Agreement, (ii) for the proper management and administration of Business Associate; (iii) as required by law, or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity.

c. Appropriate Safeguards. Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI otherwise than as permitted by this Agreement, HIPAA, HITECH and state law and to protect the confidentiality, integrity and availability of electronic PHI created, received, maintained or transmitted on behalf of Covered Entity.

d. Reporting of Improper Use or Disclosure. Business Associate shall report to Covered Entity in writing any Security Incident, unauthorized access of PHI, Use or Disclosure of PHI otherwise than as provided for by this Agreement, Breach involving Unsecured PHI, or any known pattern of activity or practice that constitutes a material breach of this Agreement, within two (2) business days of becoming aware of such improper Use or Disclosure, unauthorized access, Security Incident or Breach. In the event of a Breach, if the identity and/or contact information of all such Individuals is not known, Business Associate must nevertheless notify Covered Entity of the Breach within the two (2) business day time frame and provide additional information concerning the identification of affected Individuals as soon as it is available. Business Associate shall: (i) take prompt action to mitigate the harmful effects

of any Security Incident, Breach, improper Use or Disclosure or unauthorized access of PHI in violation of this Agreement and state or federal law; (ii) take additional action to mitigate as requested by Covered Entity; and (iii) upon request, assist Covered Entity in the performance of a risk assessment to determine if a Breach has occurred.

e. Business Associate's Agents/Subcontractors. Business Associate may disclose PHI to and permit the use of PHI by its employees, contractors, agents, or other representatives only if and to the extent directly related to, and necessary for, the performance of services for or on behalf of Covered Entity. Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI.

f. Access to PHI. Business Associate shall make PHI maintained by Business Associate or its agents or subcontractors in Designated Records Sets or in an Electronic Health Record available to Covered Entity for inspection and copying to enable Covered Entity to fulfill its obligations under HIPAA, HITECH or other applicable laws.

g. Amendment of PHI. Business Associate or its agents or subcontractors shall make PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under HIPAA, HITECH or other applicable laws.

h. Accounting Rights. Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under HIPAA, HITECH or other applicable laws. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request, or at least three (3) years prior to the request if the records are maintained in an Electronic Health Record.

i. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Covered Entity's PHI, and relating to security incidents involving Covered Entity's Electronic PHI, available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with HIPAA and HITECH.

j. Minimum Necessary. Business Associate and its agents or subcontractors shall only request, use and disclose, to the extent practicable, a Limited Data Set, or the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure.

k. Retention of PHI. Notwithstanding Section 3(d) of this Agreement, Business Associate and its subcontractors or agents shall retain the information required under Section 2(h) of this Agreement for a period of six (6) years after termination of this Agreement.

l. Audits, Inspection and Enforcement. Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or Disclosure of PHI and the implementation of appropriate security safeguards pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement.

3. Term and Termination.

a. Term. This Agreement shall become effective on the Agreement Effective Date and shall continue until terminated by Covered Entity or until the Service Agreement expires or is terminated. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Sections 2, 4, 5, 6, 7 and 8 of this Agreement.

b. Material Breach. A breach by Business Associate of any material provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement by Covered Entity.

c. Reasonable Steps to Cure Breach. 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 HIPAA, HITECH, the provisions of this Agreement or the Service Agreement and does not terminate the Agreement, then Business Associate shall take reasonable steps to cure such breach or end such violation, as applicable. If Business Associate's efforts to cure such breach or end such violation are unsuccessful, Covered Entity shall terminate the Agreement and the Service Agreement, if feasible. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this Agreement, Business Associate must take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, the Business Associate must terminate this Agreement if feasible. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of Covered Entity that Business Associate believes constitutes a material breach or violation of Covered Entity's obligations under this Agreement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

d. Effect of Termination. Upon termination of the Agreement for any reason, Business Associate shall return or destroy all PHI that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c) and 2(e) of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

4. Limitation on Liability. Covered Entity will not be liable to Business Associate or any other person for any consequential, incidental, punitive or other damages arising from or relating to the PHI (including but not limited to errors or omissions in the PHI) or for Covered Entity's performance or failure to perform under this Agreement.

5. Indemnification. Each Party agrees to indemnify, defend and hold harmless the other party and its respective employees, directors, officers, subcontractors, and agents from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses (including without limitation reasonable attorney's fees) arising from or in connection with any Breach of this Agreement, or any negligent or wrongful acts or omissions in connection with this Agreement, by the indemnifying party or its employees, directors, subcontractors, or agents. This indemnification obligation shall survive the expiration or termination of this Agreement.

6. Injunction. Covered Entity and Business Associate agree that any violations of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other

remedies available to Covered Entity at law or in equity, or under this Agreement, in the event of any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this section shall survive the expiration or termination of this Agreement.

7. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, HITECH or state law will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

8. Amendment.

a. Written Amendment Required. This Agreement may not be modified or amended except by a writing duly signed by an authorized representative of each party.

b. Amendment to Comply with Law. The parties agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH, and other applicable laws relating to the security or confidentiality of PHI.

9. No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liability whatsoever.

10. No Waiver. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision. No delay in action with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

11. Independent Contractor Relationship. This Agreement is not intended to create, and will not be construed to create, any relationship between the parties other than that of independent contractors. Neither of the parties nor any of their respective representatives will be construed to be the agent, employee, or representative of the other.

12. Notice. Any notices required to be given pursuant to the terms and conditions hereof shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the respective parties at their addresses stated below. Notices shall be deemed to be effective on the date when they are mailed.

TO: **COVERED ENTITY:**
COUNTY OF TIOGA
56 Main Street
Owego, New York 13827

TO: **BUSINESS ASSOCIATE:**
[CONTRACTOR]
[CONTRACTOR ADDRESS]

13. Severability. If any section or portion of this Agreement shall be determined to be invalid, such

determination shall not affect the enforceability or validity of the remainder of this Agreement.

14. Interpretation. The terms and conditions of this Agreement shall supersede any conflicting terms and conditions in the underlying Service Agreement (as amended from time to time) between the parties and shall supersede the terms and conditions of any existing Business Associate Agreement between the parties. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, HITECH, and applicable laws. The parties agree that any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HITECH, and applicable laws.

IN WITNESS WHEREOF, the parties hereto have duly executed this Business Associate Agreement as of the Service Agreement Effective Date.

COUNTY OF TIOGA

Covered Entity

Business Associate

By:

By

(sign):

Name:

Name

(print):

Title:

Title:

Date:

Date:
